

APPENDIX A
ORDER APPEALED FROM

FILED

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

AUG 19 2022

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MICHELE GRAY,

Plaintiff-Appellant,

v.

GC SERVICE; et al.,

Defendants-Appellees.

No. 22-15147

D.C. No. 2:21-cv-01334-DGC
District of Arizona,
Phoenix

ORDER

Before: SCHROEDER, O'SCANNLAIN, and FORREST, Circuit Judges.

The district court certified that this appeal is not taken in good faith and has denied appellant leave to proceed on appeal in forma pauperis. *See* 28 U.S.C. § 1915(a). On March 22, 2022, the court ordered appellant to explain in writing why this appeal should not be dismissed as frivolous. *See* 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

Upon a review of the record, the responses to the court's March 22, 2022 order, and the opening brief, we conclude this appeal is frivolous. We therefore deny appellant's motions to proceed in forma pauperis (Docket Entry Nos. 13 and 16) and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2).

All other pending motions are denied as moot.

No further filings will be entertained in this closed case.

DISMISSED.

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MICHELE GRAY,

Plaintiff-Appellant,

v.

GC SERVICE; APPLE,

Defendants-Appellees.

No. 22-15147

D.C. No. 2:21-cv-01334-DGC
District of Arizona,
Phoenix

ORDER

A review of the district court's docket reflects that the district court revoked appellant's in forma pauperis status because it found that the action was frivolous. This court may dismiss a case at any time, if the court determines the case is frivolous. *See 28 U.S.C. § 1915(e)(2).*

Within 35 days after the date of this order, appellant must:

- (1) file a motion to dismiss this appeal, *see Fed. R. App. P. 42(b)*, or
- (2) file a statement explaining why the appeal is not frivolous and should go forward.

If appellant files a statement that the appeal should go forward, appellant also must:

- (1) file in this court a motion to proceed in forma pauperis, OR
- (2) pay to the district court \$505.00 for the filing and docketing fees for this appeal AND file in this court proof that the \$505.00 was paid.

If appellant does not respond to this order, the Clerk will dismiss this appeal for failure to prosecute, without further notice. *See* 9th Cir. R. 42-1. If appellant files a motion to dismiss the appeal, the Clerk will dismiss this appeal, pursuant to Federal Rule of Appellate Procedure 42(b). If appellant submits any response to this order other than a motion to dismiss the appeal, the court may dismiss this appeal as frivolous, without further notice.

If appellant files a statement that the appeal should go forward, appellee may file a response within 10 days after service of appellant's statement.

The briefing schedule for this appeal is stayed.

The Clerk shall serve on appellant: (1) a form motion to voluntarily dismiss the appeal, (2) a form statement that the appeal should go forward, and (3) a Form 4 financial affidavit. Appellant may use the enclosed forms for any motion to dismiss the appeal, statement that the appeal should go forward, and/or motion to proceed in forma pauperis.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Joseph Williams
Deputy Clerk
Ninth Circuit Rule 27-7

APPENDIX B
EEOC - RIGHT TO SUE LETTER

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: Michele Gray
165A Vandenburg Place
Troy, NY 12180

From: Buffalo Local Office
300 Pearl Street
Suite 450
Buffalo, NY 14202



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

EEOC Charge No.

EEOC Representative

Telephone No.

540-2021-00075

Jean E. Mulligan,
Investigator

(716) 431-5013

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

- The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.
- Your allegations did not involve a disability as defined by the Americans With Disabilities Act.
- The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.
- Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge
- The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.
- The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.
- Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

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

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

On behalf of the Commission
Maureen C. Kielt

Digital signature of Maureen C. Kielt
DN: cn=Maureen C. Kielt, o=Equal Employment Opportunity Commission,
ou=Buffalo Local Office, email=maureen.kielt@eeoc.gov, c=US
Date: 2020.12.02 09:05:01 -05'00'

Enclosures(s)

Maureen Kielt,
Local Office Director

(Date Mailed)

cc:

Director
Human Resources
GC SERVICE
7307 E Hampton Ave
Mesa, AZ 85209

INFORMATION RELATED TO FILING SUIT UNDER THE LAWS ENFORCED BY THE EEOC

(This information relates to filing suit in Federal or State court under Federal law. If you also plan to sue claiming violations of State law, please be aware that time limits and other provisions of State law may be shorter or more limited than those described below.)

PRIVATE SUIT RIGHTS -- **Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA), the Genetic Information Nondiscrimination Act (GINA), or the Age Discrimination in Employment Act (ADEA):**

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge within 90 days of the date you receive this Notice. Therefore, you should **keep a record of this date**. Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed **within 90 days of the date this Notice was mailed to you** (as indicated where the Notice is signed) or the date of the postmark, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Courts often require that a copy of your charge must be attached to the complaint you file in court. If so, you should remove your birth date from the charge. Some courts will not accept your complaint where the charge includes a date of birth. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

PRIVATE SUIT RIGHTS -- **Equal Pay Act (EPA):**

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred more than 2 years (3 years) before you file suit may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/08 to 12/1/08, you should file suit before 7/1/10 -- not 12/1/10 -- in order to recover unpaid wages due for July 2008. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA, GINA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA, GINA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice and within the 2- or 3-year EPA back pay recovery period.

ATTORNEY REPRESENTATION -- **Title VII, the ADA or GINA:**

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do not relieve you of the requirement to bring suit within 90 days.

ATTORNEY REFERRAL AND EEOC ASSISTANCE -- **All Statutes:**

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, **please make your review request within 6 months of this Notice**. (Before filing suit, any request should be made within the next 90 days.)

IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Buffalo Local Office**

300 Pearl Street, Ste. 450
Buffalo, NY 14202

Michele Gray
165A Vandenburg Place
Troy, NY 12180

Re: Gray v. GC Service
EEOC Charge No. 540-2021-00075

Dear Ms. Gray:

The Equal Employment Opportunity Commission ("Commission") has concluded its inquiry/investigation into your allegations of discrimination contained in the above-referenced charge. The Commission has implemented charge prioritization procedures to address the dual problem of our limited resources and growing charge inventory. Under Commission procedures, we focus our resources only on those charges that are most likely to result in findings of violations of the laws we enforce. In accordance with these procedures, the Commission has evaluated your charge based on the evidence provided.

In your charge, you alleged that you were discriminated against by GC Service ("Respondent") because of age in violation of the Age Discrimination in Employment Act ("ADEA") respectively. Specifically, you alleged that you were denied equal terms and conditions of employment afforded younger employees. You further alleged that Respondent's treatment led you to resign your position.

Based upon the information provided, the Commission is unable to conclude that the evidence obtained establishes a violation of the ADEA. Please be advised, the Commission has completed its processing of this charge and this charge will be dismissed. This does not certify that the Respondent is in compliance with the statute. No finding is made as to any other issue that might be construed as having been raised by this charge. Included with this letter is your "Dismissal and Notice of Rights". Following this dismissal, you may only pursue your claims by filing a lawsuit against the Respondent. Your lawsuit must be filed within 90 days of receipt of this notice, or your right to sue based upon these allegations will be lost.

If you have any further questions, you may contact Investigator Jean E. Mulligan at (716) 431-5013.

Sincerely,

Jean E. Mulligan for
Maureen Kielt
Director
Director Maureen Kielt

Enc.

Digitally signed by Jean E. Mulligan for Director
Maureen Kielt

DN: cn=Jean E. Mulligan for Director Maureen Kielt,
o, ou, email=jean.mulligan@eeoc.gov, c=US
Date: 2020.12.01 13:17:45 -05'00'

APPENDIX C

W2

Enclosures(s)

cc:

2019 W-2 and EARNINGS SUMMARY



Employee	Reference	Copy
W-2	Wage and Tax Statement	2019 OMB No. 1545-0008
Copy C for employee's records.		

d Control number Dept. Corp. Employer use only
241468 NCN2/GC9 4245RY A 5733

c Employer's name, address, and ZIP code

G C SERVICES
LIMITED PARTNERSHIP
PO BOX 742169
HOUSTON TX 77074

Batch #01707

e/f Employee's name, address, and ZIP code

MICHELE GRAY
6901 E LAKE MEAD BLVD
APT 2166
LAS VEGAS NV 89156-1160

b Employer's FED ID number **76-0199626** a Employee's SSA number [REDACTED]

1 Wages, tips, other comp. **15087.89** 2 Federal income tax withheld **197.23**

3 Social security wages **15087.89** 4 Social security tax withheld **935.45**

5 Medicare wages and tips **15087.89** 6 Medicare tax withheld **218.77**

7 Social security tips 8 Allocated tips

9 [REDACTED] 10 Dependent care benefits

11 Nonqualified plans 12a See instructions for box 12

14 Other 12b [REDACTED]

12c [REDACTED]

12d [REDACTED]

13 Stat emp Ret. plan 3rd party sick pay

15 State Employer's state ID no. NV 16 State wages, tips, etc.

17 State income tax 18 Local wages, tips, etc.

19 Local income tax 20 Locality name

1 Wages, tips, other comp. **15087.89** 2 Federal income tax withheld **197.23**

3 Social security wages **15087.89** 4 Social security tax withheld **935.45**

5 Medicare wages and tips **15087.89** 6 Medicare tax withheld **218.77**

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241468 NCN2/GC9 4245RY A 5733

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G C SERVICES
LIMITED PARTNERSHIP
PO BOX 742169
HOUSTON TX 77074

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15 State Employer's state ID no. NV 16 State wages, tips, etc.

17 State income tax 18 Local wages, tips, etc.

19 Local income tax 20 Locality name

Federal Filing Copy

W-2 Wage and Tax Statement **2019**
OMB No. 1545-0008

Copy B to be filed with employee's Federal Income Tax Return.

This blue section is your Earnings Summary which provides more detailed information on the generation of your W-2 statement and W-4 profile. The reverse side includes instructions and other general information.

1. Your Gross Pay was adjusted as follows to produce your W-2 Statement.

	Wages, Tips, other Compensation Box 1 of W-2	Social Security Wages Box 3 of W-2	Medicare Wages Box 5 of W-2	NV. State Wages, Tips, Etc. Box 16 of W-2
Gross Pay	15,087.89	15,087.89	15,087.89	15,087.89
Reported W-2 Wages	15,087.89	15,087.89	15,087.89	15,087.89

2. Employee Current W-4 Profile. To make changes, file a new W-4 with your payroll department.

MICHELE GRAY
6901 E LAKE MEAD BLVD
APT 2166
LAS VEGAS NV 89156-1160

Social Security Number [REDACTED]
Taxable Marital Status: **SINGLE**
Exemptions/Allowances:
FEDERAL: 6
STATE: No State Income Tax

© 2019 ADP, LLC

1 Wages, tips, other comp. **15087.89** 2 Federal income tax withheld **197.23**

3 Social security wages **15087.89** 4 Social security tax withheld **935.45**

5 Medicare wages and tips **15087.89** 6 Medicare tax withheld **218.77**

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LIMITED PARTNERSHIP
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HOUSTON TX 77074

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14 Other 12b [REDACTED]

12c [REDACTED]

12d [REDACTED]

13 Stat emp Ret. plan 3rd party sick pay

e/f Employee's name, address and ZIP code

MICHELE GRAY
6901 E LAKE MEAD BLVD
APT 2166
LAS VEGAS NV 89156-1160

15 State Employer's state ID no. NV 16 State wages, tips, etc.

17 State income tax 18 Local wages, tips, etc.

19 Local income tax 20 Locality name

NV.State Reference Copy

W-2 Wage and Tax Statement **2019**
OMB No. 1545-0008

Copy 2 to be filed with employee's State Income Tax Return.

1 Wages, tips, other comp. **15087.89** 2 Federal income tax withheld **197.23**

3 Social security wages **15087.89** 4 Social security tax withheld **935.45**

5 Medicare wages and tips **15087.89** 6 Medicare tax withheld **218.77**

d Control number Dept. Corp. Employer use only
241468 NCN2/GC9 4245RY A 5733

c Employer's name, address, and ZIP code

G C SERVICES
LIMITED PARTNERSHIP
PO BOX 742169
HOUSTON TX 77074

b Employer's FED ID number **76-0199626** a Employee's SSA number [REDACTED]

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11 Nonqualified plans 12a [REDACTED]

14 Other 12b [REDACTED]

12c [REDACTED]

12d [REDACTED]

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e/f Employee's name, address and ZIP code

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6901 E LAKE MEAD BLVD
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15 State Employer's state ID no. NV 16 State wages, tips, etc.

17 State income tax 18 Local wages, tips, etc.

19 Local income tax 20 Locality name

NV.State Filing Copy

W-2 Wage and Tax Statement **2019**
OMB No. 1545-0008

Copy 2 to be filed with employee's State Income Tax Return.

Instructions for Employee

Box 1. Enter this amount on the wages line of your tax return.

Box 2. Enter this amount on the federal income tax withheld line of your tax return.

Box 5. You may be required to report this amount on Form 8959, Additional Medicare Tax. See the Form 1040 instructions to determine if you are required to complete Form 8959.

Box 6. This amount includes the 1.45% Medicare Tax withheld on all Medicare wages and tips shown in box 5, as well as the 0.9% Additional Medicare Tax on any of those Medicare wages and tips above \$200,000.

Box 8. This amount is not included in box 1, 3, 5, or 7. For information on how to report tips on your tax return, see your Form 1040 instructions.

You must file Form 4137, Social Security and Medicare Tax on Unreported Tip Income, with your income tax return to report at least the allocated tip amount unless you can prove that you received a smaller amount. If you have records that show the actual amount of tips you received, report that amount even if it is more or less than the allocated tips. On Form 4137, you will calculate the social security and Medicare tax owed on the allocated tips shown on your Form(s) W-2 that you must report as income and on other tips you did not report to your employer. By filing Form 4137, your social security tips will be credited to your social security record (used to figure your benefits).

Box 10. This amount includes the total dependent care benefits that your employer paid to you or incurred on your behalf (including amounts from a section 125 (cafeteria) plan). Any amount over \$5,000 also is included in box 1. Complete Form 2441, Child and Dependent Care Expenses, to compute any taxable and nontaxable amounts.

Box 11. This amount is (a) reported in box 1 if it is a distribution made to you from a nonqualified deferred compensation or nongovernmental section 457(b) plan, or (b) included in box 3 and/or 5 if it is a prior year deferral under a nonqualified or section 457(b) plan that became taxable for social security and Medicare taxes this year because there is no longer a substantial risk of forfeiture of your right to the deferred amount. This box shouldn't be used if you had a deferral and a distribution in the same calendar year. If you made a deferral and received a distribution in the same calendar year, and you are or will be age 62 by the end of the calendar year, your employer should file Form SSA-131, Employer Report of Special Wage Payments, with the Social Security Administration and give you a copy.

Box 12. The following list explains the codes shown in box 12. You may need this information to complete your tax return. Elective deferrals (codes D, E, F, and S) and designated Roth contributions (codes AA, BB, and EE) under all plans are generally limited to a total of \$19,000 (\$13,000 if you only have SIMPLE plans; \$22,000

for section 403(b) plans if you qualify for the 15-year rule explained in Pub. 571). Deferrals under code G are limited to \$19,000. Deferrals under code H are limited to \$7,000.

However, if you were at least age 50 in 2019, your employer may have allowed an additional deferral of up to \$6,000 (\$3,000 for section 401(k)(11) and 408(p) SIMPLE plans). This additional deferral amount is not subject to the overall limit on elective deferrals. For code G, the limit on elective deferrals may be higher for the last 3 years before you reach retirement age. Contact your plan administrator for more information. Amounts in excess of the overall elective deferral limit must be included in income. See the instructions for Form 1040.

Note: If a year follows code D through H, S, Y, AA, BB, or EE, you made a make-up pension contribution for a prior year(s) when you were in military service. To figure whether you made excess deferrals, consider these amounts for the year shown, not the current year. If no year is shown, the contributions are for the current year.

A—Uncollected social security or RRTA tax on tips. Include this tax on Form 1040. See the Form 1040 instructions.

B—Uncollected Medicare tax on tips. Include this tax on Form 1040. See the Form 1040 instructions.

C—Taxable cost of group-term life insurance over \$50,000 (included in boxes 1, 3 (up to social security wage base), and 5)

D—Elective deferrals to a section 401(k) cash or deferred arrangement. Also includes deferrals under a SIMPLE retirement account that is part of a section 401(k) arrangement.

E—Elective deferrals under a section 403(b) salary reduction agreement

F—Elective deferrals under a section 408(k)(6) salary reduction SEP

G—Elective deferrals and employer contributions (including nonelective deferrals) to a section 457(b) deferred compensation plan

H—Elective deferrals to a section 501(c)(18)(D) tax-exempt organization plan. See the Form 1040 instructions for how to deduct.

J—Nontaxable sick pay (information only, not included in box 1, 3, or 5)

K—20% excise tax on excess golden parachute payments. See the Form 1040 instructions.

L—Substantiated employee business expense reimbursements (nontaxable)

M—Uncollected social security or RRTA tax on taxable cost of group-term life insurance over \$50,000 (former employees only). See the Form 1040 instructions.

N—Uncollected Medicare tax on taxable cost of group-term life insurance over \$50,000 (former employees only). See the Form 1040 instructions.

P—Excludable moving expense reimbursements paid directly to a member of the U.S. Armed Forces (not included in box 1, 3, or 5)

Q—Nontaxable combat pay. See the instructions for Form 1040 for details on reporting this amount.

R—Employer contributions to your Archer MSA. Report on Form 8853, Archer MSAs and Long-Term Care Insurance Contracts.

S—Employee salary reduction contributions under a section 408(p) SIMPLE plan (not included in box 1)

T—Adoption benefits (not included in box 1). Complete Form 8839, Qualified Adoption Expenses, to compute any taxable and nontaxable amounts.

V—Income from exercise of nonstatutory stock option(s) (included in boxes 1, 3 (up to social security wage base), and 5). See Pub. 525, Taxable and Nontaxable Income, for reporting requirements.

W—Employer contributions (including amounts the employee elected to contribute using a section 125 (cafeteria) plan) to your health savings account. Report on Form 8889, Health Savings Accounts (HSAs).

Y—Deferrals under a section 409A nonqualified deferred compensation plan

Z—Income under a nonqualified deferred compensation plan that fails to satisfy section 409A. This amount also is included in box 1. It is subject to an additional 20% tax plus interest. See the Form 1040 instructions.

AA—Designated Roth contributions under a section 401(k) plan

BB—Designated Roth contributions under a section 403(b) plan

DD—Cost of employer-sponsored health coverage. **The amount reported with code DD is not taxable.**

EE—Designated Roth contributions under a governmental section 457(b) plan. This amount does not apply to contributions under a tax-exempt organization section 457(b) plan.

FF—Permitted benefits under a qualified small employer health reimbursement arrangement

GG—Income from qualified equity grants under section 83(i)

HH—Aggregate deferrals under section 83(i) elections as of the close of the calendar year

Box 13. If the "Retirement plan" box is checked, special limits may apply to the amount of traditional IRA contributions you may deduct. See Pub. 590-A, Contributions to Individual Retirement Arrangements (IRAs).

Box 14. Employers may use this box to report information such as state disability insurance taxes withheld, union dues, uniform payments, health insurance premiums deducted, nontaxable income, educational assistance payments, or a member of the clergy's parsonage allowance and utilities. Railroad employers use this box to report railroad retirement (RRTA) compensation, Tier 1 tax, Tier 2 tax, Medicare tax, and Additional Medicare Tax. Include tips reported by the employee to the employer in railroad retirement (RRTA) compensation.

Note: Keep **Copy C** of Form W-2 for at least 3 years after the due date for filing your income tax return. However, to help protect your social security benefits, keep **Copy C** until you begin receiving social security benefits, just in case there is a question about your work record and/or earnings in a particular year.

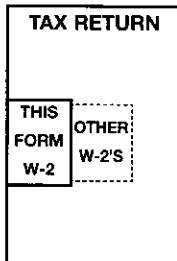
Department of the Treasury - Internal Revenue Service

NOTE: THESE ARE SUBSTITUTE WAGE AND TAX STATEMENTS AND ARE ACCEPTABLE FOR FILING WITH YOUR FEDERAL, STATE AND LOCAL/CITY INCOME TAX RETURNS.

This information is being furnished to the Internal Revenue Service. If you are required to file a tax return, a negligence penalty or other sanction may be imposed on you if this income is taxable and you fail to report it.

IMPORTANT NOTE:

In order to insure efficient processing, attach this W-2 to your tax return like this (following agency instructions):



Notice to Employee

Do you have to file? Refer to the Form 1040 instructions to determine if you are required to file a tax return. Even if you don't have to file a tax return, you may be eligible for a refund if box 2 shows an amount or if you are eligible for any credit.

Earned income credit (EIC). You may be able to take the EIC for 2019 if your adjusted gross income (AGI) is less than a certain amount. The amount of the credit is based on income and family size. Workers without children could qualify for a smaller credit. You and any qualifying children must have valid social security numbers (SSNs). You can't take the EIC if your investment income is more than the specified amount for 2019 or if income is earned for services provided while you were an inmate at a penal institution. For 2019 income limits and more information, visit www.irs.gov/EITC. Also see Pub. 596, Earned Income Credit. **Any EIC that is more than your tax liability is refunded to you, but only if you file a tax return.**

Clergy and religious workers. If you aren't subject to social security and Medicare taxes, see Pub. 517, Social Security and Other Information for Members of the Clergy and Religious Workers.

Corrections. If your name, SSN, or address is incorrect, correct Copies B, C, and 2 and ask your employer to correct your employment record. Be sure to ask the employer to file Form W-2c, Corrected Wage and Tax Statement, with the Social Security Administration (SSA)

to correct any name, SSN, or money amount error reported to the SSA on Form W-2. Be sure to get your copies of Form W-2c from your employer for all corrections made so you may file them with your tax return. If your name and SSN are correct but aren't the same as shown on your social security card, you should ask for a new card that displays your correct name at any SSA office or by calling 800-772-1213. You also may visit the SSA website at www.SSA.gov.

Cost of employer-sponsored health coverage (if such cost is provided by the employer). The reporting in box 12, using code DD, of the cost of employer-sponsored health coverage is for your information only. **The amount reported with code DD is not taxable.**

Credit for excess taxes. If you had more than one employer in 2019 and more than \$8,239.80 in social security and/or Tier 1 railroad retirement (RRTA) taxes were withheld, you may be able to claim a credit for the excess against your federal income tax. If you had more than one railroad employer and more than \$4,836.30 in Tier 2 RRTA tax was withheld, you also may be able to claim a credit. See your Form 1040 instructions and Pub. 505, Tax Withholding and Estimated Tax.

APPENDIX D
Mutual Agreement for Dispute Resolution

Communication from GC Services

Donotreply.GCHR2 <donotreply.gchr2@gcserv.com>

Mon 9/14/2020 8:33 AM

To: makaigray@outlook.com <makaigray@outlook.com>

To: Michele Gray

Subject: Communication from GC Services

GC Services would like to inform you that as of September 2, 2020, the Mutual Agreement for Dispute Resolution (“Agreement”) executed between you and GC Services, has been revised. This revision is effective retroactively to the date of the execution of the Agreement. Please find below the revision to the Agreement.

Revision No. 1 To The Mutual Agreement for Dispute Resolution

This Revision No. 1 (“Revision”) is to the Mutual Agreement for Dispute Resolution (“Agreement”) you and GC Services Limited Partnership (“GC Services”) previously agreed. This Revision is effective retroactively to the date of execution of the Agreement.

I. Section 1 of the Agreement is revised by replacing and superseding existing Section 1 with the following:

1(A). Disputes Must be Arbitrated. Except as included in Section 1(B) below, all disputes, claims, or complaints that involve legally protected rights (“Claims”) that you have now or may have in the future against the Company, or that the Company has now or at any time in the future may have against you, arising out of and/or directly or indirectly related to your application for employment with the Company, and/or your employment with the Company, and/or the terms and conditions of your employment with the Company, and/or the termination of your employment with the Company (collectively “Covered Claims”) are subject to arbitration pursuant to the terms of this Agreement and will be resolved by arbitration and NOT by a court or jury. Covered Claims include, but are not limited to, any dispute about the formation, scope, interpretation, applicability, validity, existence, enforcement, or extent of arbitrability of or under this Agreement, claims relating to breach of contract, tort claims, wrongful discharge claims, discrimination and/or harassment claims, retaliation claims, claims for overtime, wages, leaves, paid time off, sick days, compensation, penalties or restitution, claims under the Fair Labor Standards Act (“FLSA”), Title VII of the Civil Rights Act of 1964 (“Title VII”), the Age Discrimination in Employment Act (“ADEA”), the Worker Adjustment and Retraining Notification Act (“WARN”), the Equal Pay Act (“EPA”), the Americans With Disabilities Act (“ADA”), the Family and Medical Leave Act (“FMLA”), the Uniformed Services Employment and Reemployment Rights Act (^{Text}“USERRA”), and any other claim under any federal, state, or local statute, constitution, regulation, rule, ordinance, or common law. THE PARTIES HEREBY FOREVER WAIVE AND GIVE UP THE RIGHT TO HAVE A JUDGE OR A JURY DECIDE ANY COVERED CLAIMS. This Agreement to arbitrate applies to all Covered Claims, including any Covered Claims based on, arising out of, or which arose out of or in any way relate to acts and omissions that occurred before you and the Company entered into this Agreement.

1(B). Claims Not Covered By This Agreement. The following claims shall not be covered by this Agreement: (i) claims for workers’ compensation benefits; (ii) claims for unemployment compensation benefits; (iii) claims for any relief asserted under or governed by the Employee Retirement Income Security Act of 1974 (“ERISA”), resolution of which will be governed by the terms of the applicable plan and applicable law; (iv) claims or charges arising under the National Labor Relations Act; (v) claims or charges that are filed with a federal, state, or local administrative agency, such as the Equal Employment Opportunity Commission, National Labor Relations Board, Department of Labor, or similar agency; (vi) any claim that is expressly precluded from inclusion in this Arbitration Agreement, or from being compelled to arbitration, by applicable federal law, or state law that is not preempted by federal law; and (vii) claims that already have been filed in a court of proper jurisdiction in which both parties are expressly identified by name in such pending lawsuit filed before you

execute this Agreement.

1(C). No Prohibition on Filings or Communications with Government Agencies. In addition to the exclusions set forth in Section 1(B), nothing in this Agreement shall prohibit you or the Company from filing a charge, complaint, or claim, or communicating or cooperating with, providing information to, or participating in an investigation by the Equal Employment Opportunity Commission, the National Labor Relations Board, the Department of Labor, the Occupational Safety and Health Commission, the U.S. Securities and Exchange Commission, or any other federal, state or local administrative agency.

II. Except as expressly revised herein, the remainder of the Agreement remains in full force and effect.

APPENDIX E
PROOF OF SSD
INCOME



Social Security Administration Benefit Verification Letter

Date: September 6, 2022
BNC#: 22KJ932C64347
REF: A, C1, DI



MICHELE RENEE GRAY
279 TROY RD # 9-174
RENSSELAER NY 12144-9518

0201BEV6Y24BAPO CCM.M72.BEV6Y.R220907

You asked us for information from your record. The information that you requested is shown below. If you want anyone else to have this information, you may send them this letter.

Information About Current Social Security Benefits

Beginning December 2021, the full monthly Social Security benefit before any deductions is \$1,008.60.

We deduct \$0.00 for medical insurance premiums each month.

The regular monthly Social Security payment is \$1,008.00.
(We must round down to the whole dollar.)

Social Security benefits for a given month are paid the following month. (For example, Social Security benefits for March are paid in April.)

Your Social Security benefits are paid on or about the third of each month.

We found that you became disabled under our rules on February 1, 1994.

Information About Past Social Security Benefits

From December 2020 to November 2021, the full monthly Social Security benefit before any deductions was \$952.50.

We deducted \$0.00 for medical insurance premiums each month.

The regular monthly Social Security payment was \$952.00.
(We must round down to the whole dollar.)

Type of Social Security Benefit Information

You are entitled to monthly disability benefits.

APPENDIX F

Harassment | U.S. Equal Employment Opportunity Commission [EEOC]



Harassment

Harassment is a form of employment discrimination that violates Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, (ADEA), and the Americans with Disabilities Act of 1990, (ADA).

Harassment is unwelcome conduct that is based on race, color, religion, sex (including sexual orientation, gender identity, or pregnancy), national origin, older age (beginning at age 40), disability, or genetic information (including family medical history). Harassment becomes unlawful where 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive. Anti-discrimination laws also prohibit harassment against individuals in retaliation for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or lawsuit under these laws; or opposing employment practices that they reasonably believe discriminate against individuals, in violation of these laws.

Petty slights, annoyances, and isolated incidents (unless extremely serious) will not rise to the level of illegality. To be unlawful, the conduct must create a work environment that would be intimidating, hostile, or offensive to reasonable people.

Offensive conduct may include, but is not limited to, offensive jokes, slurs, epithets or name calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference with work performance. Harassment can occur in a variety of circumstances, including, but not limited to, the following:

- The harasser can be the victim's supervisor, a supervisor in another area, an agent of the employer, a co-worker, or a non-employee.
- The victim does not have to be the person harassed, but can be anyone

affected by the offensive conduct.

- Unlawful harassment may occur without economic injury to, or discharge of, the victim.

Prevention is the best tool to eliminate harassment in the workplace. Employers are encouraged to take appropriate steps to prevent and correct unlawful harassment. They should clearly communicate to employees that unwelcome harassing conduct will not be tolerated. They can do this by establishing an effective complaint or grievance process, providing anti-harassment training to their managers and employees, and taking immediate and appropriate action when an employee complains. Employers should strive to create an environment in which employees feel free to raise concerns and are confident that those concerns will be addressed.

Employees are encouraged to inform the harasser directly that the conduct is unwelcome and must stop. Employees should also report harassment to management at an early stage to prevent its escalation.

Employer Liability for Harassment

The employer is automatically liable for harassment by a supervisor that results in a negative employment action such as termination, failure to promote or hire, and loss of wages. If the supervisor's harassment results in a hostile work environment, the employer can avoid liability only if it can prove that: 1) it reasonably tried to prevent and promptly correct the harassing behavior; and 2) the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer.

The employer will be liable for harassment by non-supervisory employees or non-employees over whom it has control (e.g., independent contractors or customers on the premises), if it knew, or should have known about the harassment and failed to take prompt and appropriate corrective action.

When investigating allegations of harassment, the EEOC looks at the entire record: including the nature of the conduct, and the context in which the alleged incidents occurred. A determination of whether harassment is severe or pervasive enough to be illegal is made on a case-by-case basis.

**APPENDIX “G”
US. DISTRICT COURT “ORDER”**

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Michele Gray,

No. CV-21-01334-PHX-DGC

Plaintiff,

ORDER

Y.

GC Service,

Defendant.

Defendant GC Services, LP (“GCS”) has filed a motion to dismiss pro se Plaintiff Michele Gray’s complaint or to compel arbitration. Doc. 12. On October 13, 2021, the Court ordered Plaintiff to respond to the motion by October 29 (Doc. 16), but she failed to do so. Although Plaintiff did not respond, Defendant filed a reply brief responding to arguments Plaintiff made in her pending motion which could be construed as responsive to the motion to compel arbitration. Doc. 21. Defendant’s request for oral argument is denied because oral argument will not aid the Court’s decision. LRCiv 7.2(f).

Also pending are before the Court are Plaintiff's motions for alternative dispute resolution ("ADR") and for appointment of counsel. Docs. 14, 18, 22. Defendant responded to her first motion for ADR (Doc. 15), but Plaintiff filed no reply brief. Her second motion for ADR is fully briefed. Docs. 18, 19, 20. The Court will grant Defendant's motion to dismiss because Plaintiff's claims are barred by res judicata. All other pending motions will be denied as moot.

1 **I. Background.**

2 Plaintiff's complaint asserts various federal and state claims arising out of her
3 former employment with Defendant.¹ Plaintiff was hired by Defendant in Nevada as a
4 home-based customer service representative in June 2019. Docs. 1 at 2, 12 at 2. Plaintiff
5 alleges she was subject to harassment and discrimination that amounted to constructive
6 termination, tortious interference, and breach of contract. Plaintiff was 53 at the time of
7 her employment with Defendant and alleges that she was not given the same opportunities
8 as younger co-workers. Doc. 1 at 6, 20. She alleges that she was excluded from team
9 meetings, coaching, and training – which she characterizes as “mandatory” aspects of her
10 job – and was not given technology support. *Id.* at 6-8. She alleges that her supervisor
11 questioned how she got the job, management constantly “annoyed” her, and she was not
12 allowed to dispute warnings she received for returning late from breaks or missing calls.
13 *Id.* at 8, 16. Feeling that termination was impending, Plaintiff sent Defendant a letter of
14 resignation on January 25, 2020, to be effective on February 3, 2020, but Defendant
15 accepted it effective immediately. *Id.* at 2. About the time Plaintiff submitted her letter,
16 Defendant alleges that it learned she had moved to New York and accepted her resignation
17 with immediate effect because it does not employ individuals residing in New York.
18 Doc. 12 at 2.

19 Plaintiff asserts claims under the Federal Tort Claims Act (“FTCA”), the Year 2000
20 Computer Date Change Act (“Y2K Act”), the Age Discrimination in Employment Act of
21 1967 (“ADEA”), Title VII of the Civil Rights Act of 1964 (“Title VII”), the Americans
22 with Disabilities Act (“ADA”), and the Social Security Act (“SSA”). She also asserts state
23 law claims for intentional infliction of emotional distress, tortious interference, breach of
24 contract, and discrimination under the Arizona Civil Rights Act (“ACRA”), the New York
25 Human Rights Act (“NYHRA”), and the Nevada Fair Employment Practices Act

26
27

¹ Although the caption of Plaintiff's complaint lists both Apple and GCS as
28 defendants, Plaintiff is suing only GCS. Doc. 12-1 at 38 n.2. That is the only Defendant
listed in her civil cover sheet and the only Defendant she has served. *See* Docs. 1-2, 3, 10.
Plaintiff was employed by GCS, which provided call center management services to Apple.
Doc. 12-1 at 38 n.2.

1 (“NFEPA”). Plaintiff also cites Article 18, section 6 of the Arizona Constitution (“the
2 Anti-Abrogation Clause”).

3 This is the fourth suit Plaintiff has filed against Defendant. She first filed suit in the
4 Northern District of New York (“the NY Federal Suit”). She asserted claims under the
5 FTCA, Y2K Act, and Title VII. Doc. 12-1 at 20-22. On July 9, 2020, a Magistrate Judge
6 recommended dismissal of Plaintiff’s complaint for lack of subject matter jurisdiction and
7 leave to file an amended complaint asserting claims only under Title VII. *Id.* at 52.
8 Plaintiff’s amended complaint contained claims under the FTCA, Title VII, ADEA, and
9 for intentional infliction of emotional distress, tortious interference, and breach of contract.
10 *Id.* at 95-105. On February 1, 2021, the court dismissed Plaintiff’s complaint for failure to
11 state a claim. *Id.* at 113-14. The court allowed Plaintiff 60 days to replead her ADEA
12 claim and dismissed all other claims with prejudice. *Id.* Plaintiff did not replead her ADEA
13 claim and it too was dismissed on May 4, 2021. *Id.* at 116.

14 Plaintiff filed a second suit in New York state court (“the NY State Suit”) and a
15 third in Arizona state court (“the AZ State Suit”), each asserting claims under the FTCA,
16 Title VII, ADEA, Y2K Act, and for tortious interference, as well as claims under ACRA,
17 NYHRL, and NFEPA. Doc. 12-1 at 128-36, 150-60. The AZ State Suit also cited the
18 Anti-Abrogation Clause of the Arizona Constitution. Doc. 12-1 at 159-60. The AZ State
19 Suit was dismissed with prejudice on August 4, 2021, for failure to state a claim and
20 because the claims were barred by res judicata. Doc. 12-1 at 170. The NY State Suit was
21 dismissed on August 18, 2021, on res judicata grounds because the claims had either been
22 dismissed in the NY Federal Suit or arose from the same series of transactions and thus
23 should have been asserted in the NY Federal Suit. *Id.* at 179. Plaintiff filed this suit on
24 August 2, 2021. Doc. 1.

25 **II. Plaintiff’s Claims Are Barred By Res Judicata.**

26 Defendant argues that Plaintiff’s complaint is barred by res judicata because it
27 complains of the same work conditions as her three previous suits. Doc. 12 at 10.
28 Defendant notes that Plaintiff’s claims under the FTCA, Title VII, ADEA, and for

1 intentional infliction of emotional distress, tortious interference, and breach of contract
2 were dismissed with prejudice in the NY Federal Suit. *Id.* Defendant also argues that these
3 claims, as well as Plaintiff's claims under the Y2K Act, ACRA, NYHRL, NFEPA, and the
4 Anti-Abrogation Clause were dismissed in the AZ and NY State Suits. *Id.* While
5 Plaintiff's SSA and ADA claims are new, Defendant argues that they are barred by res
6 judicata because they arise from the same events as the other suits and could have been
7 litigated in those suits. *Id.*

8 Defendant filed its motion on September 16, 2021. On October 13, 2021, the Court
9 advised Plaintiff that "she must file a written response to Defendant's motions to compel
10 arbitration and dismiss" by October 29, 2021, and warned her that "the Court may
11 summarily grant the motions if Plaintiff fails" to do so. Doc. 16 at 3 (citing LRCiv 7.2(i)).
12 Plaintiff filed no response to Defendant's motion. Plaintiff did file two motions seeking
13 ADR other than arbitration (Docs. 14, 18), but neither addresses Defendant's res judicata
14 argument.

15 "Res judicata bars relitigation of all grounds of recovery that were asserted, or could
16 have been asserted, in a previous action between the parties, where the previous action was
17 resolved on the merits." *United States ex rel. Barajas v. Northrup Corp.*, 147 F.3d 905,
18 909 (9th Cir. 1998). Res judicata applies "whenever there is (1) an identity of claims, (2) a
19 final judgment on the merits, and (3) privity between parties." *Tahoe-Sierra Pres. Council,
20 Inc. v. Tahoe Reg'l Planning Agency*, 322 F.3d 1064, 1077 (9th Cir. 2003) (citations
21 omitted). Dismissal for failure to state a claim is a dismissal on the merits for res judicata
22 purposes. *Stewart v. U.S. Bancorp*, 297 F.3d 953, 956 (9th Cir. 2002). Identity of claims
23 exists when two suits "arise from the same transactional nucleus of facts." *Owens v. Kaiser
24 Found. Health Plan, Inc.*, 244 F.3d 708, 714 (9th Cir. 2001) (internal quotation marks and
25 citation omitted).

26 Privity exists between Plaintiff and Defendant because they were parties in the NY
27 Federal, NY State, and AZ State Suits. Final judgments on the merits were entered in each
28 of these cases. An identity of claims exists because Plaintiff's claims under the FTCA,

1 Y2K Act, ADEA, Title VII, ACRA, NYHRA, NFEPA, the Anti-Abrogation Clause, and
2 for intentional infliction of emotional distress, tortious interference, and breach of contract
3 were dismissed in the NY Federal Suit and in the AZ State Suit. While Plaintiff has not
4 previously brought claims under the ADA and SSA, they arise from the same transactional
5 nucleus of facts. *Owens*, 244 F.3d at 714 (holding res judicata applied to bar previously
6 unlitigated claims where they were “related to the same set of facts as the allegations in
7 plaintiffs’ [prior] complaint for wrongful discharge”) (internal quotations omitted);
8 *Feminist Women’s Health Ctr. v. Codispoti*, 63 F.3d 863, 868 (9th Cir. 1995) (applying res
9 judicata to bar previously unlitigated claims where plaintiff “had to produce substantially
10 the same evidence in both suits to sustain its case”). Res judicata bars all Plaintiff’s claims.

11 **III. All Other Pending Motions Are Denied as Moot.**

12 Because Plaintiff’s complaint is barred by res judicata, Defendant’s motion to
13 compel arbitration and Plaintiff’s motions for ADR will be denied as moot. Plaintiff’s
14 motion for appointment of counsel to assist her in ADR, and her reference to summary
15 judgment, will also be denied as moot. The Court need not reach the issue of whether
16 Plaintiff’s complaint states a claim for relief.

17 **IT IS ORDERED:**

- 18 1. Defendant’s motion to dismiss (Doc. 12) is **granted**. The case is dismissed
19 with prejudice.
- 20 2. Defendant’s motion to compel arbitration (Doc. 12) is **denied as moot**.
- 21 3. Plaintiff’s motion for ADR (Doc. 14) is **denied as moot**.
- 22 4. Plaintiff’s second motion for ADR (Doc. 18) is **denied as moot**.
- 23 5. Plaintiff’s motion to obtain counsel and/or appoint counsel (Doc. 22) is
24 **denied as moot**.
- 25 6. Plaintiff’s motion for partial summary judgment pursuant to Rule 56 (Doc.
26 22) is **denied as moot**.

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7. The Clerk shall terminate this action.

Dated this 12th day of January, 2022.

David G. Campbell

David G. Campbell
Senior United States District Judge