

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT United States Court of Appeals  
FILED

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No. 18-20511  
Summary Calendar

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November 19, 2021  
Lyle W. Cayce  
Clerk

TOYA GIBSON,

Plaintiff—  
Appellant,

versus

WAYFAIR, INCORPORATED,

Defendant—Appellee.

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Appeal from the United States District  
Court for the Southern District of  
Texas USDC No. 4:17.CV-2059

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Before SMITH, STEWART, and GRAVES, Circuit Judges.

PER CURIAM: \*

Pro se Toya Gibson appeals the district court's grant of summary judgment against Wayfair, Incorporated (Wayfair). Gibson sought damages based on Wayfair's alleged violation of the Americans with Disabilities Act (ADA), Title VII of the Civil Rights Act of 1964, and the Genetic Information

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Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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Nondiscrimination Act (GINA) of 2008. The district court granted summary judgment for Wayfair, whose summary judgment evidence showed that it terminated Gibson when she accumulated more than ten (10) attendance points in violation of its no-fault attendance policy.

We review the district court's grant of summary judgment de novo. *EEOC P. LHC Grp.*, 773 F.3d 688, 694 (5th Cir. 2014). 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.' 'Y *Id.* (quoting *FED. R. CIV. P.* 56(a)). We must "draw all reasonable inferences in favor of the nonmoving party. *Ida* (internal quotation marks and citation omitted).

Gibson contends that because a dental problem interfered with her ability to speak and speaking was necessary for her to perform her job, the ADA required Wayfair to accommodate absences related to her dental problem and that Wayfair could not assess attendance points for them. The "burden-shifting analysis " set forth in *McDonnell Douglas Corp. P. Green*, 411 U.S. 792, 802 (1973), requires that Gibson first establish "a prima facie case of discrimination." *LHC Grp.*, 773 F.3d at 694. Even if Gibson had a disability for purposes of the ADA, the summary judgment evidence fails to show that Wayfair treated her adversely on account of her dental problem. See *id.* at 695, 697. In other words, the record is devoid of evidence that Gibson's termination was based on any discriminatory animus against her because she could not speak. See *Kitchen P. BASF*, 952 F.3d 247, 253 (5th Cir. 2020). Nor does Gibson make a prima facie case for failure to accommodate her, as the summary judgment evidence showed that Gibson ' s purported disability was not known to Wayfair. See *Credeur v. Louisiana Through Office of Attorney Gen.*, 860 F.3d 785, 792 (5th Cir. 2017).

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Gibson also argues that Wayfair discriminated against her based on her Christian-based favorable treatment of customers who returned merchandise. Here, too, we apply the "McDonnell Douglas burden-shifting framework" under which Gibson "must first establish a prima facie case of discrimination." *Heggemeier v. Caldwell Cty.*, 826 F.3d 861, 867 (5th Cir. 2016).

To make a prima facie case, Gibson was required to, among other things, show that she "was replaced by someone outside [her] protected group or was treated less favorably than other similarly situated employees outside the protected group." *Morris v. Town of Independence*, 827 F.3d 396, 400 (5th Cir. 2016) (internal quotation marks and citation omitted). Although Gibson argues that another employee received favorable treatment with respect to being granted absences, Gibson has not provided evidence that the employee was not a Christian or that the employee was similarly situated to Gibson. See *Heggemeier*, 826 F.3d at 868. Further, Wayfair's summary judgment evidence showed it terminated at least seven other employees at the Texas call center for accumulating more than 10 attendance points. See *id.*

Gibson argues that Wayfair unlawfully discriminated against her by creating a hostile work environment after it learned that her father had a stroke and her mother was mentally ill. Under GINA, an employer is prohibited from discriminating or taking adverse actions against an employee "because of genetic information with respect to the employee." 42 U.S.C. SS 2000ff—1(a)(1); *Ortiz v. City of San Antonio Fire Dep't*, 806 F.3d 822, 826 (5th Cir. 2015). Gibson points to no evidence to overcome the district court's determination that she failed to exhaust her administrative remedies as to her claim relating to her father's medical condition. See 42 U.S.C. S

No. 18-20511

2000ff-6(a)(1); Taylor D. Books A Million, 296 F.3d 376, 378-79 (5th Cir. 2002). Moreover, Gibson came forward with no evidence that Wayfair

discriminated against her based on her genetic information as it related to her mother's mental health. See Ortiz, 806 F.3d at 826-27.

Gibson's contention that the district court's comments at the initial hearing reflected judicial bias against poverty and Christianity is unavailing. The district court's comments, in context, do not show that it " display[ed] a deep-seated favoritism or antagonism that would make fair judgment impossible." *Liteky v. United States*, 510 U.S. 540, 555 (1994). Also unavailing is Gibson's argument that the district court was required to fund expert witnesses and a stenographer. See *Pedraza D. Jones*, 71 F.3d 194, 196 (5th Cir. 1995).

Gibson has not presented any triable issues of material fact nor has she shown that the district court was unable to make a fair judgment regarding her case. We AFFIRM the district court's grant of summary judgment.

UNITED STATES COURT OF APPEALS  
FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

TEL. 504-310-7700  
600 S. MAESTRI PLACE,  
Suite 115  
NEW ORLEANS, LA 70130

December 29, 2021

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 18—20511 Gibson v. Wayfair  
USDC No. 4:17-CV-2059

The court has denied an extension of time to file a sufficient petition for rehearing en banc in this case .

Sincerely,

LYLE W. CAYCE, Clerk  
*Christina Rachal*

By: Christina C. Rachal, Deputy clerk  
504-310-7651

Ms . Toya Gibson  
Mr .Nathan Ochsner  
Mr Esteban Shardonofsky

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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No. 18-20511

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TOYA GIBSON, Document: 00516186202 Date Filed: 01/31/2022

Plaintiff—Appellant,

versus

WAYFAIR, INCORPORATED,

Defendant—Appellee.

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Appeal from the United States District  
Court for the Southern District of Texas  
USDC No. 4:17-CV-2059

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Before SMITH, STEWART, and GRAVES, Circuit Judges.

PER CURIAM:

This panel previously DENIED the motion to file a petition for panel rehearing and a petition for rehearing en banc out of time and the motion to recall the mandate. The panel has considered Appellant's motion for reconsideration.

IT IS ORDERED that the motion is DENIED.

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

TOYA M. GIBSON,  
Plaintiff,

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United States  
District Court  
Southern  
District of Texas

ENTERED  
June 27, 2018  
David J.  
Bradley, Clerk

CIVIL ACTION NO. 4: 17-2059

WAYFAIR, INC.,  
Defendant.

**MEMORANDUM AND ORDER**

This employment discrimination case is before the Court on the Motion for

Summary Judgment ("Defendant' s Motion") [Doc. # 26] filed by Defendant Wayfair, . Inc. ("Wayfair"), to which Plaintiff, pro se, Toya M. Gibson filed a Response [Doc. # 32], and Defendant filed a Reply [Doc. # 36]. Also pending is Plaintiffs Motion for Summary Judgment ("Plaintiffs Motion") [Doc. # 29], to which Defendant filed a Response [Doc. # 30], and Plaintiff filed a "Requested, Anticipated and Finally Received Addendum" ("Addendum") [Doc. # 40]. Having reviewed the full record and applicable legal authorities, the Court **grants** Defendant's Motion and **denies** Plaintiff's Motion.

Plaintiffs Motion.

1. **BACKGROUND**

Plaintiff is a Christian with strong faith. She worked for Wayfair in the Texas call center for just over six months, beginning March 28, 2016, and ending when her employment was terminated by Defendant on October 10, 2016. During that



Time, Plaintiff processed a high percentage of returns that involved exceptions to Wayfair's standard return policy. This included accepting returns after the expiration of the 30-day return period, and waiving applicable return shipping costs. Plaintiff, citing the Bible, Ephesians 4:32, notes in her Response to Defendant's Motion that Christians are commanded to be kind and compassionate. Plaintiff states that she attempted to follow that command by being kind to Wayfair customers, particularly the elderly customers, by accepting their merchandise returns.

Justin Brown was Wayfair's Customer Service Manager and Plaintiff's supervisor. When Plaintiff's minor daughter was not in school, Plaintiff requested permission to go home during her lunch break to check on her. In discussing her request with Brown, Plaintiff mentioned that her mother could not take care of the daughter because her mother was "mentally ill." See Plaintiff's Deposition, Exh. D to Defendant's Motion, p. 62. Plaintiff did not provide to Brown or anyone else at Wayfair additional information regarding her mother's mental illness. See *id.* at 65-66. Plaintiff stated that Brown allowed her to go home to check on her daughter. See *id.* at 64.

During her brief employment with Wayfair, Plaintiff was absent from work thirty-six (36) times. Wayfair's Attendance Policy is included in the "Sales & Service

Attendance" section of the "Wayfair Employee Guide: Texas Call Center Addendum," attached as Exhibit E to Defendant's Motion. Plaintiff admits that she received a copy

and was aware of the Attendance Policy. See Plaintiffs Depo., pp. 40-41. The Attendance Policy provides for the assessment of points for various attendance infractions. An employee is assessed one Attendance Point for every "unplanned absence." See Attendance Policy, Exh. E to Defendant's Motion, p. 11. An "unplanned absence" is defined as "an absence (other than a Protected Absence<sup>1</sup>) that was neither requested nor approved" by management. See id. at 10. The Attendance Policy provides that any absence

<sup>1</sup> "with less than 48-hour notice will be considered unplanned." <sup>2</sup> Id. Attendance points are tracked on a rolling basis, and are expunged from the employee's record after twelve (12) months. See id. at 9. The Attendance Policy provides for potential termination when an employee is assessed ten (10) Attendance Points. See id. at 12.

A "Protected Absence" under Wayfair's Attendance Policy is an absence covered by the Family Medical Leave Act, worker's compensation laws, disability and other reasonable accommodation laws.

2 Plaintiff argues that she should not have been assessed Attendance Points for the days she was absent for dental work in October 2016 because those absences were "unforeseen." The Wayfair Attendance Policy, however, does not exclude "unforeseen" absences from its definition of "unplanned" absences for which Attendance Points are assessed. There is no evidence that Wayfair doubted Plaintiffs statements regarding her need for dental work, and Plaintiff admits that she did not give 48-hour notice of the absences.

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Plaintiff admits receiving a verbal warning about her attendance in August 2016, and a written warning in September 2016, See Plaintiffs Depo, pp. 47-48. Due to a dental problem, Plaintiff was absent from work October 4-7, 2016.<sup>1</sup> On each morning, she contacted Wayfair to advise that she would be absent that day. None of the absences was with 48-hour advance notice. After Plaintiff received thirteen (13) Attendance Points, Wayfair terminated her employment on October 10, 2016. Plaintiff filed a Charge of Discrimination with the Equal Employment Opportunity Commission

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<sup>1</sup> In her Addendum [Doc. 40], Plaintiff presents evidence that her dental appointment scheduled for October 7, 2016, was cancelled by the dentist and rescheduled to October 11, 2016.

("EEOC"), asserting that she was discriminated against on October 10, 2016 (the date of her termination) on the basis of her religion in violation of Title VII and on the basis of genetic information in violation of the Genetic Information Nondiscrimination Act ("GINA"). See EEOC Charge, Exh. 3 to Complaint [Doc. # 1]. Plaintiff stated in the EEOC Charge that she expressed her religious beliefs openly and that her manager "was aware of [her] mother's illness." See id

After receiving the Notice of Rights, Plaintiff filed this lawsuit on June 30, 2017. In her Complaint, Plaintiff alleges that she was discriminated against on the basis of her religion and genetic information when Wayfair terminated her employment. See Complaint, p, 2.

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In her Addendum [Doc. #40], Plaintiff presents evidence that her dental appointment scheduled for October 7, 2016 was cancelled by the dentist and rescheduled to October 11, 2016.

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The parties engaged in discovery, after which each party filed a Motion for Summary Judgment. The motions have been briefed and are now ripe for decision.

11. **SUMMARY JUDGMENT STANDARD**

Rule 56 of the Federal Rules of Civil Procedure provides for the entry of summary judgment against a plaintiff who fails to make a sufficient showing of the existence of an element essential to her case and on which she will bear the burden at trial. *Celotex Corp, v. Catrett*, 477 U.S. 317, 322 (1986); *Curtis v, Anthony*, 710 F.3d 587, 594 (5th Cir. 2013); *Little v. Liquid Air corp.*, 37 F,3d 1069, 1075 (5th Cir. 1994) (en banc). Summary judgment "should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." FED. R. av. P. 56(a); *Celotex*, 477 U.S. at 322-23; *Curtis*, 710 F.3d at 594.

For summary judgment, the initial burden falls on the movant to identify areas essential to the non-movant's claim in which there is an "absence of a genuine issue of material fact." *ACE Am. Ins. Coe v. Freeport Welding & Fabricating, Inc.*, 699

F.3d 832, 839 (5th Cir. 2012). The moving party, however, "need not negate the elements of the nonmovant's case." *Coastal Agric. Supply, Inc. v. JP Morgan Chase Bank, N.A.*, 759 F.3d 498, 505 (5th Cir. 2014) (quoting *Boudreaux v. swift Transp.*

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Co., 402 F.3d 536, 540 (5th Cir. 2005)), The moving party may meet its burden by pointing out "the absence of evidence supporting the nonmoving party's case." *Malacara v. Garber*, 353 F.3d 393, 404 (5th Cir. 2003) (citing *Celotex*, 477 U.S. at 323; *Stults v. Conoco, Inc.*, 76 F.3d 651, 656 (5th Cir. 1996)).

If the moving party meets its initial burden, the non-movant must go beyond the pleadings and designate specific facts showing that there is a genuine issue of material fact for Gen. *Universal Sys., Inc. v. Lee*, 379 F.3d 131, 141 (5th Cir. 2004); *Littlefield v. Forney Indep. Sch. Dist.*, 268 F.3d 275, 282 (5th Cir. 2001) (internal citation omitted). "An issue is material if its resolution could affect the outcome of the action." *Spring Street Partners-IV\* L.P. v. Lam*, 730 F.3d 427, 435 (5th Cir. 2013), "A dispute as to a material fact is genuine if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *DIRECT TV Inc. v.*

Robson, 420 F.3d 532, 536 (5th Cir. 2006) (internal citations omitted).

In deciding whether a genuine and material fact issue has been created, the court reviews the facts and inferences to be drawn from them in the light most favorable to the nonmoving party. *Reaves Brokerage Co v. Sunbelt Fruit & Vegetable Co.*, 336 F.3d 410, 412 (5th Cir. 2003). A genuine issue of material fact exists when the evidence is such that a reasonable jury could return a verdict for the non-movant *Tamez v. Manthey*, 589 F.3d 764, 769 (5th Cir. 2009) (citing *Anderson*

*v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). "Conclusional allegations and denials, speculation, improbable inferences, unsubstantiated assertions, and legalistic argumentation do not adequately substitute for specific facts showing a genuine issue for trial." *Pioneer Exploration, LLC v. Steadfast Ins. Co.*, 767 F.3d 503, 511 (5th Cir. 2014) (quoting *Oliver v. Scott*, 276 F.3d 736, 744 (5th Cir. 2002); accord *Delta & Pine Land Co. v. Nationwide Agribusiness Ins. Co.*, 530 F.3d 395, 399 (5th Cir. 2008). Instead, the nonmoving party must present specific facts which show "the existence of a genuine issue concerning every essential component of its case." *Firman v. Life Ins. co. of N. Am.*, 684 F.3d 533, 538 (5th Cir. 2012) (citation and

internal quotation marks omitted). In the absence of any proof, the court will not assume that the non-movant could or would prove the necessary facts. Little, 37 F.3d at 1075 (citing Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871, 888 (1990)).

The Court may make no credibility determinations or weigh any evidence. See

Chaney v. Dreyfus Sen. Corp., 595 F.3d 219, 229 (5th Cir. 2010) (citing Reaves Brokerage Co., 336 F.3d at 412-13), The Court is not required to accept the nonmovant's conclusory allegations, speculation, and unsubstantiated assertions which are either entirely unsupported, or supported by a mere scintilla of evidence.

Id. (citing Reaves Brokerage, 336 F.3d at 413); accord, Little, 37 F.3d at 1075. Affidavits cannot preclude summary judgment unless they contain competent and otherwise admissible evidence, See FED. R. CIV. P. 56(c)(4); Love v. Nat'l Med. Enters., 230 F.3d 765, 776 (5th Cir. 2000).

Finally, "[w]hen evidence exists in the summary judgment record but the nonmovant fails even to refer to it in the response to the motion for summary judgment, that evidence is not properly before the district court." Malacara, 353 F.3d at 405. "Rule 56 does not impose upon the district court



a duty to sift through the record in search of evidence to support a party's opposition to summary judgment." *Ida* (internal citations and quotations omitted); *Williams v. Valenti*, 432 F. App'x 298, 302 (5th Cir. 2011).

#### 111. RELIGIOUS DISCRIMINATION CLAIM

Plaintiff alleges that her termination was the result of discrimination on the basis of her religion. Plaintiff is a Christian. The decision-makers, Brown and Quick, are also Christians. See Quick Depo., 18; Deposition of Justin Brown, Exh. L to Defendant's Motion, 10. Where the decision makers are all members of the same protected class as the discharged employee, it is less likely that unlawful discrimination on the basis of membership in that protected class was the reason for the employee's discharge. See *Kelly v. Costco Wholesale Corp.*, 632 Fed. App'x 779, 783 (5th Cir, 2015); *Donald V. Plus4 Credit Union*, 2017 WL 3235659, \*9 (S.D. Tex. July 31, 2017) (Miller,J.).

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Under the framework set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S.

792, 802-04 (1973), Plaintiff must first establish a prima facie case of discrimination.

See *Refaei v. McHugh*, 624 F. App'x 142, 145 (5th Cir, 2015). To establish a prima facie case, Plaintiff must present evidence that she "(1) is a member of a protected group; (2) was qualified for the position at issue; (3) was discharged or suffered some adverse employment action by the employer; and (4) was replaced by someone outside his protected group or was treated less favorably than other similarly situated employees outside the protected group," *Id.* (citing *McCoy v. City of Shreveport*, 492

F.3d 551, 556 (5th Cir. 2007) (per curiam)). It is undisputed that Plaintiff is a Christian, that she was qualified for the call center position, and that she was discharged.

Regarding the fourth element of the prima facie case, there is no allegation or evidence that Plaintiff was replaced by a non-Christian. Therefore, Plaintiff must present evidence that she was treated less favorably because she is a Christian than were other similarly situated employees who were not Christians, "under nearly identical circumstances." *Id.* (quoting *Lee v. Kansas City S. Ry Co.*, 574 F.3d 253, 259 (5th Cir. 2009)).

To satisfy this burden, Plaintiff must present evidence of sufficient "comparators." See *id* Employees are similarly situated if: (1) they had the same job or responsibilities; (2) they worked for the same supervisor or had \_\_\_\_\_ employment decisions made by the same person; (3) they had comparable disciplinary histories; and (4) the comparator employee's conduct was "nearly identical" but resulted in "dissimilar employment decisions." See *Lee*, 574 F.3d at 260; see also *Alkhawaldeh v. Dow Chem. co.*, 851 F.3d 422, 426 (5th Cir. 2017), reh'g denied, (Apr. 27, 2017).

In this case, Plaintiff has failed to identify any non-Christian employee at Wayfair' s Texas call center who accumulated ten or more Attendance Points and was not terminated. Defendant's Senior Human Resources Manager, William Quick, has stated under oath that between April 2016 and April 2017, Wayfair terminated at least seven other employees at the Texas call center for accumulating ten or more Attendance Points. See Affidavit of William Quick, Exh. A to Defendant's Motion, 17.

Plaintiff asserts that she was believes she was terminated because of her high percentage of returns, for which she gave exceptions because of her Christian beliefs regarding kindness and compassion. Although the record is

clear that Plaintiff was terminated for accumulating thirteen Attendance Points, the Court notes that there is no evidence of non-Christian employees at the Wayfair Texas call center with a similar percentage of returns with exceptions who were treated more favorably than Plaintiff. As a result, Plaintiff would not be able to establish a prima facie case of

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religious discrimination if she was discharged for having a high percentage of returns that required an exception to Wayfair's standard return policy.

Plaintiff has failed to present evidence of similarly-situated non-Christians who were treated more favorably than she was treated. As a result, Plaintiff cannot establish a prima facie case of discrimination on the basis of her religion. Defendant is entitled to summary judgment on this claim.

#### IV. DISCRIMINATION CLAIM BASED ON GENETIC INFORMATION

Plaintiff argues that Wayfair's decision to terminate her employment was the result of discrimination based on genetic information regarding her father's stroke and her mother's unspecified mental illness. GINA makes it

illegal for an employer to terminate or otherwise discriminate against an employee because of the employee's

genetic information. See 42 U.S.C. 2000ff-1(a)(1). Genetic information for purposes of a GINA discrimination claim is "information about [an] individual's genetic tests, the genetic tests of family members of such individuals, and the manifestation of a disease or disorder in family members of such individual." See 42

U.S.C 2000ff(4)(A). GINA is intended to prohibit employers from making a "predictive assessment concerning an individual's propensity to get an inheritable genetic disease or disorder based on the occurrence of an inheritable disease or disorder in [a] family member." *Poore v. Peterbilt of Bristol, LLC*, 852 F. Supp. 2d

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727, 730 (WD. Va. 2012); *Maxwell v. Verde valley Ambulance co. Inc.*, 2014 WL 4470512, \*16 (D. Ariz. Sept. 11, 2014). A family member's diagnosis is not considered "genetic information" for purposes of GINA if "such information is taken into account only with respect to the individual in which such disease or disorder occurs and not as genetic information with respect to any other individual." See *Poore*, 852 F. Supp. 2d at 731 (quoting H.R. Rep.

No. 110-28, pt. 2, at 27 (2007); Regulations Under the Genetic Information Nondiscrimination Act of 2008, 75 Fed.

Reg. 68,917 (Nov. 9, 2010)).

As an initial matter, the GINA claim regarding Plaintiff's father is unexhausted. A plaintiff must exhaust administrative remedies applicable to claims under GINA before pursuing a lawsuit raising that claim. See *Brown v. Metroplex Plumbing*, 2017 WL 6466747, \*2 (N.D. Tex. Oct. 5, 2017), report and recommendation adopted, 2017 WL 6447201 (N.D. Tex. Dec. 18, 2017); *Goswami v. Unocal*, 2013 WL 5520107, \*6 (S.D. Tex. Oct. 3, 2013); *Huff, DRE Mgmt., Inc.*, 2012 WL 3072389, \*3 (N.D. Tex.

July 30, 2012); see also *Bowie v. Univ. of Md. Med. Sys.*, 2015 WL 1499465, \*5 (D. Md. Mar. 31, 2015) ("GINA expressly incorporates Title VII's exhaustion requirements for employees covered by Title VII"). Here, Plaintiff in her EEOC Charge failed to allege any facts relating to her father's stroke. As a result, Defendant is entitled to summary judgment on that claim.

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In connection with Plaintiffs GINA claim relating to her mother's mental illness, Plaintiff asserts that Wayfair discriminated against her based on the "manifestation of a disease or disorder" in her family member. Plaintiff

has cited to no evidence that her mother was diagnosed with a specific mental disease or disorder, and Plaintiff admits that she did not advise anyone at Wayfair of a specific diagnosis. Instead, Plaintiff simply remarked that her mother was "mentally ill" and, therefore, could not take care of Plaintiffs minor daughter.

There is no evidence that Wayfair discriminated against Plaintiff because of any genetic information relating to Plaintiff or her mother, or that it used genetic information when deciding to terminate her employment. Instead, the uncontroverted evidence is that Wayfair used the very limited information regarding Plaintiff's mother only in connection with granting Plaintiffs request to go home during her lunch break to check on her minor daughter. Evidence that Plaintiff described her mother generally as "mentally ill" has no predictive value with respect to Plaintiffs genetic propensity to acquire a specific mental illness, and there is no evidence that Wayfair viewed it as such. See, e.g., Poore, 852 F. Supp. 2d at 731. As a result, Defendant is entitled to summary judgment on Plaintiffs GINA claim'

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4 In her Response to Defendant's Motion and in her Motion for Summary Judgment, Plaintiff complains that she was harassed when she was not initially permitted to leave (continued...)

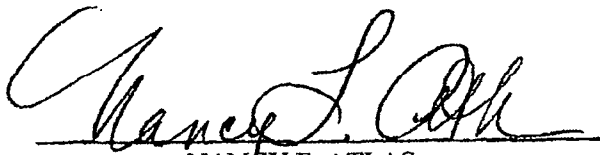
v. **CONCLUSION AND ORDER**

Plaintiff has failed to present evidence that establishes a prima facie case of religious discrimination. Plaintiff failed to exhaust her administrative remedies regarding her GINA claim (whether based on discrimination or harassment) related to her father's stroke. Plaintiff has failed to present evidence that raises a genuine issue of material fact in support of her GINA claim related to her mother's unspecified mental illness. Accordingly, it is hereby

ORDERED that Plaintiffs Motion for Summary Judgment [Doc. # 29] is DENIED. It is further

ORDERED that Defendant's Motion for Summary Judgment [Doc. # 26] is GRANTED. The Court will issue a separate Final Judgment.

SIGNED at Houston, Texas, this 27th day of June, 2018.

  
\_\_\_\_\_  
NANCY F. ATLAS  
SENIOR UNITED STATES DISTRICT JUDGE

\_\_\_\_\_



4 („continued) work early after she learned of her father's stroke. Plaintiff did not assert a harassment claim under GINA in her EEOC Charge, in which she identified the "date(s) discrimination took place" as "10-10-16." Moreover, Plaintiff did not assert a GINA harassment claim in her Complaint in this lawsuit.

PAORDERSU/11-2017 180627.1422

United States District Court  
Southern District of Texas

ENTERED

IN THE UNITED STATES DISTRICT COURT      June 27, 2018  
FOR THE SOUTHERN DISTRICT OF TEXAS David J. Bradley, Clerk  
HOUSTON DIVISION

TOYA M. GIBSON,  
Plaintiff,

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CIVIL ACTION NO. 4: 17-2059

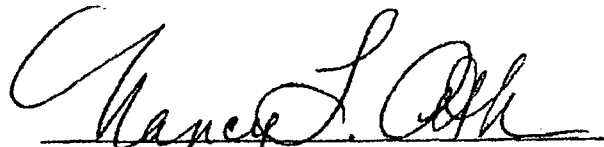
WAYFAIR, INC.,  
Defendant

FINAL JUDGMENT

For the reasons stated in the accompanying Memorandum and Order, it is  
Hereby ORDERED that Defendant Wayfair, Inc. 's Motion for Summary Judgment  
[Doc. # 26] is GRANTED, and this case is DISMISSED WITH PREJUDICE

This is a final, appealable judgment.

SIGNED at Houston, Texas, this 22 day of June, 2018.

  
NANCY F. ATLAS  
SENIOR UNITED STATES DISTRICT JUDGE

PAORDERS/11-I-2017\2059FJ.wpd 180627.1425

TEXAS WORKFORCE COMMISSION INVESTIGATION TO DETERMINE  
BENEFITS

Employer Response to Notice of Application for UI Benefits

SSNXXX-XX-9627 TOYA M GIBSON

Claim Date: 01-01-2017 Claim Type: PGM:REG Claim 2017-01-01

Employer: 15-089530-8  
WAYFAR LLC     **Y**  
                         **Y** Correct Last Employer:  
Monetarily Eligible:  
Source: Internet  
Notice Sent: 01-06-  
                 2017  
Due: 01-20-  
               2017  
Claimant                 FIRED  
Separation  
Reason:  
                             01-09-  
Responded: 2017  
Response Internet Confirmation0109SYS9627  
Type:  
Employer                 FIRED  
Separation Reason:  
TWC Action: ROUTE ONLY  
Current                   NOEL GARZA  
Investigator:

Employment Information

Date Range Worked: 03-28-2016 10-10-2016 Gross Wages Earned:

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Wages In Lieu Of Notice: N	Paid Thru:
On Temporary Layoff: N	Recall Date:
Paid Vacation Days: N	Paid Thru:

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Responder's Name: <b>William Quick</b>	TWC Account: 150895308
Responder's Title: <b>Human Resources</b>	Phone: (617) 532-6100 0975
Contact Person:	Phone:

-----Additional Information Regarding Separation-----

----- Work Separation Reason - Fired.-----

Why Did You Fire The Applicant?

Violation of our No Fault Attendance Policy.

Who Fired The Applicant?

Name: Justin Brown

Title: Service Manager

Phone: (617)880-8576 Ext:

Was There A Final Incident That Led To Firing? Y Explanation Below:

Employee was absent 10/4 - 10/7 giving her 13 attendance points whereas 10 points is cause to review for termination.

Did You Give The Applicant Prior Warning? Explanation Below:

Page: 1

Benefits — Non-Monetary Determinations  
Fact Finding

SSN • . XXX-XX-9627 TOYA M GIBSON Case Nbr: 4  
Issue Nbr: 1 Type: FRED Reason: FIRED - INTAKE STATEMENT  
Stmt Nbr: 1 of: 3 Stmt of: **Claimant** Taken: 01-05-2017 10:18:1

Name: TOYA M GIBSON Title:

Phone Stmt: Y Claim ID: 2017-01-01 Claim Dt • . 01-01-2017 Rebuttal: N  
Footnote: N

Why were you fired? Reason you were given I WAS TOLD THAT I DID  
NOT REQUEST THE DAY THAT I TOOK OFF.

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Name of the person who told you that you were fired: JUSTIN BROWN

Title of the person who told you that you were fired: MANAGER

Did something specific happen that caused you to be fired? Y

Explanation: YES I HAD DENTAL WORK DONE AND I WAS BLEEDING TOO  
MUCH TO GO TO WORK I HAD DEVELOPED AN ABSECE AND I  
CONTACTED HR AND THEY SAD IT WAS OK AND

A WEEK BEFORE I WAS COMENDED ON MY WORK ETHC AND  
INTEGRITY. BUT MY MANAGER CAME TO MY DESK AND IN FRONT OF  
EVERYONE TOLD ME TO GET MY THINGS LOUDLY AND  
CLEAN OUT MY DESK. WALKED ME TO THE DOOR AND AS I WAS  
LEAVIING HE CALLED MY NAME I TURNED AROUND AND HE WAVED  
AND SAD BYE BYE. Did you have any warnings related to the reason you were  
given for being fired? N

Did you do what you were warned about? \_

END

\*\*\* No footnote entered\*\*\*

Page: 2

Benefits — Non-Monetary  
Determinations Fact Finding

SSN: XXX-XX-9627 TOYA M GIBSON Case Nbr: 4  
Issue Nbr: 1 Type: FIRED Reason: ABSENT  
Stmt Nbr: 2 of: 3 Stmt of: Employer Taken: 01-10-2017  
12:26:37 PM  
Name: WILLIAM QUICK Title: I-IR MANAGER  
Phone Stmt: Y Claim ID: 2017-01-01 Claim De 01-01-2017 Rebuttal: Y Footnote: N

What was the reason (you/he,she) (was/were) fired? SHE WAS LET GO DUE TO EXCESSIVE ABSENCES AND VIOLATION OF OUR NO FAULT ATTENDANCE POLICY.

Name and title of person discharging claimant? JUSTIN BROWN, MANAGER.

Date(s) 1 reason(s) for final absence? SHE HAD TO MISS DUE TO MEDICAL REASONS FROM A DENTAL PROCEDURE SHE HAD. SHE NUSSED FROM 100416-100716.

Page: 3

Benefits — Non-Monetary Determinations Fact  
Finding

SSN: XXX-XX-9627 TOYA M GBSON Case Nbr: 4  
Issue Nbr: 1 Type: FIRED Reason:  
ABSENT  
Stmt Nbr: 3 of: 3 Stmt of: Claimant Taken: 01-10-2017 PM  
Name: TOYA M GIBSON Title:  
Phone Stmt: Y Claim ID: 2017-01-01 Claim Dt: 01-01-2017 Rebuttal: Y Footnote: Y

What was the reason (you/he,she) (was/were) fired? I UNDERSTAND THAT MY EMPLOYER IS SAYING THAT I WAS LET GO DUE TO EXCESSIVE ABSENCES.

Name and title of person discharging claimant? JUSTIN BROWN, MANAGER

Date(s) / reason(s) for final absence? 100416-100716, 1 HAD TO MISS WORK DUE

---

<sup>1</sup> DONT HAVE ANY RESTRICTIONS ON MY ABILITY TO LOOK FOR AND ACCEPT FULL TIME WORK AND I HAVE BEEN ABLE TO ACCEPT A FULL JOB SNCE THE BEGNNBIG OF MY CLAM PERIOD.

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TO MEDICAL REASONS. I WAS HAVING ISSUES WITH AN ABSCESS IN MY MOUTH.

Date(s) / reasons for prior absences? I AGREE WITH THE DATES THAT MY EMPLOYER

PROVIDED. THREE OF THOSE ABSENCES WERE DUE TO MEDICAL REASONS, AND

ONE OF

THEM WAS FOR MY DAD AND HAVING A STROKE. I DON'T HAVE SPECIFICS.

Prior warnings regarding attendance? If yes, when, by whom, what were warnings for? I DON'T RECALL WHAT THE WARNINGS WERE FOR, BUT I DO AGREE THAT

I WAS GIVEN PRIOR WARNINGS.

Did (you/he,she) notify the employer (you/they) were going to be absent? If yes, when? Who did (you/he, she) speak to/title? IDD CALL IN AS PER

POLICY.

What was the call-in policy/rule when absent? TO CALL PRIOR TO SHIFT STARTING.

Did (you/he,she) follow the policy? YES I DID..

Employee was given a final warning on 9/22/16 when she received her 9th point. She was advised her job was in jeopardy and any further attendance violations could result in termination.

Inadequate Untimely Employer Response

Employer Name: WAYFAR LLC

Employer D: 15-089530-8

Late or Inadequate Response Total: O

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Dates / reasons for prior absences? I WOULDN'T KNOW REASONS, BUT SHE WAS OUT 061616, 062716, 071916, 072016, 080516, 080816, 081016, 090616, 092116 AND 100416 Tfm01JGH 100716.

Prior warnings regarding attendance? If yes, when, by whom, what were warnings for? WAS GIVEN A FINAL WARNING ON 092116. THIS WAS A WRITTEN WARNING. SHE ALSO RECEIVED A VERBAL ON 081016. THE CLAMANT WAS MADE AWARE THAT HER JOB WAS IN JEOPARDY ON BOTH OCCASSIONS.

Did (you/he, she) notify the employer (you/they) were going to be absent? If yes, when?

Who did (you/he, she) speak to/title? SHE NOTIFY US THAT

SHE WAS GOING TO BE OUT AS PER POLICY.

What was the call-in policy/rule when absent? TO CALL TO LET US KNOW THAT SHE WAS GOING TO BE ABSENT.

Did (you/he, she) follow the policy? YES SHE DID.

---

END

\*\*\* No footnote entered \*\*\*



Issue Decision Log

SSN: XXX-XX-9627

TOYA M GIBSON

Case Nbr: 4

Issue Nbr: 1 of: 1

Type: FIRED Reason: HEALTH OR MEDICAL REASONS

Program:REG Claim ID 2017-01-01 Claim Type:IC Claim Dt: 01-01-2017

LEU: 15-089530-8 WAYFAIR

LLC

Late LEU Response: N Interested

Charged:

Party: Y

No

Other Employer:

Decision Date: 01-10-2017

Weeks Disqualified:

Mailed Date: 01-11-2017

Deductible Amount:

Begin Date: 01-01-2017

State:

End Date: Claimant

Incident Date :

Failed to Respond: N

Qualified: Y

Rationale: PARTIES AGREE; DET CLMT'S FINAL ABSENCE DUE TO MEDICAL REASONS •, DET FINAL INCIDENT DOESN'T RISE TO LEVEL OF MISCONDUCT.

Conclusion: FIRED-MEDICALLY VERIFIABLE ILLNESS-NOT DISQUALIFIED

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: Toya Gibson  
P.O. Box 11066  
College Station, TX 77842

From: Houston District Office  
Mickey Leland Building  
1919 Smith Street, 7th Floor  
Houston, TX 77002

On behalf of person(s) aggrieved whose identity is  
CONFIDENTIAL (29 CFR 1601(a))

EEOC Charge No.	EEOC Representative	Telephone
846.2017-01664	DeAnna Brooks-Torres, investigator	(713)6514971

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.

X. 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 that the respondent is in compliance with the statutes, No finding is as to any other issues that might be construed ag been raised by this charge.

The EEOC has adopted the findings of fie state or local fait employment practices agency that investigated this charge

Other (briefly state)

NOTICE OF SUIT RIGHT

(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 yours 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 before you file suit may not be collectible.

On behalf of the commission

Marina Guerra March 31, 2017

Rayford O. Irvin/District Director

William Quick  
HR Manager-Talent Operations  
Dept.  
WAYFAIR  
3101 University Drive E  
Bryan, TX 77802

Lowell Keig, Director  
Texas Workforce Commission Civil Rights  
Division  
101 East 15st.  
Room 144T  
Austin, TX 78778

## EEOC Form 5 (11/09)

<b>CHARGE OF DISCRIMINATION</b> This form affected by the Privacy Act of 1974. See Privacy Statement And other before completing this form,		Charge Presented To: Agency(ies) Charge No(s);  EEOC 846-2017-01664	
Texas Workforce Commission Civil Rights Division and EEOC State or local Agency, if any			
Ms. Toya Gibson		Home Phone Ana Code)	1972
Street Address City, State and ZIP code P.O. Box 11066, College Station TX 77842			
Named the Employer; Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)			
Name WAYFAIR		No. Employees, Members 15 100	Phone No. (Include Ana Code) (800) 929-3247
Street Address City* state and ZIP code 3101 University, Bryan, TX 77802			
		No. Employees, Members	Phone No. (Include Area Code)
Street Address State and ZIP Code			
DISCRIMINATION BASED ON (Check appropriate box(es))  NATIONAL ORIGIN  RETALIATION ' GENETIC Information <input checked="" type="checkbox"/>		DATE(S) DISCRIMINATION TOOK PLACE Earliest Latest 10-10-2016 10-10-2016	

THE PARTICULARS ARE (If additional paper needed attach extra sheet(s)):

I On March 28, 2016, I began my employment with Wayfair as a Customer Service Consultant On October 10, 2016. I was

II. On October 10, 2016, Justin Brown, Manager, told me I was terminated for not submitting my leave request at home through the portal. In the past was instructed by Justin Brown to contact Human Resources, William Quick, if I needed additional time that he could not approve. From October 4, 2016 to October 10, 2016, I texted Justin Brown informing him I would not be in, emailed William Quick and called the sick line concerning my absence.

III I believe I was discriminated against because of my religion, Christian. and genetics in violation of Title VII Civil Rights Act of 1964, as amended and Genetic information Nondiscrimination Act (GINA) of 2008. I expressed my religious beliefs openly and my manager was aware of my mother's illness.

I want this charge filed with both the EEOC and the State of local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

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

Mar 31, 2017 Toya M. Gibson  
Charging party Signature

Notary-When necessary for State and Local Agency Requirements

..I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.  
SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE  
ME THIS DATE  
(month, day, year)

846\*2017\*01664

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
INTAKE QUESTIONNAIRE

Please immediately the entire form and return it to the U.S. Equal Employment Opportunity Commission ("EEOC"). REMEMBER, a charge of employment discrimination must be filed within the time limits imposed by law, generally within 180 days or in places 300 days of alleged discrimination. Upon receipt, this form will be reviewed to determine EEOC coverage. Answer all questions as completely as possible, and attach additional pages if needed to complete your responses (s). If you do know the answer to a question, answer by stating "not known." If a question is not applicable, write "n/a" Please Print.

I Personal information

Last Name: Gibson First: Toya MI: M

Street or Mailing Address: P.O. Box 11066 Apt Or Unit#:

City: County: State:

Phone Numbers: Home: 713-304 -3092 Work: ( Email

Address: Gibson\_toya@hotmail.com

Date of Birth x: Mate Ferrule Do You Have Disability? No

Please answer each of the next three question. , Are you Hispanic Or Latino? No

ii. What is your Race? Please choose all the apply. X Black or African

iii. What is your Nationality

iii What National Origin (country or origin or ancestry)?

1. Provide the name of a Person we can contact if we are unable to reach you:

2. I believe that I was discriminated against by following organization (s)

Organization contact information Wayfair

Organization name: Wayfair

Address: 3101 University County: Brazos

City: Bryan State: Tx Zip: 7784

Type of Business: E-Commerce

Human Resources Director or Owner

Name: \_\_\_\_\_ Phone:

Number of Employees in the Organization at All Locations: Please check one:

☒ More than 500

3. Your Employment Data (Complete as many items as you can) Are you a Federal Employee? No

Date hired: 3/28/16 Job Title At Hire: Customer Service Consultant

Pay Rate When Hired: 14.00 Last or Current Pay Rate: 14.00

Job Title at time of Alleged Discrimination: Customer Service

Name and Title of immediate Supervisor : Consultants

2

**If Job Applicant** Date You applied for job \_\_\_\_\_ Job Titled Applied For \_\_\_\_\_

4. What is the reason (basis) for your claim of employment discrimination?

FOR EXAMPLE, if you feel that you were treated worse than someone else because of race, you should check the box next to Race. If you feel you were treated worse for several reasons, such as your sex, religion, and national origin, you should check all that apply. If you complained about discrimination, participated in someone else's complaint, or filed a charge of discrimination, and a negative action was threatened or taken, you should check the box next to Retaliation.

Race Sex Age Disability National origin Religion Retaliation Pregnancy Color

Genetic information Genetic testing Family medical history Genetic services

Other reason: \_\_\_\_\_

5. What happened to you that you believe was discriminatory? Include the date (s) of harm, the actions (s) and the name(s) and titles (s) of the person(s) who you believe discriminated against you. Please attach additional pages if needed.

A. 10/10/2016 GENETIC, HARRASMENT, RELIGION

6. Why do you believe these actions were discriminatory? Please attach additional pages if needed.



7 What reasons (s) were given to you for the acts you consider discriminatory? By whom?

His or Hears Job title:

8. Describe who was in the same or similar situation as you and they were treated. For example, who else applied for the same job you did who else had the same attendance record, or who else had the same performance? Provide the race, sex, age, national origin, religion, or disability of these individuals, if known, and if it relates to your claim of discrimination. For example, if your complaint alleges race discrimination, provide the race of each person; if it alleges sex discrimination, provide the sex of each person; and so on. Use additional sheets if needed.

B.



U.S. Equal Employment Opportunity Commission  
Houston District Office  
Mickey Leland Building  
1919 Smith Street, 7th Floor  
Houston, TX 77002

NOTICE OF CHARGE OF DISCRIMINATION

(This Notice replaces EEOC FORM 131)

DIGITAL CHARGE SYSTEM

April 9, 2017

To: William Quick

HR Manager-Talent Operations Dept.

WAYFAIR wquick@wayfair.com

This is notice that a charge of employment discrimination has been filed with the EEOC against your organization by Toya Gibson, under: Title VII of the Civil Rights Act (Title VII) and The Genetic Information Nondiscrimination Act (GINA). The circumstances of the alleged discrimination are based on Religion and Genetic Information and involve issues of Discharge that are alleged to have occurred on or about Oct 10, 2016.

The Digital Charge System makes investigations and communications with charging parties and respondents more efficient by digitizing charge documents. The charge is available for you to download from the EEOC Respondent Portal, EEOCs secure online system,

Please follow these instructions to view the charge within ten (10) days of receiving this Notice:

1. Access EEOC's secure online system: <https://nxg.eeoc.gov/rsp/login.jsf>
2. Enter this EEOC Charge No.: 846-2017-01664
3. Enter this temporary password: [REDACTED]

Once you log into the system, you can view and download the charge, and electronically submit documents to EEOC. The system will also advise you of possible actions or responses, and identify your EEOC point of contact for this charge.

#### Preservation of Records Requirement

EEOC regulations require respondents to preserve all payroll and personnel records relevant to the charge until final disposition of the charge or litigation. 29 CFR 5160214. For more information on your obligation to preserve records, see <http://eeoc.gov/employers/recordkeeping.cfm>.

#### Non-Retaliation Requirements

The laws enforced by the EEOC prohibit retaliation against any individual because s/he has filed, a charge, testified, assisted or participated in an investigation, proceeding or hearing under these laws. Persons filing charges of discrimination are advised of these Non-Retaliation Requirements and are instructed to notify EEOC if any attempt at retaliation is made. For more information, see <http://www.eeoc.gov/laws/types/facts-retal.cfm>.

#### Legal Representation

Although you do not have to be represented by an attorney while we handle this charge, you have a right, and may wish to retain an attorney to represent you. If you do retain an attorney, please provide the attorney's contact information when you log in to the online system.

Please retain this notice for your records.

## DENTAL RECORDS AND ADDENDUM

ARMED & DANGEROUS  
3101 Taylor Avenue  
Houston, TX 77249



7017 1450 0001 5344 6943



1000



77231

U.S. POSTAGE  
PAID  
BRYAN, TX  
MAY 18  
AMOUNT  
**\$4.45**  
R2304N117002-13

Toya M. Gibson  
P.O. Box 310341  
Houston, TX 77231

United States Courts  
Southern District of Texas  
Filed

THE UNITED STATES DISTRICT  
COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

JUN 19 2018

David J. Bradley, Clerk of Court

Toya M. Gibson

Plaintiff Civil Action 4:17-cv-02059

vs.

Wayfair INC.,

Defendant

Requested, Anticipated and Finally Received Addendum

I, Toya Gibson Pro Se Litigant am submitting copies of the anticipated addendum and the envelope that received it in, that requested from Texas Avenue Dental earlier in this year. On today, I received them from the Westbury United States Postal Center in Houston, Texas.

The records will support my claim that my scheduled appointment for October 7, 2016 was cancelled by

Dentist Espinoza and rescheduled for October 11, 2016 that in which I went to his office. Additionally, this addendum notes that the tooth that I solicited his office for oral surgery and treatment for was tooth #18, not #19 as originally and initially noted by mistake of his office,

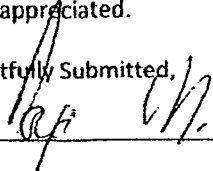

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I have written several times throughout my case that the records were inaccurate and I have also mentioned that I had contacted his office numerous times for the records to the point where i had to reach out to the Texas Dental Association for assistance to finally get them.

It is my prayer that the courts use this record to support my case.

will be appreciated.

Respectfully Submitted,

x    
6/19/2016

Please know that consideration given  
be appreciated.

will

TE  AS AVENUE DENTAL

---

JASON L. ESPINOZA, DDS

May 24, 2018

Toya M, Gibson  
P.O. Box 310341  
Houston, TX 77231

Dear Ms. Gibson,

Please see the attached documentation requested of your chart records from our office. File chart reflects an addendum regarding the proper tooth diagnosed for treatment on your visit.

Additionally pursuant to your request, I can confirm that your visit to our office was initially scheduled for Friday, October 7, 2016. On Thursday, October 6, 2016 our office experienced a malfunction with an air compressor and rendered us not equipped to treat patients. All patients scheduled after 3:30 pm on the 6<sup>th</sup> and all patients scheduled on the 7<sup>th</sup> were rescheduled to allow for equipment repair. Your appointment was postponed and completed on Tuesday, October 11, 2016

Please don't hesitate to contact me at 979-693-5130 or e-mail me directly at [dtespinoza@texasavedental.com](mailto:dtespinoza@texasavedental.com) with any questions or further requests.

Best Regards,

Jason L. Espinoza, DDS

Enclosure 2101 Texas Ave S, College Station, 77840 Phone: 979-693-5130  
Fax: 979-704-6538 • [info@TexasAveDental.com](mailto:info@TexasAveDental.com) • [www.TexasAveDental.com](http://www.TexasAveDental.com)

# TREATMENT RECORD

PATIENT NAME:

Toya Gibson

DATE	TREATMENT RENDERED	PROVIDER	DATE	TREATMENT RENDERED	PROVIDER
10/11/16	<p>10/14/16 12:00</p> <p>Pt. presents for Exam &amp; Xray #19. Dr. did oral Exam. Dr. informed pt. that her options are extractions. Root canal. Dr. explained that he will write a prescription we will get her back next Friday for the extraction. Pt. has a lot of bone loss around #19. Pt. to call if any pain occurs. Johnson, RDA.</p>				
10-11-16	<p>Explained to pt that due to large amount of bone loss &amp; mobility that RCT would have a guarded prognosis &amp; may not succeed. Also talked to pt about other visible issues &amp; how we can make a long term plan for her.</p>				
5-24-18	<p>After further review of pt's chart &amp; radiograph it is important to note that #18 is the tooth responsible for pt's chief complaint. #19 does not appear to have decay or bone loss present #18 is the tooth recommended for extraction. In addition, a Rx was given for C. lindamycin 150 (20) on 10-11-16.</p>				