

**ORIGINAL**

No. **23-1152**

IN THE

Supreme Court of the United States

**FILED**  
**FEB 28 2024**  
OFFICE OF THE CLERK  
SUPREME COURT, U.S.

**BERNADETTE DICKERSON,**

**Petitioner, Pro Se**

**V.**

**KOCH FOODS, LLC, ET AL.,**

**Respondent.**

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**On Petition for a Writ of Certiorari  
To the United States Court of Appeals  
For the Eleventh Circuit**

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**Bernadette Dickerson  
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Montgomery, AL 36116  
(334) 616-9283**

**Rachel V. Barlotta  
Jessica Spade  
Baker, Donelson, Bearman,  
Caldwell & Berkowitz, P.C.**

## **Questions Presented**

Title VII of the Civil Rights Act of 1964 makes it unlawful for an employer to discriminate against someone because of: race, color, religion, sex, or national origin. Title VII also makes it unlawful for an employer to take negative action, or retaliate, against person because they complained about discrimination, whether formally or informally; filed a charge of discrimination with an agency like the U.S. Equal Employment Opportunity Commission or participated as a witness in an employment discrimination investigation or lawsuit. Section 42 USC 2000e et seg. The law prohibits discrimination based on sex, including sexual harassment, and covers employee, it protects individuals from unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature. This case centers around false documents presented to the court as basis for summary judgment. The court allowed and granted summary judgment in error on all disputed material facts.

- Whether if I didn't give consent for my case to be conducted by the magistrate Judge Kelly Pate. Rule 73. 28 U.S.C. § 636(c). A record must be made of consent 28 U.S.C. § 636(c)(5). I asked for trial by jury, never consented to a magistrate conducting any proceedings, is grounds for vacating judgment.
- Whether the District court erred in allowing summary judgment with all material facts being disputed, which I expressed in my objection to summary judgment is grounds for vacating summary judgment. Rule 56 of Federal Rules of Civil Procedure. Grounds for vacating summary judgment.

- Whether granting motion to strike, dismiss and summary judgment is prohibited without oral argument is grounds for vacating summary judgment. Rule 78
- Whether it is grounds to vacate judgment for violating federal fraud law 18 U.S.C. Section 1001 (Oct. 11, 1996) knowingly and intentionally doing any of the following: falsifying, concealing, or covering up by any trick, scheme, or device a material fact; making any materially false, fictitious, or fraudulent statement or representation; or entry.
- Whether 28 CFR § 76.15 ex parte communication initiated by the district magistrate judge with opposing party on multiple occasions and after becoming clearly biased and prejudice, grounds for vacating judgment.
- Whether Judge Kelly Pate denying recusal after clear and concise bias and prejudice after initiating ex parte communication was inappropriate and becoming impartial grounds for vacating summary judgment. (Doc 56).
- Whether all my newly discovered evidence since trial; material; of such weight that it will produce a new result. If this Rule 60(b)(3) allows a court to grant relief and vacate summary judgment.
- Whether me being thrust into pro se and not registered in the cm/ecf system and newly discovered evidence which by due diligence could not have been discovered until my petition for rehearing Rule 60(b) is grounds for vacating summary judgment. 60(b)(1), (2), and (3)

- Whether new trial under Rule 59 is appropriate
- Whether Rule 59e may be granted if the moving party demonstrates any of the following: (1) the judgment was based upon a manifest error of law or fact.
- Whether Court of Appeals erred in denying my petition for rehearing en banc against the great weight of evidence under Rule 59(e). Motion for new trial; altering or amending a judgment, and fraud upon the court.
- Whether the appellee's fraud upon the court is grounds for vacating summary judgment.
- Whether an order for alleged inappropriate behavior and sanction was grounds for granting summary judgment and dismissing case with prejudice. See doc. 65
- Whether pro se not having access to the cm/ ecf system and timely court filings, deficiencies in my filings and postal mail was not being delivered is reason for vacating summary judgment.
- Whether my Amendment VII constitutional rights were violated, my rights to trial by Jury. See doc. 1 the complaint civil cover sheet clearly states demand for jury trial.
- Whether respondents' fraud upon the court to the 11<sup>th</sup> Circuit Court of Appeals is grounds for vacating judgment.

- Whether the sanction dismissing my case was appropriate because sanctions are usually monetary. Doc. 65 heading.
- Whether Judge Pate's bias and prejudiced behavior after initiating ex parte communication was grounds for recusal, and therefore reason to vacate summary judgment.

### **Parties to Proceeding**

1. Barlotta, Rachel
2. Brasher, Judge Andrew L.
3. Dickerson, Bernadette
4. Grant, Judge Britt C.
5. Koch Foods, LLC, et al.
6. Lagoa, Judge Barbara
7. Marks, Judge Emily C.
- 8.. Pate, Kelly Fitzgerald, Alabama District Court Magistrate Judge
9. Spade, Jessica

### **Related Cases**

- *Dickerson v. Koch Foods, LLC et al* No. 2:20-CV-00163-ECM-KFP, District Court for the Middle District of Alabama. Final Judgment entered on July 21, 2022.
- *Dickerson v. Koch Foods, LLC, et al.*, No. 22-12434 US Court of Appeals for the Eleventh Circuit. Appeal affirmed 8/21/2023.

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### **Cases**

Bulloch v. United States 763 F.2d 1115

Kemp v United States

Meritor Savings Bank, FSB Petitioner Mechelle Vinson  
et al No. 84-1979

Hawkins v Anheuser-Busch Inc., 517 F. 3d 321, 333 (6<sup>th</sup> Cir 2008)

Kerry Ellison v. Nicolas F. Brady, 924 F 2d 872 (9<sup>th</sup> Cir 1991)

Teyo Johnson v. Everyrealm, Inc., Julia Schwartz, Janine Yorio, and William Kerr

Warf, 713 F. 3d at 878 (quoting Bowman v. Shawnee State Univ. 220 F. 3d. 456, 463 (6<sup>th</sup> Cir 2000)

Faragher v. City of Boca Raton, 524 U.S. 775, 787-88 (1998) (citing Harris 510 U.S. at 23)

Grace, 521 F. 3d at 678-79 (quoting Harris, 510 U.S. at 23 (internal quotes omitted)

Harris v. Forklift Sys., Inc., 510 U.S. 17, 21 (1993) (citing Meritor Saving Bank, 477 U.S. at 64)

Warf v. U.S. Dept. of Veterans Affairs, 713 F. 3d 874, 878 (6<sup>th</sup> Cir 2013) citing Grace v. USCAR, 521 F 3d 655, 678 (6<sup>th</sup> Cir. 2008)

Schmalz, 2012 WL at \*7

Schmalz, 2012 WL at \*9

18 U.S.C. 1621 and 1623, Hubbard v. United States 115 S. Ct. 1754, 1764 n. 15 (1995) § 1503 (obstruction) and 267 (false claims), 1001 in False Statement Accountability Act of 1996, P.L. 104-292 H.R. 3166, Oct 11, 1996

Fitzpatrick, 2 F 3d at 1116

Miller v. Kenworth of Dothan, Inc., 277 F 3d 1269, 1275  
(11 Cir. 2002)

Baldwin v. Blue Cross/ Blue Shield, 48 F 3d 1289

Jackson v Birmingham Board of Education

Vinson et al No. 84-1979

McCormick v. city of Fort Lauderdale, 333 F. 3d 1234  
(11<sup>th</sup> Cir 2003)

### **Constitutional provisions, Statutes and FRCP**

United States Constitution Amendment VII

18 USC § 1001 (Oct 11, 1996)

18 USC § 1621 and 1623

42 USC 2000e et seg

28 U.S.C. § 636(c)

28 U.S.C § 636(c)(5)

28 U.S.C. § 1254

### **Federal Rules of Civil Procedure**

Rule 73 Magistrate Judges: Trial by Consent

Rule 2.9 Ex Parte Communication

Rule 56 and 56(f), Mason v

Rule 38 Right to Jury Trial

Rule 60(b)(1)(2)(3) grounds for relief

Rule 60(d)(3) motion to vacate a judgment for fraud  
on the court.

## **Jurisdiction**

The district court's subject matter jurisdiction is based on 28 U.S.C. § 1331, as Pro Se alleged violations of Title VII of the Civil Right Act of 1964, 42 U.S.C. § 2000e et seg., and 42 U.S.C. § 1981a (Doc. 1). On July 21, 2022, the district court magistrate judge entered a Final Judgment. (Doc. 69). On July 25, 2022, I filed a timely notice of appeal. (Doc 71). The court of appeals had jurisdiction under 28 U.S.C. § 1291. The court of appeals affirmed the District Court judgment on August 21, 2022. I then motioned for rehearing which was denied on November 29, 2023. The Chief Justice of the Supreme Court extended the time within which to file a petition for a writ of certiorari to March 28, 2024. The Supreme court has jurisdiction invoked under 28 U.S.C. § 1254. I am asking the US Supreme court to review the final judgment from the Alabama middle district entered on July 21, 2022, and the petition for rehearing denied on November 29, 2023. The district court erred in law and facts.

## **Introduction**

Bernadette Dickerson, Pro Se, respectfully petitions this court for a writ of certiorari to review the Middle District of Alabama court's docket for the violations of civil procedures and facts of the case. All evidence and statement presented prove fraud upon the court on behalf of respondents. The cover page of my complaint clearly states that I demand a trial by jury (Doc. 1) . The case was referred to the US Magistrate Judge for all pretrial proceedings pursuant to USC 636. (do 31). Pursuant to this same statute magistrate judge can determine any pretrial matter, except a motion for injunctive relief, for judgment on the pleading, for summary judgment, to dismiss or quash

and indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action , to dismiss for failure to state a claim upon which relief can be granted, and to involuntary dismiss a action. A judge of the court may reconsider any pretrial matter under this subparagraph where it has been shown that the magistrate judge's order is clearly erroneous or contrary to Law. Still for this the court has to have consent and a record. I never consented to having my proceedings be conducted by the Magistrate Judge. This is 28 U.S.C. § 636(c), a magistrate judge may, if all parties consent, conduct a civil action or proceeding, including a jury or nonjury trial. A record must be made in accordance with 28 U.S.C § 636(c)(5). This was never done and neither party consented to the magistrate judge to conduct any proceedings.

Attorneys for the respondents motioned the court for summary judgment based on fraudulent documents. The events in these documents never happened (Doc. 45) See appendix E for the reason for discharge by the Human Resources Manager Shenealya Maxwell. Just as in the case Jackson v. Koch Foods (2:20-cv-00046) filed 1/17/20. Steven Jackson was an employee of Koch Foods, and he was forced to falsify and alter documents to keep his job. Jackson's case was quickly settled. How can the District Court allow and grant summary judgment on fraudulent documents (Rule 56 Federal Rule of Civil Procedure)

The documents Barlotta submitted for summary judgment are completely fabricated. The documents were written after I was terminated. The documents are all written in the exact same handwriting. Supposedly from different individuals. They are in the same exact color ink. You can tell they were written by the same person in other words. I noticed this and mentioned it at the deposition

which was video graphed, and a stenographer was present.

This is the most important dispute of material fact which makes Barlotta's case complete fraud on the court. This makes every other statement and document irrelevant. This is a violation of Rule 56 which governs summary judgment for federal courts. Under Rule 56, to succeed in a motion for summary judgment, a movant must show 1) that there is no genuine dispute as to any material fact and 2) that the movant is entitled to judgment as a matter of law. The company submitted documents to the Alabama Department of Labor as a sexual harassment complaint. I also have several company emails that state the same thing. So, summary judgment was allowed and granted in error. This makes Barlotta entire case, statements, and documents to the court fraudulent (18 U.S.C. § 1001) Fraud upon the court.

This company had approximately ten quid pro sexual harassment complaints. According to an article by the EEOC. Most notable cases EEOC vs Koch Foods, Jackson v. Koch Foods, and Gray v. Koch Foods were originally filed together because the cases are intertwined. They quickly settled Jackson, Fuller v. Koch Foods, Collins v Koch Foods. The EEOC took up the case in EEOC v. Koch Foods according to the lawsuit Koch subjected individual plaintiff/intervenors and classes of Hispanic employees to a hostile work environment and disparate treatment based on their race/national origin, sex (female) and further retaliated against those engaged in protected activity. EEOC alleges that supervisors touched and or made sexually suggestive comments to female Hispanic employees, hit them and charged many of them money for normal everyday work activities. Further, a class of employees was subject to retaliation in the form of

discharge and other adverse actions after complaining. All this alleged conduct violates Title VII of the Civil Rights Act of 1964. This ended in a massive settlement. The three-year consent decree was entered by Judge Daniel P. Jordan III it provided to \$3,750,000 in monetary relief for the victims. In addition, Koch Foods will take specified actions designed to prevent future discrimination, including implementing new policies and practices designed to prevent discrimination.

My case consists of the exact same elements of treatment. Because it involved several immigrants that were being groped and sexual harassed, this turned into a hostile work environment. All the court of appeals opinions are based on fraudulent statements from Barlotta.

I was chosen by Eula Tarver for the position. I had to wait for a while after getting the transfer from grader. Eula Tarver had someone rush my transfer. She assigned the person with the least seniority to train me. Crystal Jones and I were stationed at the same station. Eula Tarver immediately began coming to the station a lot. The station is a U-shaped counter and Eula Tarver was supposed to remain outside the station. Instead, she was coming inside the station between Crystal Jones and myself. She would have the front of her body positioned on my body. She had extremely large breasts. She would rub her entire body against mine in a slow sexual manner. This made me very uncomfortable. She did this for a while until I told Crystal Jones how uncomfortable she made me feel. Crystal Jones told me she did her the same exact way. Crystal must have told her what I said. Chiquita Patterson asked Eula Tarver to stop micromanaging us. Patterson noticed how much she was staying at our station sexually harassing me. She then began calling me to QA office to sexual harass me and make sexual advances. Asking me

personal questions. She then threatened me with termination for the small errors. I believe she altered because they were written in pencil. She called me to the office every day I was employed at Koch Foods and never stopped sexually harassing me. She even came to my station on the day I was suspended with a smirk on her face 11/11/19. She told me that I was wanted in HR and they suspended me.

After telling Crystal Jones, I began to receive false complaints of "outbursts". These false complaints remained anonymous. I never even saw the complaints or knew who wrote them. This was retaliation for complaining about the sexual harassment and unwanted rubbing and touching and groping. Shenealya Maxwell the HR manager kept calling me to the office to notify me of the complaints. She never presented any actual write ups. I would ask who said them and ask about video footage. She had neither of these. I found this very suspicious because this plant has cameras in every crack and crevice and the ability to catch everything on surveillance inside and outside the plant. But she couldn't show me any video footage. Shenealya called me to HR one day to ask me to allow her to set up a meeting between Crystal Jones and myself. This is when I realized she was the one making the false complaints. She wanted me to make up with Crystal Jones because she wanted Crystal Jones to groom me to be exactly like her. She made up the anonymous complaints of outbursts to intimidate me to comply with the groping, the sexual advances and harassment.

As Crystal Jones and I walked through the plant, and she was training me. All the males in the plant would grab and grope her. She wouldn't even look around to see who did it or stop to acknowledge the incident happened. I was warned by two women in another department to

watch her because she is a snake. I later found out Crystal Jones was called the "Chicken house whore". She was having sex with all the Supervisors for money. This is the reason she said Eula Tarver did her the same way.

Eula Tarver QA under her supervision. She would call me to the QA office when she was alone. She always showed me some minor mistakes she wanted me to correct. I didn't think I made the mistake. We wrote our paperwork in pencil and looked as if she had changed the words and used this to get me alone. Also to get me to comply to her sexual advances. She threatened me with termination one of these times. I recorded the conversation and later recorded her as she recanted her lies. The false complaints got so out of hand, I started recording every time Shenealya and Eula called me to the office. I also have contemporaneous notes taken from entire of employment at Koch Foods.

After my informal complaints of sexual harassment, I placed a bid for another position. I was written a final write up. I had never been written up before this. I didn't understand how this could be done. I wasn't even present at work when the write up was done. I had left early the day before because I was severely distraught by all the lies and deceit. The write up said something about another "outburst". Shenealya called me to the office and demanded I sign it. I declined signing because I didn't know what the dispute was about nor who wrote it. I asked for a copy of the document and Shenealya Maxwell had wited out a portion of the document. So, this also remained anonymous. The company used this reason "outbursts" to write up false complaints on many others. I also have that in my evidence. I am just finding out who allegedly wrote them in my evidence.

I never had any complaints in any other department except the QA department where Eula got her employees to write these false complaints after I was fired. They told her everything. After I was written the final, April Walton resigned from Koch Foods, because I had worked with her that day and she knew the write up was false. Eula had created chaos trying to get me to have sex for money and trying to make me give in to her sexual harassment and advances.

I was intentionally hit by a forklift from behind. The driver was written up. I wrote Tryonne Brown up for groping me and grabbing my butt, which I believe he did because of their grooming. I believe Crystal Jones was done the same way as me to get her to comply. She told me they did her the same way. Tryonne Brown also physically assaulted on 8/12/19 and Shenealya wrote it up as only a verbal altercation. This is how I knew she was a part of the grooming. She conspired with Eula Tarver. Brown and Jones would wait until I moved to get my product so they could be in front of me. They then would hit me with carts and go to the office and lie on me. This is why Eula chose Crystal Jones to train me. Tryonne Brown would come to my station to talk every day and offer me money for sex. After I reported him for all this, they still let him return to work. Patterson said he had previously behaved like this. Tryonne Brown and all the men at the plant including supervisors would harass about having sex for money. After I stopped talking to Brown, he got really angry. One day as I was on the route to get my product. I was entering the way I was supposed to enter. He was intentionally coming out that way because he knew I was behind him, because he constantly stalked me. He then starts ramming and shoving his cart into me. This is a cold wet concrete floor and Brown is 6'2" and about 300 lbs. in weight. I had to jump to get

out of his path so I wouldn't be hurt on the cold wet slippery concrete floor.

He then runs to the QA office and speaks to Chiquita Patterson, the QA manager. He told her I was mad because he wouldn't speak to me. Patterson told me this because I immediately went to her. She told him she didn't believe him. He had previous behavior of this nature. Patterson told me not to worry and that I would return to work soon. I returned to work, but I was told by Fredena Wooten that Brown was fired after viewing the surveillance cameras. She was present when they viewed them. She witnessed the physical altercation. They allowed him to return after he threatened with a lawsuit. After he returned, he started stalking me around corners and doors. I was frightened of him. I couldn't understand why they let him return according to his previous history and what he did to me. Shenealya Maxwell wrote the complaint as just a verbal complaint instead of a physical one. I noticed that she altered documents in my evidence.

Shenealya Maxwell and Eula Tarver were conspiring together to get me to comply to the sexual harassment. Maxwell altered one of the complaints with wite out. This is the reason I know and have good faith that Maxwell knew the sexual harassment complaint was not false. Maxwell and Eula Tarver had me come to HR on another false complaint, this time I was written a final Maxwell and Tarver both made this up to keep me transferring to another position I had secretly bid on. The document had words wited out. No one knew but HR. I wasn't even present at work, and she asked me the next day to sign it. I declined because the statements were all false and she says she investigated. How do you conduct an investigation without the main character present. Eula stated right in front of

Maxwell that I was a good employee that came to work every day on time and did what I was supposed to do.

The sexual harassment, violence and retaliation was common in this particular location, as well as all the other locations for this company. About eight according to the EEOC were all from this location, most centered around two managers McDickinson and Birchfield. See *Gray v. Koch Foods*. These two lived together and threatened other employees who wouldn't have orgies with them with being fired. There is also a plant manager named Ernest Lawson who kept harassing me about making friends with Crystal Jones after she got mad. He came to my station every day to try to get me to make friends with her. I felt as though he was harassing me. He did this because he was paying her money in exchange for sex, and they were trying to groom me to break my morals and values to keep my job and keep from losing my home of eight years at the beginning of this lawsuit. How can something this irrelevant be so important to the HR manager Shenealya Maxwell and the plant manager Ernest Lawson. I didn't have anything to apologize for as I told Lawson. Eula Tarver then orchestrates a fake meeting that Crystal didn't attend. Instead, Jones changed her station from mine. I believe she got mad because I wouldn't comply to the sexual harassment like she did. After this she submitted several lies to HR about me. After viewing the camera footage one day Shenealya Maxwell transferred Jones to the other plant because she saw that she lied. She was made to transfer, and this made Eula Tarver angry with me. Eula Tarver and Crystal Jones were involved in a relationship. Eula Tarver was involved in several relationships with her immediate employees. One by the name of Christopher Penigar. One day at a QA meeting she told us that she was in a relationship with him, that they broke up because he had too many women. She also made a statement about

what happens in the QA department stays in the QA department.

Barlotta states in her brief about me bullying. I am a 56-year-old female who is 5' tall and not in perfect health. The people she says I bullied are younger, taller and bigger than me. I couldn't even perform my job duties from all the lies. I never allowed anyone at this plant to shake my hand, hug me or anything. I kept my job on a professional level. Barlotta states that LeShawn Haile often hugged me. I didn't even like LeShawn Haile, he was mad because I wouldn't let him touch me. I was injured at his machine because he wouldn't help me with the product. This is a description of his job. He went off on me one day and said I think "I'm all that" because I won't let these people touch or have sex with me. He talked about my body and said vulgar things to me. He talked about the size of my breasts and that I needed a training bra and a lot of ugly things. I reported this incident to his supervisor Mr. Timothy Lee. At this location they were having sex inside and outside the plant. In the parking lot, the freezer where they store the meat. I'm sure this is a violation of the law.

I submitted an inquiry to the EEOC as early as August 2019. I was advised by the investigator Ray Grooms not to submit the charge. He later tried to get me not to submit the sexual harassment charge. He kept messing up the charge and this kept me from submitting the charge. I believe he had some financial gain. Why would he ask me to not submit the harassment charge. I had to contact his supervisor to obtain my right to sue because he wouldn't give them to me. This is why I waited to submit the charge.

I kept receiving false anonymous complaints. Crystal Jones wrote one on 9/26/19 because she hit me with her cart that day. Eula Tarver escorted Crystal to HR first, I was

later escorted by Chiquita Patterson. While Patterson and I waited I took this time to tell Patterson about Eula Tarver sexually harassing me and about all the false complaints. She shook her head like she didn't believe me.

HR and the QA department kept having meetings about the chaos Tarver and Maxwell had created by trying to make me comply to her sexual harassment. It was all on social media and everywhere. Everyone in the plant knew what was happening. They just watched the chaos as they did their jobs. How is Koch Foods implementing new policies. They just keep firing the individual who is complaining and keeping the person doing the sexual harassment. Leona Marlow said I won't win because of the lies she knows Koch Foods attorney are capable of.

Shenealya Maxwell called for me to come to HR on 11/05/19 to tell me about two complaints of "outbursts" again. I recorded this audio and submitted this into evidence. This is the reason I know Maxwell was involved because she was the person calling me to HR to tell me of these fake complaints. I never saw the physical complaint. Maxwell kept asking me to let her arrange a meeting between Crystal Jones and me to talk and squash the beef. I couldn't understand why all these Managers and supervisors in the company kept harassing me about being friends with Crystal Jones. It was because she is the company prostitute and they were trying to coerce and force me to do the same thing by intimidating me with lose of my job. They stressed me out so much with these false allegations I couldn't perform my job. So, on 11/05/2019 I returned to the Human Resources office and made a formal complaint. I had no success with reporting this to Bibb, Gadsberry, Bobby Elrod and Chiquita Patterson.

All the QAs would wait for Eula Tarver every morning before starting work. She was always late. April Walton and me would always go to the floor. I believe this is when they made up these complaints. Two complaints were allegedly made in the QA office. I know they have cameras in the QA office, but she told me that they had no surveillance again. She didn't say anything much and just told me to return to the production floor. I returned to the floor. After a lot of thought I returned to HR and gave my formal statement of quid pro quo sexual harassment, sexual harassment and the hostile work environment created by Eula Tarver. I was intentionally hit by a forklift, I was intentionally hit with carts, I was physically assaulted by Tryonne Brown because I wouldn't have sex with him. I had to leave work one day because I was extremely distraught because of the false complaints and being hit with carts. I was almost called to HR for false complaints. I couldn't even perform my duties. I was already grieving from the loss of my mother, grandmother, my husband and businesses of ten years.

Barlotta wants the court to believe her ridiculous statements about childlike behavior and outbursts. About me having anger issues and bullying. These people were trying to force me into prostitution at this company. One morning I heard Eula Tarver and Crystal Jones say that they were going to sign a false warrant on me. All this was to scare me to prostitute and give in to Eula's advances. She was already in a relationship with Crystal Jones. She kept saying what happens in the QA department stays in the QA department. When I wouldn't comply to their sexual harassment, advances, groping, touching, requests for sex for money , physical assault and a very hostile work environment that altered my ability to perform my job duties and severely stressed me out. I was already grieving from a great deal of loss. This is the absolute bottom line of

the environment and people working as managers at this company. Maxwell the Human Resources Manager being at the head of the harassment. She had me in human resources almost daily and Eula Tarver called me to her office to sexually harass me every single day until I was suspended for the sexual harassment complaint. I never returned to work so I couldn't rebut the situation. Maxwell lied and never conducted any investigations into anything because she knew what was going on. She never questioned me about any incident or complaint. She was a ringleader and her and Eula Tarver conspired and made my life and job impossible.

I started being sexually harassed immediately after starting the position. The sexual harassment never stopped. I reported this behavior to several managers and was ignored by them. I formally reported the harassment one day to Human Resources after Maxwell called me to the office with another fake complaint. This was on 11/05/2019. I was suspended for that complaint pending investigation on 11/11/2019. I asked the EEOC to submit the inquiry I submitted months earlier. Bobby Elrod the corporate Human Resources Director received the charge via email on 11/14/2019 and Maxwell began emailed Carow for approval to terminate on 11/15/2019 after the company got the EEOC charge which was a Friday. She then called me to discuss the complaint and terminate me on 11/18/2019. There was never any investigation done as to any matter concerning me or my employment because Maxwell was the main instigator.

### **Statement of the Case**

If the Honorable Judges please review my petition for rehearing en banc they will see that this summary

judgment and Barlotta's entire case to the court is fraud. I included a addendum with all the evidence to dispute all material facts presented as evidence, enough evidence to have no reasonable doubt, reverse summary judgment and remand the case back to court. Defendants intentionally submitted fraudulent documents and statements committing fraud on the court.

Barlotta knew at discovery that my lawyer had obtained documents from Koch Foods company emails and response to the Department of Labor stating I was fired for a sexual harassment claim only. At a face-to face settlement conference Barlotta and Co-counsel then bribed my Attorney. (doc 25). I had no knowledge of this conference until reviewing the docket. My attorney had given himself complete power of attorney and was not informing me of any proceedings.

After the discussion with my attorney and the knowledge of the documents to win the case by Brian Clark's paralegal. The paralegal Carol Farmer informed me of the the evidence sent from the company. After Brian Clark, my former attorney had a face-to-face settlement conference with Barlotta (Doc 25). I had to terminate Brian Clark as my attorney (doc. 26,27,28 and 29). My attorney Brian Clark wasn't letting me know about any of the proceedings. I have good faith that he was bribed to drop my case. He had created a fraudulent contract that gave himself full power of attorney. The entire time Rachel Barlotta and Jessica Spade had my cell phones tapped. After firing Mr. Clark as my attorney. Rachel Barlotta immediately begins contacting me via cell phone and trying to compel me to attend deposition without an attorney. Judge Kelly Pate gave me only two weeks to find an attorney. Defendant's Counsel Barlotta was listening to all my calls and threatening attorneys who agreed to

retain my case. Approximately three attorneys agreed to retain my case. So that I would have to attend deposition and all proceedings pro se. I view this as obstruction of justice, this refers to an act that, according to federal law: corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice. She did this because I had no knowledge of the court processes and therefore gave herself an advantage in winning this case. My attorney wasn't letting me know about any proceedings.

After this the court vacated the uniform scheduling order (doc 31) Also in this document the court referred the case to the US Magistrate Judge pursuant to 28 U.S.C 636. This is only allowed with consent from both parties 28 USC 636(C) and a record must be kept 28 USC 636(c)(5). This wasn't done and I asked for demand by trial as displayed on the first page of my complaint (doc. 1).

I was forced to attend the deposition without an attorney because she was terrifying all my attorneys. Barlotta then submitted some documents as evidence. Supposedly some complaints from different individuals. Although the complaints were written in the exact same penmanship and same blue ink pen. I know they were false documents written after I was fired for the sexual harassment complaint. See Jackson v Koch Foods. 2:20-cv-00046. The company forced him to create and alter false documents to cover their tracks. A case involving Gray v. Koch Foods. I also discovered along with the Alabama Dept. of Labor document from the company admitting I was fired for a sexual harassment complaint. I also discovered several company emails stating the same thing. I reviewed an email from Patterson after she viewed

camera footage of Crystal Jones antagonizing me after she reported I was the aggressor in all these fake complaints. This is why she was transferred to the adjoining plant. I was asked to voluntarily transfer, and I declined, that is how I know she was made to transfer.

A joint motion for telephonic status conference was scheduled (doc 32,33, and 34). On 4/26/19 we attended a telephone conference. (doc 34) I informed the Judge at the conference that the Attorneys were harassing me and committing crimes. They told the Judge that it wasn't true. At the end of the telephone conference Magistrate Judge Kelly F. Pate asked the two attorneys Barlotta and Spade to remain on the line after I leave. She also did this again at the end of the hearing where she granted a cease communication harassment order on me. Barlotta lied to the court to say I was harassing her. Rule 2.9 ex parte communication : a judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter. This alone is grounds for vacating the summary judgment. 28 CFR § 76.12 During the conference Judge Pate advised Barlotta and Spade to mediate this case. Barlotta had no intentions of mediating and just asked me to submit an email with an amount that I would accept to make this case go away. I sent the amount, and she basically insulted my intelligence. I then told her I would take this to trial and didn't want to mediate anymore. She then submitted something to the court about mediation to satisfy the court (doc. 42).

After the ex parte communication Judge Pate became concise and clearly biased and prejudiced. It was obvious to me that she would not remain impartial in these proceedings. She was ignoring everything I sent to the

court, and I was forced to ask for her recusal (doc. 56). Judge Kelly Pate again initiated ex parte communication after the hearing to cease communication harassment (doc. 55). She refused to recuse herself, which didn't surprise me. I have good faith that the owner and Barlotta bribed all the individuals involved at every level. Including the clerks for the District, Court of Appeals. They tried to intentionally tell me wrong answers.

Surprisingly, Barlotta submitted summary judgment in the middle of discovery (doc. 45) These are the fake documents presented to me at the deposition. The events in these documents never happened. (See appendix E page 42). In these documents she never mentioned the sexual harassment complaint as reason for termination in her summary judgment. As stated in Jackson v. Koch Foods the company forced him to alter and submit false documents to protect the company in these matters. The magistrate Judge allowed and granted summary judgment with all material facts being disputed. (Rule 56). Barlotta then tells the court of appeals about the sexual harassment complaint. This is the only reason for termination. I properly opposed summary judgment, but the magistrate judge ignored all my motions (doc 48).

The Defendants were committing all kinds of crimes against me and my family. They had the postal worker stop delivering my mail in this case. She was returning the mail to the sender as undeliverable (doc 41,56). She had been my postal worker for 12 years. When I asked her about why she was returning the mail, she couldn't give me an excuse and immediately resigned from USPS. I wasn't getting my mail timely and I had no access to the filing system which made it impossible to submit proper filings and they gave me no notice of deficiencies. I thought this was mandatory in court filings.

I submitted my opposition to summary judgment (doc. 48). It was directly after submitting these documents that Rachel Barlotta made up the fake harassing behavior. It was actually Barlotta and her client the owner of Koch Foods, Joseph Grendy harassing me. I recently discovered and submitted my evidence to the court in my petition for rehearing en banc. There you will find all the evidence to prove Barlotta's fraud upon the court and prove my case. I ask the court to review my petition for rehearing en banc. This will prove all my statements to the court as facts. I ask the court to reverse this false summary judgment and remand this case back.

The defendants have already cost me a great deal of money to repair the damage they have done to my home, cars, etc. I had to buy another car. Replace destroyed personal property. They also had me fired from all my jobs after filing this lawsuit by telling the employers about my pending sexual harassment case. I called every agency to report these crimes. I called the attorney general about the crimes they were committing. The secretary named Liz placed me on hold for another call. She then comes back to the line and says, "they say you have a pending sexual harassment lawsuit." This is proof of invasion of privacy, another charge placed in my lawsuit against these corrupt individuals. Does this give them the right to harass me, commit murder and all these crimes against me. They then would get the jobs to lie about my discharge. This is my reason for filing additional things in my complaint, such as intentional infliction of emotional distress. I also have talked to several other attorneys that have worked with Barlotta and they told me about her corrupt behavior. All her colleagues are afraid of her. I reported her crimes to her firm headquarters. Judge Pate made this order to dismiss my case because Barlotta had

informed her that I had documents to prove this case. This is the reason Judge Kelly F. Pate sanctioned me (doc. 65) Clearly states that summary judgment be granted on all the plaintiffs' claims. She recommended the court grant the defendants motion to dismiss (doc 58) and that this case be **DISMISSED WITH PREJUDICE** as a sanction for the plaintiff's willful disobedience of court orders.

Summary judgment should not have been allowed with disputing material facts (Rule 56) Federal Rules of Civil Procedure. I am disputing everything the Respondents have submitted to the court, all documents and statements. This is obvious in my evidence. The court is not allowed to grant summary judgment without an oral argument hearing. The court didn't do any of these things properly and violated several rules of civil procedure. The court used a sanction to dismiss my case. Barlotta was sending me things in the mail. She even sent an entire brief stating that my complaint was frivolous. I kept this brief.

First Barlotta motioned for summary judgment based on fraudulent documents and statements (doc. 45). These documents were written after I was fired from Koch Foods. These are the very same documents I informed her I was disputing. She based her summary judgment on these documents. The documents state nothing about a sexual harassment charge. Koch Foods submitted the reason for termination as a false sexual harassment complaint to the Alabama Dept. of Labor. The Human Resources Manager Shenealya Maxwell knew the complaint wasn't false because she participated in the harassment to try to force me into prostitution with all the supervisors and employees. The same way they did Crystal Jones. Most of the people involved no longer work for Koch Foods. Rachel Barlotta stated that I was fired for my behavior and later to the Court of Appeals for the Eleventh Circuit, she adds the

sexual harassment complaint. Koch Foods sent reason for termination to the Alabama Dept. of Labor as a sexual harassment complaint. This is why I am disputing every single statement. Because there isn't enough words and time to clarify all Barlotta's lies to the court. I don't even understand the opinion of the court of the 11<sup>th</sup> Circuit because nothing makes any sense and nothing is true. If you read Barlotta's statements they seem very childish and ridiculous. This is because she made up all these statements and documents for summary judgment (doc. 45). These documents were written by the same person after I was fired from Koch Foods. I viewed them at desposition.

I then sent in my petition for rehearing en banc. This was denied. I believe again it was denied by Judges for financial gain. If she tells the court the company has no knowledge of the charge and then the court states in their opinion the date it was received by the company. That was obvious fraud.

After exhausting all my efforts to inform managers, and supervisors namely Chiquita Patterson, Nikki Bibb, Michael Gadsberry who told me to go back to Nikki Bibb. I tried to speak to Bobby Elrod while he was visiting the plant one day. I called his office and left a voicemail. He returned my call with a voicemail that I still have.

I went to HR office to formally complain about these false complaints and quid pro quo sexual harassment on 11/05/19. Michael Carow came to visit the plant on 11/11/19 and told Shenealya Maxwell to suspend me pending investigation of the complaint. I audio recorded myself telling her. She then asks me to put it in writing. On 11/14/19 the company was emailed the charge. 11/15/19 which is a Friday I have emails where Shenealya Maxwell is emailing Michael Carow for approval to terminate me. I

have the email when he approves termination on that Friday. On Monday 11/18/19 Shenealya called and terminated my position via telephone after a detailed discussion about the sexual harassment complaint. I also recorded this conversation. After this Shenealya Maxwell refused to give me a termination letter. I then filed a retaliation charge with the EEOC on 12/05/19.

A female supervisor was killed at this same location on January 19, 2024. They caught surveillance of the suspect vehicle arriving right before the woman was scheduled to leave early. The suspect vehicle then followed the supervisor, driving her sister's vehicle. They followed her a short distance down the road and shot and killed her. This is because of the sexual harassment and retaliation this company allows to happen every day. They rely on Barlotta to lie their way out of these situations, with her corrupt tactics and crimes. The news released the suspect vehicle from Koch Foods cameras.

According to the EEOC when you file a job discrimination complaint with the EEOC or otherwise participate in an EEOC investigation or lawsuit, you are protected against retaliation regardless of the validity or reasonableness of the allegation of the original allegation of discrimination. This protection applies to anyone who files an EEOC complaint or a lawsuit, talks to the EEOC, or serves as a witness. When you report discrimination to someone other than the EEOC, slightly different rules apply. To be protected from retaliation in this situation, you must have a reasonable and good faith belief that the practice you are complaining about is illegal and you have good faith that it is true. This means when I reported the complaint to HR I was in protected activity and once the company received the email of the charge I was in protected activity. The company violated my protected

activity by suspending me for the complaint and firing me after receiving the charge. How does the summary judgment play into all of this. It lets you know the statement and documents are all fraud from Barlotta. 18 USC § 1001 fraud upon the court.

I didn't consent to the magistrate Judge to conduct any proceedings in this case 28 U.S.C. § 636(c) and Rule 73. The record must show consent § 636(c)(5). The Magistrate judge allowed summary judgment even though all the material facts were being disputed. (Rule 56). This is grounds for relief under Rule 60. The opposing party misrepresented the case by knowing and willingly submitting false statements and documents previously discussed at discovery and deposition 18 U.S.C. § 1001. Also, the false claims act. This is grounds to vacate or set aside the summary judgment. She then makes false statements to the court about me harassing her to get an order because I was trying to get one against her. The court never documented my pleas to the court for relief from Barlotta's egregious behavior until after she falsely claimed I was harassing her. (Doc. 60,62) My case was dismissed because Barlotta falsely claimed I was harassing her and motioned the court. I contacted her firm at the advice of headquarters to report her criminal behavior. I don't know the proper terminology or procedures of the court. Which is why Barlotta tapping my phone and threatened every attorney who agreed to retain my case. I believe is an obstruction of justice. Judge Pate initiated ex parte communication and then became clearly biased and prejudiced. This is again grounds for relief from summary judgment.

#### **Reasons to Grant the Writ**

The District court made an error by letting the Magistrate judge conduct proceedings without consent. First and foremost, I never consented to my case to be conducted by the Magistrate Judge. I specifically asked for a trial by jury. 28 USC § 636(c). A record must be made of the consent 28 USC § 636(c)(5). The magistrate judge is excluded from conducting summary judgments according to 28 USC § 636 and therefore this order should be vacated, and case remanded back. 28 U.S.C. § 636 excludes summary judgment by magistrate judge.

The magistrate judge erred by inappropriately allowing summary judgment with all material facts being disputed. (Rule 56) Federal Rules of Civil Procedure. I properly opposed summary judgment for disputing all material facts. Summary Judgment is prohibited without a hearing with oral argument. I am disputing every statement and every document presented by the respondents. All of the statements are fraud upon the court. The entire defense by Barlotta and Spade is pure and complete fraud. Barlotta's summary judgment and brief to the court has too many lies and therefore disputes of material facts to contain in this writ. I am disputing every single material fact. I submitted the document from the Alabama Department of Labor. It states that my termination was from a false sexual harassment complaint only. I had 0 priors. It was submitted by Shenealya Maxwell. (see appendix e)

The magistrate judge erred by initiating ex parte communication twice. Rule 2.9: a judge shall not initiate, permit, or consider ex parte communication, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter. Judge Kelly Pate initiated ex parte communication and then became very prejudiced. I

knew she could not remain impartial after the ex parte communication. I believe this is the point where Judge Kelly F. Pate initiated the bribe.

The district court erred by granting summary judgment based on fraud. (See appendix E). Under Rule 60(d)(3) fraud on the court, authorizes a court to relieve a party from a final judgment, order, or proceeding. Barlotta submitted false documents and statements as basis for summary judgment. Koch Foods submitted reason for separation as a sexual harassment complaint to the Alabama Department of Labor. They admitted on many other company documents also. Fraud upon the court is another reason to vacate summary judgment.

The district court erred because the court only gave me two weeks to obtain counsel after terminating my attorney. I believe this writ should also be granted because the respondents threatened fellow attorneys that agreed to take this case. The respondents have demonstrated egregious behavior by stopping my postal mail. So, I wasn't receiving timely filings or deficiencies from the court system because I wasn't registered as pro se. This is a mandatory requirement of the court system.

The district court erred by not registering me for the electronic filing system. The court system violated the FCRP many times, they never registered me for the cm/ecf system, and I didn't receive filings or deficiency notices. I was new to the pro se process. I didn't know what I was doing. They denied me for the pro se assistance program.

I have all newly discovered evidence which can change the outcome at trial. I have all the evidence to prove all my claims and prove fraud upon the court by the defense. The attorney for the defendants perjured herself

with different false statements to each court in a desperate attempt to keep me from getting the justice I deserve. Included in my petition for rehearing en banc I submitted more than enough evidence to prove Barlotta's fraud on the court and for the Honorable Judges to reverse summary judgment in my favor or remand the case back to court.

I have been deprived of my justice and constitutional right to trial by jury (Amendment VII).

I should be granted relief under Rule 60 of the Federal Rules of Civil Procedure because the defense submitted fraudulent documents and statements. The counsel for the defense has submitted nothing but false statements and fraudulent documents to the court in a desperate attempt to win this case and by the great preponderance of evidence, I would plead to the court to reverse summary judgment in Pro Se favor and against the respondents. The defendants are so corrupt and dangerous.

Rule 60(b) of the FRCP authorizes a court to relieve a party from a final judgment, order, or proceeding for various reasons, including "mistake, inadvertence, surprise, or excusable neglect. 60(b)(1) includes a judge's errors of law "Kemp v United States, 142 S Ct 1856, 1861 & n. 1, 213 L. Ed. 2d 90 (2022). Under Rule 60(b)(1)." Id. At 1860 in so holding, the Supreme Court indicated that the term "mistake" in 60(b)(1) should be given its broadest possible interpretation to include any mistake, including "all mistakes of law made by a judge" Id. at 1862

Rule 60(b) grounds for relief from a final judgment, order or proceeding. On motion and just terms, the court

may relieve a party or its legal representative from final judgment, order, or proceeding for the following reasons:

- (1) Mistake, inadvertence, surprise, or excusable neglect;
- (2) Newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) Fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) The judgment is void;
- (5) The judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) Any other reason that justifies relief.

Rule 60(d)(3) set aside a judgment for fraud on the court.

I followed all the proper protocol for reporting the sexual harassment and retaliation. I went up the chain of command. I was totally ignored by everyone, so I formally made the complaint on 11/05/19 after being so stressed and distraught.

I am asking the court to review the district court docket carefully and see that the court erred in allowing and granting summary judgment based on disputed material facts. Barlotta's different statements of fact to the 11<sup>th</sup> Circuit, which Barlotta then adds the sexual harassment complaint as reason for termination. Because she knew by now that I had discovered the documents stating sexual harassment complaint as reason for termination. She never stated this for her summary judgment. If this had been done summary judgment

wouldn't have been allowed. I am disputing every statement and all documents from the defense.

She says the sexual harassment started and stopped. The unwanted sexual harassment, advances and retaliation never stopped. These came from Eula Tarver my immediate supervisor, Maxwell and also several other employees . Tryonne Brown physically assaulted me. The owner of the company is continuously harassing me and my family and personal property. I know he is mostly involved because my phone always gives his location as mine. 60606 Chicago, Illinois. I have good faith that the owner of the company is involved and has tried attempts to have me killed. I have 35+ pages of evidence in my petition for rehearing en banc starting with an addendum explaining the documents. I would like the court to please read Barlotta's motion carefully for summary judgment and then her brief to the court of appeals and see how her perjury changes. I am asking for a review of the petition for rehearing en banc to prove the fraud on the court by Barlotta. For the court to review my newly discovered evidence and prove all my statements to remand this case back.

Barlotta is so corrupt and needs to be disbarred from practicing law. If you review all Barlotta's cases while representing Koch Foods you will notice complaints of invasion of privacy, intentional infliction of emotional distress. I haven't been able to keep a job since this lawsuit. The defendants keep getting me fired. I have been in foreclosure on my home three times since filing this lawsuit. Barlotta is very dangerous and corrupt. I tried notifying her firm and this is when the order to cease harassment communication was made. I didn't even make a call to her. I was advised by Baker Donelson headquarters located in Memphis to call her manager in Birmingham.

They also hacked my Microsoft account and keep altering and deleting this writ to prevent me from submitting it to the court because they know they have lied to the court.

## **CONCLUSION**

For the foregoing reasons, I ask the court to note probable jurisdiction and plead with the court to grant this writ, and reverse the summary judgment, and remand this case back to court. If possible, I would like to plea to the court to grant summary judgment in my favor against the defendants.

## **APPENDIX**

**APPENDIX A** U.S. Court of Appeals for Eleventh Circuit. No. 22-12434 Bernadette Dickerson versus Koch Foods, LLC, Koch Foods of Alabama, LLC. Do not publish

Appeal from the United States District Court for the Middle District of Alabama D.C. Docket No. 2:20-cv-00163 ECM-KFP Opinion of the Court Before Grant, Lagoa, and Brasher, Circuit Judges, PER CURIAM: Bernadette Dickerson, pro se, appeals the district court's summary judgment on her complaint alleging employment discrimination and retaliation. Based on our review of the record and the parties' briefs, we affirm. We deny Dickerson's motion to supplement the record on appeal with evidence that she failed to present to the district court.

### **I.**

Dickerson began working for Koch Foods of Alabama, LLC, in April 2019. In May 2019, she applied for

and received a position as a quality assurance technician. Eula Tarver selected Dickerson for the position and acted as he direct supervisor. According to Dickerson, Tarver frequently rubbed her breasts against Dickerson's back when squeezing between Dickerson and another employee during the first week of her training in the quality assurance position. Dickerson says that she told the other employee, Crystal Jones, about the unwanted contact, and Jones replied that Tarver "was rubbing up on her too." Dickerson believes that Jones must have told Tarver about Dickerson's complaint, because Tarver immediately stopped brushing against her.

Dickerson also claims that two other employees touched and teased her inappropriately during the next few months of her employment at Koch Foods. She says that a coworker, LeShawn Haile, hugged her from behind "all the time", but stopped when she really got annoyed and told him emphatically not to touch her. She also says that another coworker, Tryonne Brown, asked her for sex "all the time" during her first month or so in the quality assurance a department, and on one occasion, he touched her bottom. Dickerson "went off" on Brown when he touched her, and he never did it again.

Later, on August 12, 2019, Dickerson and Brown got into an argument at work. Dickerson claims that Brown tried to push her over with his cart, and she and Brown both used profanity. Dickerson says that she reported Brown's prior inappropriate behavior to her department manager (Chiquita Patterson) after the incident, though she acknowledged that it had stopped by the time she reported it. Both Brown and Dickerson were suspended from work for violating Koch Food's workplace conduct rules.

Not long after Dickerson returned from her suspension, Jones complained to Human Resources that Dickerson was harassing her. Jones complained that she had had "previous incidents" with Dickerson, and that on August 19, 2019, Dickerson had asked her "why are you looking nervous?" Ten days later, Jones and another employee reported that Dickerson- who was upset because she believed that Jones had replaced her cart with a broken one- told Jones that she did not "want to hurt anybody" and "go back to prison." As a result of these complaints, Human Resources Manager Shenealya issued a "final warning" to Dickerson for making indirect threats in violation of Koch Food's workplace conduct rules and workplace violence policy.

On September 26, 2019, Jones complained again that Dickerson was harassing her. For her part, Dickerson complained to Patterson that Jones was picking on her and had hit her with her cart. Patterson escorted Dickerson to the Human Resources Department, where they waited outside the office while Jones finished her complaint. Dickerson was "quite vocal" in her complaints to Patterson while they waited; Patterson and one of the Human Resources employees had to ask her a few times to lower her voice. Dickerson says that she told Patterson during this conversation about Tarver brushing up against her during her first week of employment. When Jones emerged from the Human Resources office, Dickerson commented loudly that she thought Jones had "mental problems."

Patterson, Dickerson , and Maxwell watched video of the incident with Jones, and neither Patterson nor Maxwell saw Jones's cart make contact with Dickerson. Dickerson was counseled about making inappropriate "outbursts" because of her comment that Jones had mental problems. The next day, Jones asked to be

transferred to another department because she felt that she was being "watched or stalked" by Dickerson.

On November 5, 2019, another coworker, Nikia Simmons, complained that Dickerson was "bullying" her. Simmons and another employee reported that Dickerson said to Simmons, "some things people just shouldn't say out their mouth," which comment made Simmons "really feel some type of way." The next day, another employee, Leona Marlow, complained that Dickerson was falsely telling other employees that Marlow had been "peeping" at Dickerson in the bathroom stall. Three other employees confirmed that Dickerson accused Marlow of looking at her in the bathroom in a sexual way, and Dickerson admitted that she told other employees that Marlow was "peeping on her" in the bathroom stall.

In response to Marlow's complaint, Maxwell counseled Dickeson about making inappropriate statements to coworkers. During the counseling session, Dickerson told Maxwell for the first time that Tarver had rubbed against her several times during her first week in the quality assurance department. Dickeson also reported that Jones told her that Tarver had touched her in the same manner. Dickerson believed that Tarver had been encouraging Dickerson's coworkers to make false complaints about her retaliation for telling Patterson two weeks earlier about Tarver's harassment.

Maxwell and the human resources manager for the complex interviewed Jones about Dickerson's accusations that Tarver had harassed Jones. Jones denied Dickerson's allegations. On November 8, 2019, Jones provided a written statement stating that Dickeson's accusations about Tarver were false, and that Tarver had always been "professional and helpful" in training her for her position. In

separate interviews, Tarver and Patterson also denied Dickerson's allegations- Tarver stated that she had never touched Dickerson or any employee inappropriately, and Patterson denied that Dickerson had ever complained to her about sexual harassment by Tarver.

On November 11, 2019, Dickerson was suspended from work for a violation of company policy pending an investigation by Human Resources. A few days later, Maxwell recommended that Dickerson be terminated because of the multiple conflicts with her coworkers and for making a false accusation of sexual harassment in violation of company policy. Koch Food's Director of Human Resources, Michael Carow, approved the termination. Maxwell notified Dickerson of her termination on November 18, 2019.<sup>1</sup>

Meanwhile, Dickerson made an informal complaint with the Equal Employment Opportunity Commission in October 2019, and on November 6, 2019, she filed a formal

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<sup>1</sup> Dickerson has filed a motion to supplement the record on appeal with documents intended to show that she was not at fault (or not entirely at fault) in the altercations with Jones and Brown, and that she was fired for making a false accusation of sexual harassment immediately after the EEOC notified the company of her EEOC charge. We generally do not allow supplementation of the record with evidence that was not submitted to the district court. *CSX Transp., Inc. v. City of Garden City*, 235 F. 3d 1325, 1330 (11<sup>th</sup> Cir. 2000). Because the proffered evidence would make no difference to our decision in this case, we deny the motion to supplement the record on appeal. See *id.*

EEOC charge alleging sexual discrimination in the form of a hostile work environment. The EEOC notified Koch Foods's Corporate Director of Human Resources, Bobby Elrod, of Dickerson's discrimination charge by email in a letter dated November 14, 2019. After she was fired, Dickerson filed a second EEOC charge alleging retaliation.

The EEOC issued right to sue letters for both charges, and Dickerson subsequently filed a lawsuit alleging that Koch Foods<sup>2</sup> violated Title VII of the Civil Rights Act by creating and allowing a hostile work environment and by terminating her employment in retaliation for reporting sexual harassment and filing her hostile-work environment EEOC charge. After two years of litigation and discovery, the district court granted the defendants' motion for summary judgment. This appeal follows.

## II.

We review a district court's order granting summary judgment de novo. *Anthony v. Georgia*, 69 F. 4<sup>th</sup> 796, 804 (11<sup>th</sup> Cir. 2023). Summary judgment is appropriate when the evidence viewed in the light most favorable to the non-moving party, presents "no genuine dispute as to any material fact" and the moving party shows that it is entitled to judgment as a matter of law. *Id.*; *Fed. R. Civ. P.* 56(a). A genuine dispute of material fact exists when "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

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<sup>2</sup>Dickerson sued Koch Foods, LLC, and Koch Foods of Alabama, LLC. The district court granted summary judgment to Koch Foods, LLC, on the ground that it was not Dickerson's employer, and Dickerson does not challenge that ruling on appeal.

### III.

#### A.

Title VII prohibits discrimination based on sex with respect to the terms and conditions of employment. 42 U.S.C. § 2000e-2(a)(1). The statute is implicated when an employer creates or perpetuates a discriminatory “hostile work environment” – that is, when “the work environment was so pervaded by discrimination that the terms and conditions of employment were altered.” *Vance v. Ball State Univ.*, 570 U.S. 421, 427 (2013). To establish a violation of Title VII in a hostile work environment claim, a plaintiff must show that she is a member of a protected class; that she experienced unwelcome harassment based on a protected characteristic; that “the harassment was sufficiently severe or pervasive to alter the terms and conditions of employment and create discriminatorily abusive working environment,: and that her employer is either directly or vicariously liable for the hostile work environment. *Fernandez v. Tree, Inc.*, 961 F. 3d 1148, 1153 (11<sup>th</sup> Cir. 2020). An employer may be held vicariously liable for harassment by an immediate or higher-level supervisor. *Miller . Kenworth of Dothan, Inc.*, 277 F. 3d 1269, 1278 (11<sup>th</sup> Cir. 2002). Where the alleged harasser is merely a coworker, the employer will be held vicariously liable only if the employer “knew or should have known of the harassing conduct but failed to take prompt remedial action.” *Id.*

Even if an employee can demonstrate sufficiently severe or pervasive harassment to support a hostile-work-environment claim, the employee may escape liability by showing that “(1) it ‘exercised reasonable care to prevent and correct promptly any sexually harassing behavior’; and (2) the employee ‘unreasonably failed to take advantage of any preventive or corrective

opportunities" the employer provided. *Baldwin v. Blue Cross/Blue Shield of Alabama*, 480 F. 3d 1287, 1303 (11<sup>th</sup> Cir, 2007) (quoting *Faragher v. City of Boca Raton*, 524 U.S. 775, 807 (1998), and *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 765 (1998)). The employer may satisfy the first requirement of the so-called "Faragher-Ellerth defense" by establishing and effectively disseminating a valid anti-discrimination policy and providing reasonable procedures for reporting violations. *Id.*; *Madray v. Publix Supermarkets, Inc.*, 208 F. 3d 1290, 1297-98 (11<sup>th</sup> Cir. 2000). The employer may satisfy the second requirement by showing that the employee failed to report the alleged harassment promptly. *Baldwin*, 480 F. 3d at 1306-07, see *Walton v. Johnson & Johnson Servs.*, 347 F. 3d 1272, 1289-91 (11<sup>th</sup> Cir. 2003).

The district court did not err in entering summary judgment for the defendants on Dickerson's hostile-work-environment claim. Viewed in the light most favorable to Dickerson, the evidence showed that she endured several instances of unwanted physical contact by her immediate supervisor during her first week of employment, which stopped immediately when she complained to a coworker. Separately, she also experienced unwanted touching by two coworkers, each of whom stopped the offensive contact when she told them emphatically to stop. Dickerson has presented no evidence that Koch Foods permitted or failed to correct the inappropriate behavior of her coworkers, which had stopped by the time she reported it. And the alleged contact by Tarver during Dickerson's first week of employment was neither objectively severe nor sufficiently pervasive to alter the terms and conditions of her employment. See *Vance*, 570 U.S. at 427; *Miller*, 277 F. 3d at 1276.

Even if Tarver's alleged conduct had been sufficient to create a hostile work environment, the district court

correctly concluded that Koch Foods had proved its *Faragher-Ellerth* defense based on unrebutted evidence in the record. The evidence showed that Dickerson received a copy of Koch Food's Equal Employment Opportunity and Harassment Policy in April 2019, during the first few days of her employment. The policy prohibited sexual discrimination and harassment and instructed employees to report harassment immediately to specified members of management or Human Resources if it occurred. Despite receiving this information, Dickerson admitted that she did not report the alleged harassment by Tarver in late May and early June 2019 to management until September 26 of that year, when she says she informed Patterson. Koch Foods cannot be held liable for Tarver's alleged harassment when Dickerson unreasonably delayed making use of well-established procedures for correcting such conduct until several months after it had ended. See *Baldwin*, 480 F. 3d at 1307; *Walton*, 347 F. 3d at 1289-90.

**B.**

Title VII also makes it unlawful for an employer to retaliate against an employee because of her opposition to a discriminatory employment practice or participation in an EEOC investigation or hearing. 42 U.S.C. § 2000e-3(a); see *EEOC v Total Sys. Servs., Inc.*, 221 F. 3d 1171, 1174 (11<sup>th</sup> Cir. 2000). When a plaintiff relies on circumstantial evidence to prove retaliation (as Dickerson does here), we generally apply the burden-shifting framework described in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). *Johnson v. Miami-Dade Cnty.*, 948 F. 3d 1318, 1325 (11<sup>th</sup> Cir. 2020). Under that framework, a plaintiff must first establish a *prima facie* case of retaliation by showing that (1) she engaged in statutorily protected activity; (2) she suffered an adverse employment action was causally related to her protected activity. *Id.*

Once established, the plaintiff's *prima facie* case creates a presumption that the adverse employment action was retaliatory. *Bryant v. Jones*, 575 F. 3d 1281, 1308 (11<sup>th</sup> Cir. 2009). The burden of production then shifts to the employer to articulate a legitimate, nondiscriminatory reason for its employment action. *Id.* If the employer does so, the presumption of retaliation "drops from the case," and the burden shifts back to the plaintiff to show that the employer's reason "was not the real basis for the decision, but a pretext for discrimination." *Id.* (quoting *Texas Dep't of Cnty. Affs. V. Burdine*, 450 U.S. 248, 255 n 10 (1981)); *Johnson*, 948 F. 3d at 1325 (citation omitted).

Here, the parties dispute whether Dickerson made out a *prima facie* case of retaliation based on her allegation that Koch Foods fired her because of her EEOC hostile-work-environment charge. But we need not reach that question, because even if she established a *prima facie* case, Koch Foods countered by presenting legitimate, nondiscriminatory reasons for firing her. Koch Foods's Director of Human Resources (Carow) and the Human Resources Manager for the plant where Dickerson worked (Maxwell) testified that they were unaware of Dickerson's EEOC charge at the time that Maxwell recommended and Carow approved her termination. They testified that Dickerson was fired because of her repeated conflicts with her coworkers and what Maxwell deemed to be a false report to Human Resources of sexual harassment by Tarver. These were valid reasons for Dickerson's termination. See *Total Sys. Servs., Inc.*, 221 F. 3d at 1176 (employer's good-faith belief that employee lied during an internal investigation of alleged sexual harassment was a legitimate, nondiscriminatory basis for discharge).

Once Koch Foods articulated legitimate reasons for its decision to fire her, Dickerson was required to present concrete evidence showing that the proffered reasons were pretext for discrimination. See *Holland v. Gee*, 677 F. 3d 1047, 1055 (11<sup>th</sup> Cir. 2012); *Bryant*, 575 F. 3d at 1308. She failed to do so.

Dickerson argues that the coworkers who accused her of bullying, threatening, or harassing them were lying, and that Tarver, Patterson, and Jones also lied when they denied Dickerson's allegations of harassment by Tarver. But she has presented nothing to counter the witnesses' testimony that several of her coworkers complained about Dickerson's behavior or insisted that she had made false accusations of sexual harassment. And the relevant inquiry in determining whether the plaintiff has presented evidence of pretext is not whether the plaintiff actually engaged in the misconduct cited as the reason for her termination, but whether the employer had a good-faith belief that she did. *Gogel v. Kia Motors Mfg. of Georgia, Inc.*, 967 F. 3d 1121, 1148 (11<sup>th</sup> Cir. 2020). Here, Dickerson failed to rebut her employer's evidence showing that Maxwell and Carow reasonably believed that Dickeson instigated or perpetuated conflicts with several of her coworkers and falsely accused her supervisor of sexual harassment.

#### IV.

The district court did not err in granting summary judgment on Dickerson's Title VII hostile-work-environment and retaliation claims. Dickerson did not present evidence of severe or pervasive harassment sufficient to meet her burden of proof at trial, and in any event, the defendants presented unrebuted evidence that Dickerson was aware of her employer's procedures for reporting sexual harassment but failed to make use of them until long after

the alleged harassment had ceased. Dickerson also failed to rebut her employer's evidence showing that it had legitimate, nondiscriminatory reasons for terminating her employment. We therefore affirm the district court's judgment.

Dickerson's motion to supplement the record on appeal is DENIED.

**AFFIRMED.**

## **APPENDIX B**

U.S. Court of Appeals for the Eleventh Circuit No. 22-12434  
Bernadette Dickerson v Koch Foods, LLC, Koch Foods of Alabama, LLC. On Petition for Rehearing and Petition for Rehearing En Banc before Judge Grant, Lagoa, and Brasher. PER CURIAM: The petition for rehearing En Banc is DENIED, no judge in regular active service on the court having requested that the court be polled on rehearing en banc. FRAP 35. The petition for rehearing en banc is also treated as a petition for rehearing before the panel is DENIED. FRAP 35, IOP 2.

## **APPENDIX C**

In the United States District Court  
For the Middle District of Alabama  
Northern Division

Bernadette Dickerson v. Koch Foods, LLC, et al.,

MEMORANDUM OPINION and ORDER

Now pending before the Court is the Report and Recommendation of the Magistrate Judge (doc. 65) which recommends that the Defendant's motion for summary judgment (doc. 43) be granted and that this case be dismissed with prejudice. On July 18, 2022, the Plaintiff filed objections to the Recommendation. (doc. 66). The next day, the Plaintiff filed additional objections (doc. 67). The Court has carefully reviewed the record in this case, including the Magistrate Judge's Report and Recommendation, and the Plaintiff's objections. See 28 U.S.C. § 636(b).

When a party objects to a Magistrate Judge's Report and Recommendation, the district court must review the disputed portions *de novo*. 28 U.S.C. § 636(b)(1). The district court "may accept, reject, or modify the recommended disposition; receive further evidence; or resubmit the matter to the magistrate judge with instructions." FED. R. CIV. P. 72(b)(3). *De novo* review requires that the district court independently consider factual issues based on the record. *Jeffrey S. ex rel. Ernest S. v. State Bd. of Educ.*, 896 F. 2d 507, 513 (11<sup>th</sup> Cir. 1990). See also *United States v. Gopie*, 347 F. App'x 495, 499 n.1 (11<sup>th</sup> Cir. 2009). However, objections to the Magistrate Judge's Report and Recommendation must be sufficiently specific in order to warrant *de novo* review. See *Macort v. Prem, Inc.*, 208 F. App'x 781, 783-85 (11<sup>th</sup> Cir. 2006). Otherwise, a Report and Recommendation is reviewed for clear error. *Id.*

The Court has carefully reviewed the entire record in this case, the Recommendation of the Magistrate Judge, and the Plaintiff's objections. The Plaintiff's objections largely reiterate the claims against the Defendants, their attorneys and the Magistrate Judge. Although the Plaintiff's general objections do not merit *de novo* review, the Court undertook a *de novo* review of Plaintiff's objections. The

Plaintiff again offers only her conclusory assertions that she was harassed, discriminated against and retaliated against by the Defendants. She makes conclusory assertions that she is entitled to relief against the Defendants and offers a recitation of her claims, but she does not point to any legal error committed by the Magistrate Judge. The Court finds that the well-reasoned Recommendation of the Magistrate Judge effectively addresses all of the Plaintiff's claims. The Plaintiff's objections are due to be overruled. Accordingly, for the reasons as stated and for good cause, it is

ORDERED that the Plaintiff's objections (docs. 66 and 67) are OVERRULED, the Recommendation of the Magistrate Judge (doc. 65) is ADOPTED, the the Defendants' motion for summary judgment (doc. 43) is GRANTED, and this case is DISMISSED with prejudice.

A final judgment will be entered.  
DONE this 21<sup>st</sup> day of July, 2022

/s/ Emily C. Marks  
Chief United States District Judge

**APPENDIX D** In the US Middle District Court for the Middle District of Alabama Northern Division.

Bernadette Dickerson v. Koch Foods, LLC, et al. CIV.  
ACT. NO. 2:20-cv-163-ECM

## **FINAL JUDGMENT**

In accordance with the order entered on this date  
adopting the Recommendation of the Magistrate Judge  
Pate, it is the

ORDER, JUDGMENT and DECREE of the Court that  
judgment is entered in favor of the defendants and against  
the plaintiff, and that this case is DISMISSED with prejudice.

The Clerk is DIRECTED to enter this document  
on the civil docket as a Final Judgment pursuant to Rule 58  
of the Federal Rules of Civil Procedure

Done this 21<sup>st</sup> day of July, 2022.

/s/ Emily C. Marks  
Emily C. Marks Chief United States District Judge

## **APPENDIX E**

Alabama Department of Labor

Dickerson, Bernadette

SSN XXX-XX-XXXX

Date Submitted 11/26/2019

Discharge or Disciplinary Suspension

What is the reason the claimant was discharged or  
suspended from employment? Failed to Follow I  
Instructions/Policy

What was the final incident that caused the discharge or suspension?

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Ms. Dickerson was discharged due to reporting a false sexual harassment claim.

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What was the date of the final incident? 11/11/2019

Did the claimant violate company policy? Y

If a company policy was violated, was the claimant made aware of the policy or unacceptable behavior that contributed to the discharge or suspension? Y

If yes, how was the claimant made aware of the policy or unacceptable behavior that contributed to the discharge or suspension? B

What is the name of the person who took the action to discharge or suspend the claimant? Shenealya Maxwell

What is the title of the person who took the action to discharge or suspend the claimant? HR Manager

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#### **Discharge or Suspension – Prior Incidents**

Were there prior incidents that led to the discharge or suspension? 0

No. 23A647

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IN THE  
**SUPREME COURT OF THE UNITED STATES**

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Bernadette Dickerson – PETITIONER

VS

Koch Foods, LLC, et al. - RESPONDENT

**PROOF OF SERVICE**

I, Bernadette Dickerson, do swear or declare that on this date, March 28, 2024, as required by the Supreme Court Rule 29 I have served the enclosed PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every person required to be served, by depositing and envelope containing the above documents in the United States mail

