No. 21-6308

IN THE

SUPREME COURT OF THE UNITED STATES

IONA SANDERS,

Petitioner

v.

CHRISTWOOD,

Respondent

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit

ORIGINAL

PETITION FOR WRIT OF CERTIORARI

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pro se/Petitioner

QUESTIONS PRESENTED

1. Whether a pandemic overrides Amendment VII, which states, "the right of trial by jury shall be preserved," when the district court judge stated, "Obviously given where we are, the Court is not having any jury trials at this time, and the jury trials that we did have scheduled ... and a lot of the first part of 2021 is already consumed with trial settings," than scheduled the jury trial, but granted summary judgment to the moving party "the first part of 2021."

2. Whether the Fifth Circuit can require a "judgment or order" to have jurisdiction over a non-appealed denial motion to recuse under § 455(a), thereby declining to address the Petitioner's "Statement of the Issues Presented for Review," under Fed. R. App. P. 28(a)(5), regarding the magistrate judge, refused to recuse because the litigant's request was "too late," because an order was "outside of an explicitly designated order in the notice of appeal," as this opinion shows conflicts amongst circuit Courts adhering to a "timeliness" motion not set by Congress, but allows the Fifth Circuit to remain silent on a non-appealed denial motion to recuse.

3. Whether the Fifth Circuit in Appeals I, disregarded this Court's precedent in Comcast Corp. v. National Association of African-American Owned Media, 589 U.S._ (2020), by failing to mandate the district court addressed and required the Petitioner's Race Discrimination claims brought under 42 U.S.C. § 1981, meet the "But-For" Causation Standard, instead of the appellate court pairing Race Discrimination claims under Title VII with claims under § 1981 to be "analyzed under the evidentiary framework" to meet the "McDonnell Douglas burden-shifting framework" when affirming summary judgment.

4. Whether the Fifth Circuit err when applying de novo standard of review when barring a litigant claims under the Law of the Case Doctrine, as this opinion shows consensus amongst the Seventh and the Court of Appeal of Indiana, but conflicts with the Sixth, and Tenth Circuits, Supreme Court of Florida and Court of Appeal of California.

5. Whether an appellate court in Appeals II can verbatim take facts from its previous ruling in Appeals I and apply it in Appeals II when reviewing a trial court grant of summary judgment in Summary II under de novo standard of review as this conflicts with the Sixth circuit.

6. Whether appellate courts can override State regulations by implementing that a litigant needs to show a violation of State Law to meet the requirements under the Louisiana Whistleblower Statute when the Louisiana Supreme Court did not "directly addressed" in the statute whether a litigant "must prove an actual violation of state law."

7. Whether a litigant claiming "emotional distress" without medical treatment is grounds for a "probable cause" that would grant an employer full access to an employee medical records to search "any mental or physical conditions which could have led to the claimed damages," when Amendment IV stipulates a "right of the people to be secure in their "papers" ... "against unreasonable searches and seizures," as circuit courts conflicts on whether employers should be granted access to litigants medical records in the absence of medical treatments for "emotional distress."
8. Whether the Fifth Circuit err when waiving the litigant's "challenge to the evidence" of an employer submission of unsigned and unsigned sealed documents "in support of its summary judgment motion," because the litigant failure to file a motion to strike or object, as this decision conflicts with the 7th Circuit, Fed. R. Civ. P. 11(a), and Fed. R. Civ. P. Rule 26(g)(2)(C) requiring the Court to strike unsigned documents once brought its attention.

PARTIES TO THE PROCEEDING

Petitioner Iona Sanders was the plaintiff in the district court proceedings and appellant in the court of appeals proceedings. Respondent Christwood was the defendant in the district court proceedings and appellee in the court of appeals proceedings.

RELATED CASES

(1) Sanders v. Christwood, No. 2:17-cv-9733, U. S. District Court for the Eastern District of Louisiana. Judgment entered January 5, 2021.

(2) Iona Sanders v. Christwood, No. 21-30016, U. S. Court of Appeals for the Fifth Circuit. Judgment entered June 2, 2021.

(3) Sanders v. Christwood, No. 2:17-cv-9733, U. S. District Court for the Eastern District of Louisiana. Judgment entered June 27, 2019.

(4) Iona Sanders v. Christwood, No. 19-30550, U. S. Court of Appeals for the Fifth Circuit. Judgment entered August 14, 2020.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Iona Sanders, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit in Case No. 21-30016, entered on June 2, 2021, and Case No. 19-30550, entered on August 14, 2020.

OPINION BELOW

In Appeals II, the opinion of the Court of Appeals for the Fifth Circuit affirming the judgment of the United States District Court for the Eastern District of Louisiana was entered on June 2, 2021 (Appendix A "App. A"). The Fifth Circuit has determined its opinion be unpublished, and it is available at Sanders v. Christwood, No. 21-30016 (5th Cir. Jun. 2, 2021). The opinion of the United States District Court granting Christwood summary judgment and dismissing Petitioner's claim with prejudice was entered on January 5, 2021 (Appendix B "App. B") and reported at Sanders v. Christwood, L.L.C., Civil Action No. 17-9733 Section M (5) (E.D. La. Jan. 5, 2021).

The Court of Appeals for the Fifth Circuit affirmed the judgment of the United States District Court for the Eastern District of Louisiana was entered on August 14, 2020 (Appendix H "App. H"). The decision was published on August 14, 2020, and available at Sanders v. Christwood, 970 F.3d 558 (5th Cir. 2020). The opinion of the United States District Court granting Christwood summary judgment and dismissing Petitioner's claims with prejudice was entered on June 26, 2019 (Appendix I "App. I"), and reported at Sanders v. Christwood, L.L.C., Civil Action No. 17-9733 Section M (5) (E.D. La. Jun. 26, 2019).

JURISDICTION

This Court jurisdiction is invoked under 28 U.S.C. § 1254(1). The Court of Appeals' opinion was decided on June 2, 2021. On March 19, 2020, this Court ordered an extended deadline to file a writ of certiorari "to 150 days from the date of the lower court judgment, order denying discretionary review, or order denying a timely petition for rehearing." (Order List: 589 U.S. March 19, 2020). This writ of certiorari petition is timely filed under Supreme Court Rule 30(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution

Amendment IV

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment VII

> In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Amendment XIV

> Section 1
> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Title VII of the Civil Rights Act

42 U.S.C. § 2000e–2 - Unlawful Employment Practices

2(a) Employer practices

It shall be an unlawful employment practice for an employer -

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

42 U.S.C. § 1981- Equal Rights Under the Law

(a) Statement of equal rights

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(b) "Make and enforce contracts" defined

For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

(c) Protection against impairment

The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

Louisiana Statutory

Louisiana Whistleblower Statute

A. An employer shall not take reprisal against an employee who in good faith, and after advising the employer of the violation of law:

(1) Discloses or threatens to disclose a workplace act or practice that is in violation of state law.

(2) Provides information to or testifies before any public body conducting an investigation, hearing, or inquiry into any violation of law.
(3) Objects to or refuses to participate in an employment act or practice that is in violation of law.

La. Rev. Stat. Ann. § 23:967(A)(1-3)

Louisiana Revised Statute Tit. 40, § 2009.20 - Duty to make complaints; penalty; immunity

A. As used in this Section, the following terms shall mean:

(1) "Abuse" is the infliction of physical or mental injury or the causing of the deterioration of a consumer by means including but not limited to sexual abuse, or exploitation of funds or other things of value to such an extent that his health or mental or emotional well-being is endangered.
(2) "Neglect" is the failure to provide the proper or necessary medical care, nutrition, or other care necessary for a consumer's well-being.

B. (1) Any person who is engaged in the practice of medicine, social services, facility administration, psychological or psychiatric services; or any registered nurse, licensed practical nurse, nurse's aide, home- and community-based service provider employee or worker, personal care attendant, respite worker, physician's assistant, physical therapist, or any other direct caregiver having knowledge that a consumer's physical or mental health or welfare has been or may be further adversely affected by abuse, neglect, or exploitation shall, within twenty-four hours, submit a report to the department or inform the unit or local law enforcement agency of such abuse or neglect. When the department receives a report of sexual or physical abuse, whether directly or by referral, the department shall notify the chief law enforcement agency of the parish in which the incident occurred of such report. Such notification shall be made prior to the end of the business day subsequent to the day on which the department received the report. For the purposes of this Paragraph, the chief law enforcement agency of Orleans Parish shall be the New Orleans Police Department.

(2) Any person who knowingly or willfully violates the provisions of this Section shall be fined not more than five hundred dollars or imprisoned for not more than two months, or both.

C. Any person, other than the person alleged to be responsible for the abuse or neglect, reporting pursuant to this Section in good faith shall have immunity from any civil liability that otherwise might be incurred or imposed because of such

report. Such immunity shall extend to participation in any judicial proceeding resulting from such report.

D. All hospitals shall permanently display in a prominent location in their emergency rooms a copy of R.S. 40:2009.20.
La. R.S. § 40:2009.20

Louisiana Revised Statute, Title 37, Chapter 11. Nurses, Part II. Practical Nurses

§961. Definitions

As used in this Part:

(1) "Accredited school" means a school of practical nursing approved by the board.

(2) "Board" means the Louisiana State Board of Practical Nurse Examiners.

(3) "Practical nurse" means a person who practices practical nursing and who is licensed to practice under this Part.

(4) The "practice of practical nursing" means the performance for compensation of any acts, not requiring the education, training, and preparation required in professional nursing, in the care, treatment, or observation of persons who are ill, injured, or infirm and for the maintenance of the health of others and the promotion of health care, including the administration of medications and treatments or in on-job training or supervising licensed practical nurses, subordinate personnel, or instructing patients consistent with the licensed practical nurse's education and preparation, under the direction of a licensed physician, optometrist, or dentist acting individually or in his capacity as a member of the medical staff, registered nurse, or physician assistant. The licensed practical nurse may perform any of the foregoing duties, and with appropriate training may perform additional specified acts which are authorized by the Louisiana State Board of Practical Nurse Examiners when directed to do so by the licensed physician, optometrist, or dentist acting individually or in his capacity as a member of the medical staff, registered nurse, or physician assistant.

LA Rev Stat § 37:961(1)(2)(3)(4)

Part V-A - Licensing of Adult Residential Care Providers

Section 40:2166.5 - Rules and regulations; licensing standards; fees

A. The department shall promulgate and publish rules, regulations, and licensing standards, in accordance with the Administrative Procedure Act, to provide for the licensure of adult residential care providers, and to provide for the health, safety, and welfare of persons receiving care from such providers, and to provide for the safe operation of such providers. The rules, regulations, and licensing standards shall become effective upon approval of the secretary of the department in accordance with the Administrative Procedure Act. Such rules, regulations, and licensing standards shall

have the effect of law.

La. Stat. tit. 40 § 2166.5

STATEMENT OF THE CASE

On September 27, 2017, I filed suit against my former employer, Christwood, ("Respondent"), a Louisiana non-profit corporation, for Race Discrimination, under Title VII of the Civil Rights Act, 42 U.S.C. § 2000e et seq., 42 U.S.C. § 1981, and retaliation under the Louisiana Whistleblower Statute, LA Rev Stat § 23:967 (ROA.15-20, ROA.77-84). Petitioner is African-American, and a Registered nurse (RN) with a Master's in Clinical Systems Management (ROA.2204). I was formerly employed at Christwood from September 17, 2008, until being constructively discharged on January 30, 2017 (ROA.2204-2205, ROA.2208-2209).

Christwood is a nonprofit corporation that operates a continuous care retirement community (ROA.26, ROA.2207-2208, ROA.365-366). Christwood assisted living facilities are recognized as an Adult Residential Care Provider (ARCPs) that are licensed by the Louisiana Department of Health, Health Standards Divison, (a.k.a."State," "Department" or "DHH," and "HSS") and are subject to rules and regulations under 48 LAC Pt I, § 6801 et seq., pursuant to LA Rev Stat § 40:2166.1- 40:2166.8. (App. K, pp. 438-476, App. K, p. 438, App. K, p. 440, ROA.366, ROA.2208-2209).

On January 30, 2017, Petitioner was terminated as the Level 4 ARCPs (or "ALU Director"), demoted on SNU in a non-supervisory position with a significant reduction in responsibilities, and constructively discharged, because Petitioner refused to particpate in delegating to Thompson, Licensed Practical Nurse ("LPN"), (White), to "redo" the State required initial incident report pursuant to La. Admin. Code tit. 48 § I-6871(C), as this

was motivated by my Race.

A document absent of a "late entry" would violate 46 LAC Pt. XLVII, $ 306 8(k) "delegating nursing care, functions, tasks, or responsibilities to others contrary to regulation and 46 LAC Pt. XLVII, $ 306 8(i) falsifying records (ROA.2300-2303, ROA.2314). Pursuant to *La. R.S. § 40:2009.20(B)(1),* healthcare providers are required to submit a report on abuse or neglect within twenty-four hours. Under LAC 46:XLVII $ 933(A), documentation is apart of a nursing curriculum.

Only the Black employees were terminated from their positions, while Christwood retained the White employees (ROA.1994, ROA.2243, ROA.2050). Christwood had refused my continuous request for specific documents so I may adequately defend my claims, and fairly represent myself during this judicial process (ROA.1435-1436, ROA.1230-1233). Rule 26(b)(1) of the Federal Rules of Civil Procedure, allows litigants to "obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case."

In Summary I, the district court had allowed Christwood to submit unsigned and undated documents in support of their motion for summary judgment and had sealed some of these documents in the Court's record even though the Petitioner brought Christwood's unsigned documents to the Court's attention (ROA.2414, ROA.2421, ROA.2417, ROA.384, ROA.395, ROA.412, ROA.960-961).

Appeals I, the Fifth Circuit stated, "Sanders, however, neither objected to nor moved to strike these documents in the district court. As a result, her challenge to the evidence is waived." (App. H, p. 4). Petitioner contends the Fifth Circuit opinion conflicts

with Rule 11(a), and Rule 26(g)(2)(C) of the Federal Rules of Civil Procedure. Christwood used these unsigned documents to dispute the Petitioner's claims of unlawful racial discrimination and retaliation, as these documents were instrumental in aiding the district court in formulating their opinions (App. A, App. B, App. H, App.I, Appellant Brief I, and II). Petitioner was denied her constitutional right of having a fair and impartial judge, which had greatly impacted my denial of a civil trial by jury (App. A, App. B, App. H, App. I, App. C, App. D).

Appeals II, the Fifth Circuit affirmed the district court granting Christwood summary judgment though the district court did not address claims of Race Discrimination under 42 U.S.C. § 1981, in Summary I, or II (App. I, pp. 6-14). Appeals I, the Fifth Circuit paired Race Discrimination claims under Title VII with claims under § 1981 to be "analyzed under the evidentiary framework" to meet the "McDonnell Douglas burden-shifting framework" when affirming summary judgment App. H, p. 4).

Standard of Review

Appeals II, the Fifth Circuit applied the Law of the Case to Petitioner's "Title VII claims" and reviewed the grant of summary judgment under de novo standard of review (App. A, p. 4). Federal Circuit stated, "[T]o consider a matter de novo is to determine it anew, as if it had not been heard before and no decision had been rendered.' By use of the term de novo, this court means that it does not defer to the 'lower court ruling or agency decision in question.' See Litton Sys., Inc. v. Honeywell, Inc., 87 F.3d 1559, 1566 n.1, 39 U.S.P.Q.2d 13: 1324 n. I (Fed. Cir. 1996) (quoting Yepes-Prado v. INS, 10 F.3d 1363, 1367 n.5 (9th 1993)). Rouse v. DaimlerChrysler Corp., 300 F.3d 711, 715 (6th Cir. 2002) ("We

use an abuse of discretion standard when reviewing a lower court's application of the law-of-the-case doctrine. See Pacific Employers Ins. Co. v. Sav-a-Lot of Winchester, 291 F.3d 392, 398 (6th Cir. 2002) (citing Bowling v. Pfizer, Inc., 132 F.3d 1147, 1150 (6th Cir. 1998). ").

The Law of the Case Doctrine

In Appeals II, the Fifth Circuit stated, "Thus, Sanders's arguments regarding this Court's prior disposition of the Title VII claims are barred by the law of the case doctrine." (App. A, pp. 4-5). Fifth Circuit stated, "Under the law of the case doctrine, "an issue of law or fact decided on appeal may not be reexamined either by the district court on remand or by the appellate court on a subsequent appeal." *Gene & Gene, L.L.C. v. BioPay, L.L.C.,* 624 F.3d 698. 702 (5th Cir. 2010). (App. A, pp. 4).

Fifth Circuit further stated, "Sanders has presented no argument that an exception to the law of the case doctrine applies, and we find no reason to reexamine the Title VII claims." See *Gene,* 624 F.3d at 702 (App. A, p. 5). Petitioner contends the Fifth Circuit disregard this Court precedent in Comcast Corp. v. National Association of African-American Owned Media, 589 U.S._ (2020), by failing to mandate the district court addressed and required the Petitioner's Race Discrimination claims brought under 42 U.S.C. § 1981, meet the "But-For" Causation Standard under the exception to the doctrine (App. A, p. 4).

Kennedy v. Lubar, 273 F.3d 1293, 1299 (10th Cir. 2001) ("In any event, law of the case principles are not absolute. "Although courts are often eager to avoid reconsideration of questions once decided in the same proceeding, it is clear that all federal courts retain

power to reconsider if they wish." Wright Miller § 4478, at 789.

Hinds v. McNair, 413 N.E.2d 586, 607 (Ind. Ct. App. 1980) ("Law of the case designates the doctrine that an appellate court's determination on a legal issue is binding on both the trial court on remand and an appellate court on a subsequent appeal given the same case and substantially the same facts.")

Race Discrimination, under Title VII of the Civil Rights Act, 42 U.S.C. § 2000e et seq.

In 2013, Christwood assisted living unit was approved for a Level 4 Adult Residential Care Provider (ARCPs) with the State, and this position required the ALU Director to be a Registered nurse ("RN") pursuant to *La. Admin. Code tit. 48, § I-6865(2)(a)* (App. K, p. 463, ROA.367). Under *La. Admin. Code tit. 48, § I-6865(2)(a)* states, "Level 4 ARCPs shall employ or contract with at least one RN who shall serve as the nursing director and who shall manage the nursing services." (App. K, p. 463, ROA.367). The State recognized the Level 4 ARCP Director as a "key administrative" position and requires ARCPs facilities to submit in writing under 48 LAC Pt I, § 6813 (B)(l)(a)(b)(c), "Any change regarding the ARCP's key administrative personnel shall be reported in writing to the department within 10 business days of the change." (App. K, p. 444).

In March 2015, I verbally accepted the promotion as the Assisted Living Unit ("ALU") Director from Cook, (White), administrator (ROA.811, ROA.501-505, ROA.2209). Christwood failed to promote the Petitioner in March 2015 as the ALU Director when they refused to register my position with the State as a "key administrative personnel," by utilizing the "Key Personnel Change Form." December 2016, Christwood registered

the Petitioner with the State as the ALU Director, as this promotion came after an unannounced State visit in September 2016 regarding another mandatory reporting incident, and not after my verbal acceptance in March 2015 (ROA.815).

Christwood maintained Perry, LPN, registered with the State in the RN required Level 4 ARCP Director position in March 2015, even after the State approved their assisted living unit transition from a Level 3 ARCP (does not require an RN as the nursing director) to an RN required Level 4 ARCP facility (ROA.367, App. K, p. 444). Perry, LPN, as my supervisor, violates State regulations under La. Admin. Code tit. 48, § I-6865(2)(c), and LA Rev Stat § 37:961(4), (ROA.42, ROA.367-369, ROA.825).

In March 2015, after I accepted the ALU Director's position, my paycheck code changed from RN Supervisor under code ("AL_RN") (ROA.1234, ROA.1237) to ALU Director under ("AIL Director," a.k.a. "Assisted/Independent Living Director") (ROA.1236), wages changed to salaried exempt, exchanged text messages with Perry (ROA.814-815, ROA.818-819, ROA.549, ROA.2210), performed the job duties, but was excluded from weekly director's meetings, denied the annual director's bonuses and prevented from making high-level decisions over the assisted living unit due to my Race (ROA.1679).

In Summary I, the district court stated, "Sanders points to Perry as her comparator on this issue, but Perry was not similarly situated since she had far more relevant work and management experience than Sanders." (App. I, p. 8). Petitioner contends the State required a Registered nurse as the Level 4 ARCP nursing director under *La. Admin. Code tit. 48, § I-6865(2)(a)* for the assisted living unit, and the

documentation in this role requires the signature of a Registered nurse.

Appeals I, the Fifth Circuit stated, "Sanders maintains that as early as 2015, Christwood was required under state regulations to notify the state that she was the ALU director. But even if Sanders is correct, she fails to explain how she was adversely affected. This claim fails." (App. H, p. 5). Petitioner was not recognized by the State as the nursing director because Christwood refused to notify the State of the change in key personnel as required under 48 LAC Pt I, § 6813 (B)(l)(a)(b)(c), thereby failing to promote the Petitioner in this role.

Perry's Declaration #32 stated, "In about March of 2015, I recall informing Plaintiff about the availability of the ALU Manager position for the ALU and she accepted the position." (ROA.370, ROA.371). I was unaware until discovery, that Christwood had an unsigned and undated form in my personnel file with the words "ALU Mgr" (ROA.501, ROA.506, ROA.370-371, ROA.2209, ROA.752, ROA.2210, ROA,506, App. I, p.8).

Christwood did not submit to the Court an "ALU Manager" Job Description, but submitted Petitioner's job descriptions for the positions of "ALU Director" (ROA. 781-783); "ALU RN Supervisor" (ROA.748-751); and January 30, 2017, demoted "Quality Assurance Coordinator" (ROA.829-832). Christwood did not listed the "ALU Manager" Job Description on their "Defendant's Exhibit List" (ROA.1239-1243). Allen Declaration #23, stated, "Plaintiff ... ledger pay code "... AIL Director" was "for accounting purposes ..." (ROA.403-404). Petitioner contends the ledger code designated the nurse position. When I was an LPN, my ledger code stated "LPN" (ROA.1238).

October 18, 2018 Deposition, Perry, who was not sworn in, nor list as present

during this deposition, stated aloud as soon as the break was announced "Assisted In Living." (ROA.2304-2307). Christwood counsel immediately went back on tape as a result of Perry's unsworn statement and questioned the Petitioner on "Assisted In Living." (ROA.2304-2307, ROA.781-783).

Christwood offered several reasons for their refusal to allow the Petitioner to attend the weekly director's meetings. Perry's Declaration #62 states, "First, it was decided that Plaintiff's membership in the group and attendance to the meetings was unnecessary because I had continued oversight over the ALU and more experience as discussed above." (ROA.378). Perry and Allen's Declarations stated, the "Director's group" did not start until 2016, but informed the Court that I have been asking to attend the weekly director's meetings since 2013 and 2015 (ROA.377-378, ROA.401). Christwood response to Interrogatory #8, stated, "Finally. Defendant did not have a formal policy on who could attend the Director group meetings. It was based on the discretion of management." (ROA.1134).

Appeals I, the Fifth Circuit stated that Christwood removed two White directors and replaced the "group" with one White director. (App. H, p. 6). The Fifth Circuit further stated, "These examples undermine Sanders's claim that she should have been a member of the director's group because her title had the word "director" in it." (App. H, p. 6). Petitioner contends Christwood refused to submit any tangible evidence in discovery that would validate their claims, but mainly relied on their statements, and unsigned documents.

Allen's Declaration #19, stated, Roger, (White), former "Director of Nursing," was

not a "Director group" member, or received the director's bonuses, but was employed from September 1, 2016, to June 5, 2017 (ROA.402, ROA.2415). Petitioner contends nine months of employment would not reflect an annual director's bonus on a paycheck (ROA.402). Allen's Declaration #20, stated Lunday, who replaced Petitioner, "was the Nurse Manager for ALU from March 2017 to September 2, 2018, not apart of Director group, nor received the Director's bonus." (ROA.402). Allen's footnote, stated, "I understand that Lunday was listed with the State as the Director for the ALU at some point after she became the Nurse Manager for the ALU. However, to my knowledge, she never held a Christwood position with the title "Director" in it. Therefore, I believe that the reference to Lunday as the "Director" of the ALU in Exhibit N at Christwood 000829 may be an administrative error." (ROA.403).

Perry's Declaration #58 stated, "Laura Lunday, who was promoted to Nurse Manager for the ALU in March of 2017, was then listed with the State as the Director for the ALU beginning on August 23, 2017. Lunday was listed with the State as the Director for the ALU until November 1, 2018)." (ROA.376-377). Christwood submitted Lunday's unsigned "Key Personnel Change Form," but their declarations show disputed statements (ROA.403, ROA.376-377, ROA. 395-396).

In Appeals I, the Fifth Circuit stated, "Sanders was promoted to the position of assisted living unit (ALU) director at some point between March 2015 and November 2016." (App. H, p. 2). Petitioner contends the appellate court opinion disputed Christwood's pretextual claim that the Petitioner accepted an "ALU Manager" position in March 2015, instead of the ALU Director's position (ROA.370, ROA.398). The Fifth

Circuit had identified only the acceptance of the ALU Director's position in its opinion and dated the range back to March 2015, but affirmed the district court granting Christwood Summary Judgment (App. H, p. 13). Delta Savings Bank v. U.S., 265 F.3d 1017, 1021 (9th Cir. 2001) ("The court must determine, viewing the evidence in the light most favorable to the nonmoving party, whether there are any genuine issues of material fact and whether the district court correctly applied the relevant substantive law. Lopez v. Smith, 203 F.3d 1122, 1131 (9th Cir. 2000) (en banc).").

In February 2016, Perry offered the Petitioner the Director of Nursing (DON) position, if I promise not to accept this position (ROA.368, ROA.825). Petitioner was registered with the State as the DON, and signed the "Key Personnel Change Form," along with Cook, administrator (ROA.368, ROA.825). Christwood continued their search for another DON, and subsequently, replaced my DON's position with two RNs - both White. (ROA.1743). Christwood refused to submit the signed "Key Personnel Change Form." (ROA.368).

On December 19, 2016, 6:01 AM, Perry called the Petitioner regarding an elopement involving a cognitively impaired assisted living resident (ROA.583-584). The elopement incident required mandatory reporting to the State and the submission of an incident report within 24 hours under La. Admin. Code tit. 48 § I-6871(C) (App. K, p. 466). Petitioner received a call at 6:14 AM from Thompson, LPN, (White), nurse on duty, verbally stating he had last saw the resident at 4:45 AM (ROA.584). Perry called back and redirected the Petitioner to the hospital to check on the resident, and stated she would go to Christwood to talk to the staff (ROA.585). Resident's family said Thompson

stated he last saw the resident at 4:45 AM (ROA.585).

8:20 AM, Thompson and I were documenting when Perry entered my office, briefly glanced at the Petitioner, then turned her attention to Thompson, and stated, "Stick to what you know, Ian. Stick to what you know." (ROA.587, ROA.585-586). 8:45 AM, Perry returned to my office and stated she reviewed the video camera and it showed the resident exiting the building alone at 2:33 AM and re-entering with the night CNA at 5:52 AM (ROA.587, ROA.371). Thompson's nurses' note on December 19, 2016, stated he last saw the resident at 2:30 AM, and this collaborates with Perry's Timeline (ROA.2395), Christwood response to Interrogatory #17 (ROA.1420-1421) and Petitioner's Narrative (ROA.801).

Grainger and Taylor were also verbally reporting they last saw the resident at 4:45 AM (ROA.590-591). Grainger does not work on the side of the hall the resident resides and stated to Allen and Petitioner, she checked her side of the hall, and "all of them was telling Tami 4:45." (590-591). Allen stated, "I don't understand why Kim Grainger would write a statement if that wasn't her side of the hall." (ROA.801, ROA.591-598). Grainger and Taylor handed Perry written statements and were terminated for falsification of documentation (ROA.2382-2383, ROA.2384-2385, ROA.599). Christwood decided to maintain Thompson, and issued him a written warning before Allen walked in Thompson's disciplinary meeting with a blank written warning (ROA.2433, ROA.600-601, ROA.802, ROA.404-405, ROA.781, ROA.376, ROA.591-598).

In Summary II, the district court stated, "Thompson was also disciplined – by Sanders, among others – for his initially inaccurate oral statement of the time he last saw

the missing resident indoors, but only with a written warning." (App. B, p.3 (footnote), ROA.2433). Petitioner contends Thompson's written warning regards time management when documenting, and does not address his three different reporting times, and a written warning could not foresee a future nurses' note time of "2 AM" (App. B, p. 3, ROA.2388, App. B, 3, ROA.404)

December 19, 2016, at 5:06 PM, Perry sent Petitioner an email with three separate instructions, and the email delegated the Petitioner to obtain another incident report to send to the State (ROA.2443). On December 22, 2016, after numerous attempts trying to retrieve the initial incident report from Cook, he handed the incident report back to the Petitioner, still unsigned by him, and stated, "It needs to be redone. I am not sending that." (ROA.644, ROA.805). Perry stated, "It will be redone." (ROA.805).

Christwood's Separation Letter stated, "When asked for a clarified incident report from the nurse on duty, you stated you were not comfortable coercing an employee to revise an incident report. We were not suggesting that he change the details but to clarify the events of the incident." (ROA.828). Ciardullo (2016) states, "A provider may not realize the inadequacies in his/her documentation until faced with a patient complaint, a professional misconduct investigation, or lawsuit. At such times there can be a strong temptation to add to the medical record to "clarify" what actually occurred, or remove potentially damaging information, or even create a completely new record." (p. 1).

(Noridian, 2018) further stated, "A late entry supplies additional information that was omitted from the original entry. The late entry bears the current date, is added as soon as possible, is written only if the person documenting has total recall of the omitted

information and signs the late entry." In Summary II, the district court stated, "Perry and Cook merely asked Sanders to rework the report into a new document, by adding missing content, before it was submitted to the State as the preliminary written or final report mandated by LAC 48.I.6871." (App.B, p.18).

December 24, 2016, Thompson arrived in my office, and stated, "Tami got halfway through rewriting the Incident Report, and then she tore it up." (ROA.805-806, ROA.655-659). Thompson further stated, "She said that she will look at the camera and write a detailed report from the times on the camera and send it with the Incident Report." (ROA.805-806, ROA.655-659). In Summary II, the district court further stated, "Thompson told Sanders that Perry was halfway through rewriting the narrative report when, in frustration, she tore it up and opted to prepare and submit as the state-required report a timeline of events instead (the "Christwood Incident Report"). (App.B, p. 6). Petitioner contends that Thompson did not suggest any evidence that Perry "tore" up an attempt to create another incident report was due to "frustration" (ROA.805-806, ROA.655-659, App.B, p. 6).

Appeals I, the Fifth Circuit opinion does not reflect Perry's preferential treatment received from Christwood when the Court failed to distinguish between two separate mandatory reporting incidents involving two different assisted living residents but paired February 2016 incident when Perry was the ALU Director, with this claim when affirming summary judgment for Christwood (App. H, p. 7). In February 2016, Perry was not held accountable for the nurse on duty actions, nor was she terminated and demoted as a coordinator with a significant reduction in responsibilities.

Appeals I, stated, "Next, Sanders, argues that Perry received preferential treatment, as she was not disciplined for refusing to send the report to the state. But Perry never refused to send the report; she ordered Sanders to submit a report, and when Sanders ultimately failed to comply, prepared and submitted the report herself. We therefore affirm summary judgment for Christwood on Sanders's intentional discrimination claims." (App. H, p.7). Fifth Circuit opinion does not distinguish these two cases but affirmed the summary judgment (App. H, p. 13).

In Summary Judgment II, the district court stated, "On December 29, 2016, Sanders says she emailed Perry about sending a letter transmitting the Nurse's Incident Report to the State, but Perry responded that it had already been taken care of." (App. B, p.6).

Sanders October 18, 2018 Deposition:

A "I emailed Tami -- it's 12/29/2016:
"I emailed Tami Perry about sending a letter to the State. She cc'd David Cook while informing me not to send the letter to the State. She stated she had already taken care of it."

A 1/5/2017: "Mr. Cook stopped by my office and stated, 'What was that letter to Chris Vincent about that Tami told you not to send?' I explained to Mr. Cook that I was letting him know that we did the elopement drill. He said Tami had already taken care of it." (ROA.659, ROA.805-806).

Race Discrimination, under Title VII of the Civil Rights Act 42 U.S.C. § 1981

Appeals II, Fifth Circuit failed to require the district court to address the Petitioner Race Discrimination claims under 42 U.S.C. § 1981, and mandate the claim meet the "But-For" Causation Standard as established in Comcast Corp. v. Nat'l Ass'n of African Am.-Owned Media, 140 S. Ct. 1009, 1014 (2020) (App. H). Cbocs West, Inc. v. Humphries, 553 U.S. 442, 450-51 (2008) (" subsection (b) provided, in "the context of

employment discrimination ... would include, but not be limited to, claims of harassment, discharge, demotion, promotion, transfer, retaliation, and hiring." Christwood unlawfully discriminated against Petitioner in pay, promotion, demotion, discipline, and constructive discharge (ROA.81-82, ROA.2058-2059).

Louisiana Whistleblower Statute, LA Rev Stat § 23:967

Lightell v. Walker, Civil Action No. 20-672 Section: "B"(1), 49-50 (E.D. La. Mar. 18, 2021) ("While the Louisiana Supreme Court has not directly addressed whether a plaintiff must prove an actual violation of state law, the appellate courts have consistently determined that the statute requires proof of an actual violation. See, e.g., *Accardo v. Louisiana Health Servs. & Indem. Co., 943 So.2d 381, 383 (La.App. 1 Cir. 6/21/06)*; *Hale v. Touro Infirmary, 886 So.2d 1210 (La.App. 4 Cir. 11/3/04)*"). In Appeals II, the Fifth Circuit stated, "This Court and the Louisiana Supreme Court have held that, under the statute, it is the plaintiff-employee's burden to prove an actual violation of Louisiana law," and cited *Herster v. Bd. Of Supervisors of Louisiana State Univ.*, 887 F.3d 177, 187 (5th Cir. 2018). (See App.A, p. 6).

Herster v. Bd. Of Supervisors of Louisiana State Univ., the opinion of the Fifth Circuit stated, "If the Louisiana Supreme Court has not ruled on an issue, then this court makes an "Erie guess" and "determine[s] as best we can" what the Louisiana Supreme Court would decide." *Herster v. Bd. of Supervisors of La. State Univ., 887 F.3d 177, 188 (5th Cir. 2018).* The Fifth Circuit further stated, ""[W]hen the language of the law is susceptible of different meanings, it must be interpreted as having the meaning that best conforms to the purpose of the law." " Herster v. Bd. of Supervisors of La. State Univ.,

887 F.3d 177, 188 (5th Cir. 2018).

Christwood stated it was the Petitioner who delayed sending the initial Incident Report when it was Christwood administration who physically retained the required initial incident report in their possession, custody, and control on 12/20/2016, at the 12N deadline (ROA.649-650). Perry stated she did not send the State the incident report because it was not well written, and stated she submitted a Timeline to Vincent, DHH Program Manager for ARCPs, on December 24, 2016 (ROA.998). (Noridian Healthcare Solutions, 2018) stated, "Examples of falsifying records include: Creation of new records when records are requested, ..., or Adding to existing documentation (except as described in late entries, addendums and corrections)." (Noridian Healthcare Solutions, 2018).

Perry's Declaration # 42 stated, "When I reviewed the incident report prepared by Thompson and signed by Sanders ..., I thought it was inadequate as it did not contain an adequate factual accounting of the incident, such as how long the resident had been outside and whether the resident was talking when she was found. My primary concern was that Vincent would not have an adequate understanding of what happened." (ROA.372). Ciardullo (2016) emphasized, "It may be tempting to revisit the medical record documentation and add facts to cast yourself in a more favorable light, erase or delete entries which conflict with your defensive posture, or even create a new record entirely. Even if the alteration is truthful, such impulses must be controlled. Any change in the record can easily be discovered during the course of pre-trial discovery investigation." (p. 2).

According to Ciardullo (2016), " If corrections are required, the provider should:

1. clearly and permanently identify any amendment, correction, or delayed entry;
2. clearly indicate the date and author of any amendment, correction, or delayed entry; and
3. not delete, but clearly identify all original content. With a paper medical record, correction of misinformation is usually accomplished by a single line strike out of the original text so that the original content is still legible. The correct information should then be entered above, below, or next to the entry which was crossed out. The person making the entry must date and sign the change next to the corrected information. If it is necessary to include additional information in the record, this should be done by means of an addendum. Any addendum should refer to the original note being amended. There should be a heading titled "Addendum" or "Late Entry," with the new information appearing underneath. Once again, the entry must be dated and signed." (p. 12).

Perry's unsigned Timeline does not indicate to the State that her document was not the original document regarding the December 19, 2016 incident, nor does it identify Thompson's had completed an initial incident report (ROA.2395). Perry was not present during the elopement of the assisted living resident to give a first-hand account and override the nurse on duty initial incident report. Perry's Declaration #39 stated, "An incident report was completed by the nurse on duty, Ian Thompson, on the day of the incident. Both Thompson and Sanders signed the report. As stated above, I reviewed the report the day it was completed." (ROA.372).

Petitioner has been referring to Thompson's initial incident report on file with the Court as the initial incident report signed on December 19, 2016, throughout this claim. In Sanders' October 18, 2018 Deposition, Petitioner confirmed with Christwood's counsel that Thompson's initial incident report is the original incident report that he and I signed on December 19, 2016 (ROA.578-582). Christwood stated, "Plaintiff has never disputed that the original Incident Report remains in the patient file at Christwood." (ROA.1784).

Petitioner's "First Amended Complaint" stated:

18. "Plaintiff refused to altered (sic) the initial Incident Report, a violation of state law. Ultimately, Ms. Perry physically destroyed the initial Incident Report, and did not keep the documentation. Upon information and belief, Defendant submitted an altered document in its place, prepared by another employee, in violation of state law. The Incident Report was submitted late as well." (ROA.837).

Petitioner's former counsel failed to make the necessary correction in #18 under "First Amended Complaint," before her granted withdrawal (ROA.837). Amended Complaint #18 should have referred to Thompson's statement, "Tami got halfway through rewriting the Incident Report, and then she tore it up." (ROA.2386-2387, ROA.1277). The district court referred his attention to La. Admin. Code tit. 48, § I-6871(F)(6), which requires ARCPs facilities to keep the copy of the initial incident on file after its submission to the State. In Summary II, the district court stated, "But this dogmatic position finds no authority in the language of § 6871(F)(6), and the Nurse's Incident Report, even assuming it is a legal document under some other, remains preserved. Therefore, Sanders does not have a viable LWS claim based on the alleged violation of LAC 48.I.6871(F)(6) (App. B, pp. 15-16).

The district court further stated, "Yet, in the face of her acknowledgment, Sanders still told Cook she could not tell anyone to change an incident report." (App. B, pp. 17-18). Petitioner contends the district court excluded Cook's crucial statements, "It needs to be redone. I am not sending that." (ROA.805). Summary II, the district court declared Perry's unsigned Timeline as the " 'preliminary written report,' required by regulation," while holding the Petitioner responsibile for the "delay in reporting." (App.B, P.13-14).

CHRISTWOOD FAILURE TO PRESERVE INITIAL NURSES' NOTE

Petitioner's nurses' note regarding this claim is no longer in existence, and I was unaware of the alleged "destruction" of this legal document until discovery (ROA.2246, ROA.2319, Appellant Brief II, p. 37). Christwood's response to Production #19 states, "Defendant has no documents responsive in this request." (ROA.1167-1168). Summary II, the district court stated, "Even assuming this allegation is true, it still cannot form this basis of a whistleblower claim because Sanders never informed Christwood that it was violating state law for the destruction of documents. In her surreply, Sanders admits that she "was unaware [her] nurses' note [was] no longer in existence until discovery." (App. B, p. 15).

Christwood has a duty of reasonable care to preserve the resident's medical records. See Rodgers v. St. Mary's Hospital, 198 Ill. App. 3d 871, 873 (Ill. App. Ct. 1990). State regulations mandate facilities to maintain resident's records as set forth under LAC 48:1§6869 D(3), LAC 48: 1, § 6869 D(4), and LAC 48: 1, §6869(E)(2) (App. K, pp. 465-466).

Christwood's Critical Reporting Policy

Christwood's "Critical Reporting Incident" policy does not align with current State regulations under 48 LAC Pt I, § 6801 et seq., and are prohibited under *La. Admin. Code tit. 48, § I-6833(C)(9), La. Admin. Code tit. 48, § I-6855(A)(7),* conflicts with the date "6/2016," and does not have a footnote (ROA.795-796, App.K, p. 450, App.J, p. 45). June 2016 is six months before the December 19, 2016 mandatory reporting incident, and Christwood started its operation in June 1996 (ROA.365). Christwood's "Critical Incident Reporting" policy states it would "report and document to Department of Health and Hospitals" ... "situations requiring the use of passive physical restraints"... (App. J, p. 1).

The State prohibits restraints on any assisted living residents under *La. Admin. Code tit. 48, § I-6833(C)(9), La. Admin. Code tit. 48, § I-6855(A)(7), and La. Admin. Code tit. 48, § I-6857(A),* (App.K, p. 450, App.K, p. 459, App.K, p. 460, ROA.795-796). In 1999, the Louisiana ARCPs facilities were licensed under the Department of Social Services ("DSS") and called "Adult Residential Care Facilities." (See La. Admin. Code tit. 48, § 8801 (A)(1)(B)(3)).

During this time, "Adult Residential Care Facilities" regulations were pursuant to La. Admin. Code tit. 48, § 8801, and were "effective March 31, 1999." Department of Social Services (1999), regarding their March 1999 "Adult Residential Care Facilities," under La. Admin. Code tit. 48, § 8821(G)(1) stated, "A Provider shall have written procedures for the reporting and documentation of unusual incidents ..., situations requiring the use of passive physical restraints, ...). (See *La. Admin. Code tit. 48, § 8821(G)(1)(a)(b)).*

Compensation Records

Rule 26(b)(I) of the Federal Rules of Civil Procedure, allows litigants to "obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and nonprivileged matter that is relevant to the needs of the case." Appellee Brief 1, stated, "Indeed, if the payroll information was critical to Sanders' claim she should have filed a timely motion to compel; she did not." (Doc. 00515267449, Appellee Brief, p. 56).

Petitioner requested Perry, assisted living nurses, and the Director of Nursing compensation records in "Plaintiff's First Set of Requests for Production of Documents to

Defendant" #5 (ROA.1435-1436), and requested a copy of Perry's and assisted living nurses' compensation records when responding to their counsel email (ROA.1230-1233). Christwood submitted selected compensations records of Lunday (White) (who replaced Petitioner), and some Director of Nursing.

Christwood used my "Director of Nursing" wages that were entered into the system as a bonus, and combined it with my ALU Director salary, then presented it to the Court as one salary (ROA.422, ROA.408). In Appeals I, the Fifth Circuit stated, "Last, Sanders argues that she was paid less than Perry. She concedes, however, that there is no evidence in the record on Perry's compensation. Without this information, Perry cannot serve as a valid comparator. We conclude that Sanders's discriminatory pay claim fails." (App. H, p. 6).

Christwood's Unsigned and Undated Document is Pretextual For Unlawful Racial Discrimination

Rule 26(g)(2)(C), under Federal Rules of Civil Procedure stated, "If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection, and a party shall not be obligated to take any action with respect to it until it is signed." "Christwood Director Christmas Bonus" is used to divert attention away from their denial of the annual director's bonus, text messages I exchanged with Perry when she stated, "Be careful. Directors do not get the employee Christmas bonus." (ROA.814, ROA.2414, ROA.820).

The district court sealed Christwood unsigned vague document because their counsel stated, "Indeed, Christwood does not want its compensation practices and policies

available for public viewing by competitors as it may harm its competitive standing." (ROA.938). The district court sealing Christwood unsigned documents has allowed Christwood to divert its pretextual reasons under the shield of Rule 5.2 and competitiors would not be able to obtain any information from an unsigned, three sentences document that does not have a business letterhead and includes inaccurate calculations that shows similarities between exempt and non-exempt employees (ROA.2414, ROA.2421).

"Medication Delay" is Prextual for Unlawful Retaliation

Christwood was seeking an additional poor performance evaluation and used medication delay of the Independent residents on January 29, 2017, to defend their adverse employment decision in the scheduled meeting held the following day (ROA.807-810). Petitioner was not expected to notify Perry when an assisted living nurse call-in sick over the weekend, but maintain coverage for the unit (ROA.781-783, #2).

Baldwin, LPN, was prepared to give the Independent Living residents their medications since he completed the administration of the assisted living residents (ROA.809). Petitioner witness Baldwin on the telephone with Perry and he stated after ending the call, that Perry was going to call "Jamie" to give the medications, therefore, he did not have to give the Independent residents medications (ROA.809, ROA.816-818).

Petitioner was Denied a Civil Trial By Jury

Beacon Theatres, Inc. v. Westover, stated, "[t]he right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States shall be preserved . . . inviolate." (Beacon Theatres, Inc. v. Westover, 359 U.S. 500, 503, 508–10 (1959). In Summary II, while in a Telephonic Status Conference, the district

court stated, "Obviously given where we are, the Court is not having any jury trials at this time, and the jury trials that we did have scheduled -- ... -- and a lot of the first part of 2021 is already consumed with trial settings." (App. E, p. 7). The Court than stated, "So at some point I'm going to turn this over to ... actually convert this to a scheduling conference in order to pick a trial date and the pretrial conference date." (App. E, p. 7).

On January 5, 2021, the "first part of 2021," the Court granted Christwood Summary Judgment, and dismissed the "remaining claims of plaintiff Iona Sanders" with prejudice (App. B, p. 3-7, App. B, p.19, ROA.13). Beacon Theatres, Inc. v. Westover, stated, "In the Federal courts, this [jury] right cannot be dispensed with except by the assent of the parties entitled to it, nor can it be impaired by any blending with a claim, properly cognizable at law, of a demand for equitable relief in aid of the legal action, or during its pendency." See Beacon Theatres, Inc. v. Westover, 359 U.S. 500, 503, 508–10 (1959).

Petitioner was Denied a Fair and Impartial Judge

On June 18, 2018 unsuccessful Settlement Conference, the magistrate judge, stated to the Petitioner in the presence of my former counsel, "the law is on the side of the business," and "they already know, they probably win summary judgment." (ROA.159). In United States v. Microsoft Corp, the Appeals Court granted Microsoft's request to disqualify the trial judge by stating, "all of these remarks and others might not have given to a violation of the Canons or § 455(a) had he uttered them from the bench .. .It is an altogether different matter when the statements are made outside the courtroom, ... "

(See the United States v. Microsoft Corp., 253 F.3d 34 (D.C. Cir. 2001).

October 8, 2020, Telephonic Status Conference, the district judge stated, "Okay. Well, I can assure you on my relationship in working with Judge North, that Judge North is not trying to convey to you that somehow your claims for you, as the plaintiff, are disfavored in the court in any way, shape, or form. If he was trying to convey anything to you, he was probably telling you that -- his estimation of how the law might apply." (App. E, pp. 8-9). Petitioner filed a motion to recuse and was denied by both judges under 28 U.S.C. § 455(a), and I did not appealed their decisions (See Doc. #103, App. C & D, Doc. #103, ROA.11, Doc. 119, ROA.12, Doc. 126, ROA.13).

Appellant Brief II, under "Statement of the Issues Presented for Review," stated, "Whether the District Court violated 28 U.S.C.§ 455(a) which requires a mandatory recusal for the "appearance" of bias when a judge "impartiality might reasonably be questioned," but instead shift his responsibility of recusal to the litigant's request as being "too late" even though Congress has not imposed a "timeliness" to the statute? (*sic*) [.]." (See Appellant Brief II, p. 3, App. C, pp. 1-2).

Appeal II, Fifth Circuit required a "judgment or order" to have jurisdiction over a non-appealed denial motion to recuse, while failing to address the Petitioner's "Statement of the Issues Presented for Review," regarding the magistrate judge statements, and his refusal to recuse because the litigant's request was "too late," even though "the Fifth Circuit has declined to adopt a *per se* rule on the timeliness of motions" under § 455(a) (App. A, p.5, App. C, pp. 1-2, citing United States v. Sanford, 157 F.3d 987, 988 (5th Cir. 1998).

Second Circuit stated, " a party must raise its claim of a district court's disqualification at the earliest possible moment." Apple v. Jewish Hosp. and Medical Center, 829 F.2d 326, 333 (2d Cir. 1987). NY Supreme Court stated, "benefit of the judiciary that where an appearance of improper judicial interest emerges, the integrity of the judiciary requires that a Judge disqualify herself' (See Murray v. Murray, 73 A.D.2d 1015 (N.Y. App. Div. 1980). Fifth Circuit stated, "one seeking disqualification must do so at the earliest moment." U.S. v. Sanford, 157 F.3d 987, 988 (5th Cir. 1998).

Sixth Circuit stated, ("The District Judge had an independent duty to recuse himself, however, under 28 U.S.C. § 455(a). Section 455(a) is a self -executing provision for the disqualification of federal judges. There is no particular procedure that a party must follow to obtain judicial disqualification under §455(a). Instead, the section sets forth a mandatory guideline that federal judges must observe sua sponte.") (See Roberts v. Bailar, 625 F.2d 125, 128 (6th Cir. 1980)).

Seventh Circuit held recusal under *§* 455 does not have time limits, and "Congress did not incorporate this recommendation in the statute." (SCA Services, Inc. v. Morgan, 557 F.2d 110, 117 (7th Cir. 1977). Seventh Circuit stated, "The provisions are mandatory; they are addressed to the judge and require that he disqualify himself in certain circumstances." (SCA Services, Inc. v. Morgan, 557 F.2d 110, 117 (7th Cir. 1977). Ninth Circuit stated, "While no per se rule exists regarding the time frame ..., recusal motions should be filed with reasonable promptness after the ground for such a motion is ascertained." Preston v. U.S., 923 F.2d 731, 733 (9th Cir. 1991).

Petitioner's Medical Records

Petitioner filed a Motion for a Protective Order and indicated a denial of

psychological or medical treatment on "claims raised in this complaint." (ROA.263-264). Christwood argues they are "clearly entitled to any records that may relate to the cause or causes of her alleged "emotional distress and/or mental anguish" as these records may reveal possible alternative theories relating to her alleged suffering."(ROA.277).

The Magistrate stated, "Plaintiff has clearly put her medical condition at issue, thus entitling Defendant to the discovery of information pertaining to any mental or physical conditions which could have led to the claimed damages." (App. G, pp. 1-2). Kunstler v. City of NY, the court stated a garden variety distress is "the distress that any healthy, well-adjusted person would likely feel as a result of being so victimized." (See Kunstler v. City of N.Y., 2006 WL 2516625, at *9 (S.D.N.Y. Aug. 29, 2006).

Prado v. Equifax, the court upheld the objection for discovery requests for medical or psychiatric records, because it tends to be more invasive than an actual examination, and held the litigant's "garden variety" distress claim did not meet a level of putting her mental or physical condition "in controversy." Prado v. Equifax Info. Servs. LLC, No. 18-cv-02405-PJH (LB) (N.D. Cal. Jan. 3, 2019).

REASONS FOR GRANTING THE WRIT

The Supreme Court should grant this writ of certiorari to dissolve splits amongst Circuit Courts in determining whether 28 U.S.C. § 455(a) requires a "timeliness" motion for the litigants to file, or is it directed at federal judges for their recusal for the appearance of bias. The Court should grant this petition to decide whether an employer has "probable cause" to override Amendment IV and gain access to an employee's medical records when a litigant claims "emotional distress" without medical treatment. Granting

this petition can determine if State agency's regulations are upheld if the State Law is not addressed by Louisiana Supreme Court.

CONCLUSION

For the foregoing reasons, Petitioner, Iona Sanders, requests this Court grant the petition for a writ of certiorari.

Respectfully submitted,

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November 1, 2021

APPENDIX A