

APPENDICES A

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UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

JAN 24 2023

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

LOLA BONITTA McGEE,

Plaintiff-Appellant,

v.

LOUIS DEJOY, Postmaster General of the
United States; et al.,

Defendants-Appellees.

No. 22-16985

D.C. No.

2:13-cv-01426-RFB-VCF

District of Nevada,
Las Vegas

ORDER

Before: WARDLAW, CLIFTON, and SANCHEZ, Circuit Judges.

A review of the record demonstrates that this court lacks jurisdiction over this appeal because the December 21, 2022 notice of appeal was not filed within 60 days after the district court's post-judgment order entered on August 12, 2022. *See* 28 U.S.C. § 2107(b); *United States v. Sadler*, 480 F.3d 932, 937 (9th Cir. 2007) (requirement of timely notice of appeal is jurisdictional). Consequently, this appeal is dismissed for lack of jurisdiction.

DISMISSED.

APPENDICES B

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UNITED STATES COURT OF APPEALS
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MAR 20 2023

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

LOLA BONITTA MCGEE,

Plaintiff - Appellant,

v.

LOUIS DEJOY, Postmaster General of
the United States; et al.,

Defendants - Appellees.

No. 22-16985

D.C. No. 2:13-cv-01426-RFB-VCF
U.S. District Court for Nevada, Las
Vegas

MANDATE

The judgment of this Court, entered January 24, 2023, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule
41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Bonnie J. Kates
Deputy Clerk
Ninth Circuit Rule 27-7

APPENDICES C

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Activity in Case 2:13-cv-01426-RFB-VCF McGee v. Donahoe Order on Motion to Reopen Case

From: cmecf@nvd.uscourts.gov

To: cmecfhelpdesk@nvd.uscourts.gov

Date: Friday, August 12, 2022 at 03:46 PM EDT

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United States District Court

District of Nevada

Notice of Electronic Filing

The following transaction was entered on 8/12/2022 at 12:45 PM PDT and filed on 8/12/2022

Case Name: McGee v. Donahoe

Case Number: 2:13-cv-01426-RFB-VCF

Filer:

WARNING: CASE CLOSED on 09/23/2019

Document Number: 280(No document attached)

Docket Text:

MINUTE ORDER IN CHAMBERS of the Honorable Judge Richard F. Boulware, II on 8/12/2022.

Because a motion to reopen the case is procedurally improper, the Court evaluates [277], [278], and [279] Motions to Reopen Case under the standard for Fed. R. Civ. P. 60. Plaintiff's motions do not provide good cause for consideration under Rule 60, as Plaintiff submits no evidence that was not already considered as part of the record or in [257] Order, nor does she make a colorable claim that there has been a manifest error of law or injustice, nor evidence of fraud of any kind. Further, Rule 60 requires that such a motion be made within a reasonable time, no more than a year after the entry of the judgment or order or the date of the proceeding. The Order was issued on September 23, 2019. See ECF No. 257. Further, Plaintiffs appeal of the order was denied on December 14, 2020, over a year before Plaintiff filed [277] the first motion on December 20, 2021. As a result, this motion is also untimely. Accordingly, IT IS THEREFORE ORDERED that [277], [278], and [279] Motions to Reopen Case are DENIED. (Copies have been distributed pursuant to the NEF - CVL)

2:13-cv-01426-RFB-VCF Notice has been electronically mailed to:

Roger Wayne Wenthe roger.wenthe@gmail.com

Brian W. Irvin brian.irvin@usdoj.gov, CaseView.ECF@usdoj.gov, angelina.villalpando@usdoj.gov, daniel.maul@usdoj.gov, dionne.white@usdoj.gov, eunice.jones@usdoj.gov, maria.covarrubias@usdoj.gov, maritess.recinto@usdoj.gov, samira.tamules@usdoj.gov

Lola McGee mcgee.lola@yahoo.com

2:13-cv-01426-RFB-VCF Notice has been delivered by other means to:

Activity in Case 2:13-cv-01426-RFB-VCF McGee v. Donahoe Order on Motion to Reopen Case

From: cmecf@nvd.uscourts.gov (cmecf@nvd.uscourts.gov)

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United States District Court

District of Nevada

Notice of Electronic Filing

The following transaction was entered on 12/22/2022 at 12:59 PM PST and filed on 12/22/2022

Case Name: McGee v. Donahoe

Case Number: 2:13-cv-01426-RFB-VCF

Filer:

WARNING: CASE CLOSED on 09/23/2019

Document Number: 286(No document attached)

Docket Text:

MINUTE ORDER IN CHAMBERS of the Honorable Richard F. Boulware, II on 12/22/2022.

Before the Court is [282] Plaintiff's Fourth Motion to Reopen. Because a motion to reopen the case is procedurally improper, the Court construes the motion as one brought under Fed. R. Civ. P. 60. The Court's [280] prior ruling denied Plaintiff's three earlier motions because Plaintiff did not show good cause under Rule 60 and the motions were untimely. Plaintiff has filed [285] a notice of appeal of the Court's prior ruling.

Plaintiff's Fourth Motion, like her three previous motions, does not establish good cause under Rule 60. It only includes evidence already considered as part of the Record or referenced in [257] the Court's decision on the merits. It does not contain a colorable claim of fraud. It also does not contain a colorable claim that the Court should grant the motion to avoid a manifest error of law. See Navajo Nation v. Dep't of the Interior, 876 F.3d 1144, 1173 (9th Cir. 2017). As Plaintiff's Fourth Motion was filed after her three untimely motions it too is untimely.

Accordingly, IT IS SO ORDERED that [282] Plaintiff's Fourth Motion to Reopen is DENIED.
(no image attached) (Copies have been distributed pursuant to the NEF - BEL)

2:13-cv-01426-RFB-VCF Notice has been electronically mailed to:

Blaine T Welsh Blaine.Welsh@usdoj.gov, CaseView.ECF@usdoj.gov, allyson.beyer@usdoj.gov,

angelina.villalpando@usdoj.gov, dionne.white@usdoj.gov, maria.covarrubias@usdoj.gov, maritess.recinto@usdoj.gov, vera.minkova@usdoj.gov

Roger Wayne Wenthe roger.wenthe@gmail.com

Brian W. Irvin brian.irvin@usdoj.gov, CaseView.ECF@usdoj.gov, angelina.villalpando@usdoj.gov, daniel.maul@usdoj.gov, dionne.white@usdoj.gov, eunice.jones@usdoj.gov, maria.covarrubias@usdoj.gov, maritess.recinto@usdoj.gov, samira.tamules@usdoj.gov

Lola McGee mcgee.lola@yahoo.com

2:13-cv-01426-RFB-VCF Notice has been delivered by other means to:

Lola McGee
1132 Park Hollow Ln
Lawrenceville, GA 30043
Phone: (562) 889-2662
Email: mcgee.lola@yahoo.com

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

Lola McGee

Plaintiff

v.

Louis DeJoy,
Postmaster General,
United States Postal Service

Defendant

CASE No. 2:13-cv-01426-RFB-VCF

**PLAINTIFF'S 4th MOTION TO RE-OPEN HER CASE BASED ON
NEW AND OLD FACTUAL MEDICAL EVIDENCE - ALONG WITH LACK OF DUE
PROCESS - CORRUPTION - FAILURE TO ACKNOWLEDGE INCAPACITATION - AND
ULTIMATELY DENIED JUSTICE IN HER CASE**

I, Lola McGee, Plaintiff respectfully requests District Court of Nevada to Re-open her case based on new and old factual medical evidence, along with lack of due process, corruption, the court's failure to acknowledge plaintiff's incapacitation, and ultimately denying plaintiff justice in her case. Plaintiff's mental, physical, emotional, and financial conditions were caused by the Nevada Sierra District Postal Service Management. Please change plaintiff's address to the above. Please see Dr. Miriam E. Shapiro's five-page Neuropsychological Evaluation, dated 6/1/2021 & 6/8/2021, for plaintiff's most recent mental damage caused by plaintiff's boss' actions and behaviors since the onset-2004-2005. This evaluation is supporting evidence that further proves Ms. McGee's incapacitation, and why she was not capable of meeting timeliness requirements, arguing her case at hearings, and her having poor cognition, along with needing her assistant, Rosemary Garity, to even bring the case to the district court. Plaintiff has mental, physical, and emotional disabilities. Ms. McGee was not capable of arguing her filings before the court,

1 nor did she understand what an argument was. Perhaps, plaintiff would have been afforded due process
2 if her cognition did not preclude her; because, she could not hear, understand, comprehend, or speak,
3 due to her mental and physical conditions. However, even though she had filings in her case, but could
4 not argue before the court, she can only assume that the court would have been unbiased, professional,
5 and followed the law that she presented. Ms. Garity helped plaintiff with court filings and writings, but
6 Ms. Garity was not permitted to speak for Ms. McGee, because Ms. Garity is not an attorney. Plaintiff
7 was not even capable of filing her case without the assistance of Rosemary Garity, which is the reason
8 that she was able to bring the case to the court in the first place. However, Ms. Garity, was precluded by
9 the court to speak on plaintiff's behalf, and plaintiff was not capable of arguing her case for herself.

10
11 The 2021 Factual and new supporting evidence shows through extensive testing by Dr. Miriam E.
12 Shapiro, Ph.D. that plaintiff had a Full-Blown Nervous Breakdown, and "But For" the postal service
13 upper management's actions and behavior, plaintiff would not have experience such catastrophic mental,
14 physical, and emotional health conditions such as Post Traumatic Stress Disorder (PTSD), Panic Attacks
15 – Panic Disorder, Heart Operation - Heart Palpitations, Peripheral Sensory Neuropathy – Sudden
16 Trauma to the Central Nervous System, Major Depression, Anxiety, OCD, Agoraphobia, and other
17 conditions. Plaintiff has had 30 plus providers from 2005 – Present, and she has relocated 12 times by
18 April 2012, which was a very short time span since the onset of her abuse, racism, threats of violence,
19 retaliation, discrimination, lies, deceit, hostile work environment issues. Plaintiff informed her superiors
20 of the problems she was facing, but to no avail. The superiors, themselves, are the people that behaved
21 adversely towards Ms. McGee. See the monumental supporting medical starting with Dr. Michael
22 Shepard in 2005, 2nd letter dated August 26, 2009, In-home Health care documents, Physical Therapy,
23 Caregiver Statements, Employee and Staff Statements, Office of Personnel Management medical
24 Retirement Report, Social Security Disability Report, also, Dr. Roy Lubit MD, Ph.D.'s report, dated July
25 30, 2016, stating that plaintiff was immobilized. Further, Dr. Lubit responds regarding defendant's
26 doctor (Dr. Lewis M. Etkoff, Ph.D., A.B.N.) report, dated January 29, 2016. All this documentation and
27 much more proves plaintiff met her extraordinary circumstances to toll her time requirements. To date,
28 the court has never written about plaintiff heart operation performed by Dr. Mark Blitzler, and his report

1 has been submitted by plaintiff since her case was filed on 8/8/13, and throughout. However, the court
 2 disregarded plaintiff's filings, the law, and it appears to be corruption on the part of the court and
 3 defendant, see (Exhibit 1). Please see (Exhibit 2) for a few filings to show that the district court received
 4 plaintiff's filings, but the filings are mixed between other filings; regardless, if they were presented to
 5 the court via in person or electronically filed, starting from (ECF Nos. 1-279) that were filed on
 6 plaintiff's behalf.

7
 8 This is unacceptable conduct by the court, an impedes on an accurate reference. Plaintiff has her filings
 9 as she filed them, accept when Sharon Nelson represented her, because attorney Nelson took plaintiff
 10 out of the electronic filing system, so plaintiff would not know what Ms. Nelson was filing. Attorneys
 11 were terminated because they worked with the postal service and filed documents against Ms. McGee,
 12 or they were not knowledgeable in the area needed, and the court's adversity made it worse.

13 This Motion is based on the following memorandum of points and authorities, as well as all papers and
 14 pleadings on file in this case, including (ECF Nos. 277 - 279).

15
 16 /s/ Lola McGee
 17 Lola McGee
 Plaintiff Pro Se

Date: September 3, 2022

18 MEMORANDUM OF POINTS AND AUTHORITIES

19 I. INTRODUCTION

20 Plaintiff respectfully requests the court to Re-open her case based on new evidence that proves she was
 21 not capable of meeting required time deadlines because she was incapacitated due to the threats from
 22 management of the Nevada Sierra District Postal Service employees. "But For" the threats on her life,
 23 hostile work environment, retaliation, abuse, lies, deceit, and other discriminating factors, like, race,
 24 gender, color, age, sex, religion, disabilities, and other actions and behaviors, she would not be disabled.
 25 She would still be working in her accomplished acquired life that she worked hard to achieve. Plaintiff
 26 filed her EEO Complaints, Affidavits, and the EEOC file, that was errored with lies and ambiguous
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1 statements, because plaintiff's documentation proved otherwise, with the court, but the court failed to
2 follow the law in plaintiff's case. See (ECF Nos. 1, 8, 11, 39, 62, 136, 143, 167, 173, and 181).

3
4 Plaintiff is an educated woman, and she had achieved much success in her personal and professional life
5 prior to the egregious actions and behavior against her. She was an exemplary employee in her
6 professional life and an exemplary person in her personal life. "But For" management of the Nevada
7 Sierra Postal Service management's evil, hateful, and discriminatory actions and behavior, plaintiff
8 would have been achieved higher success as she desired, because of her self-driven motivating will,
9 along with higher education, knowledge, skills, and abilities. A crime has been committed on Ms.
10 McGee, please see the plethora of attached documents, and the court should not allow the defendants to
11 get away with their actions and behavior that was deliberately geared towards Ms. McGee, because it
12 caused her life to be ruined, and she could not properly defend herself in court, in a timely, appropriate,
13 an efficient manner.

14 15 **II. ARGUMENT**

16 Plaintiff's assistant, Rosemary Garity was able to help plaintiff create written documents to fight her
17 case, but plaintiff was not capable of representing herself during oral arguments, because she could not
18 hear, because she has hearing loss or understand plain English due to her mental state and condition, and
19 mental disabilities, please see (Exhibit 1). Plaintiff's mental state had her abruptly hurrying out of court
20 in tears, because she could not deal with being disregarded, and the lies bother her deeply. At times,
21 there were words that would register with her, in her traumatic condition, she was in a trance, aimlessly
22 staring, and the court knew it, but did nothing.

23
24 There were many violations that plaintiff would have verbally addressed the court with at hearings;
25 however, plaintiff was not capable of doing so, such as, Plaintiff's heart operation not being included in
26 Magistrate Judge Cam Ferenbach's court transcripts, and District Judge Richard F. Boulware, II's court
27 transcripts, even though plaintiff informed the court of the letter from Dr. Mark L. Blitzer, dated
28 February 4, 2010, Dr. Blitzer's medical report being put under Seal, but plaintiff had already submitted

1 it in serval filings, Court Orders not followed by opposing counsel, Sanctions to the U.S. Postal Service
 2 and its attorneys for unethical, unprofessional, and violation of the law regarding Discovery and
 3 misconduct regarding behavior and actions, Default Judgments for defendant's untimely and late filings
 4 of documents and not filing an "Answer" to Orders/Decisions from the court, not complying with
 5 Discovery according to law, violating Federal Rules Of Civil Procedures and the rule of law, and the
 6 Constitution, RE: Depositions of plaintiff's medical providers, opposing counsel compromised
 7 Discovery, opposing counsel arbitrarily putting Bates Numbers on documents, and filing Threaded
 8 Emails, opposing counsel, Assistant U.S. Attorney, Krystal J. Rosse was taken off plaintiff's case and
 9 supposedly had left the employment, yet she was still on the courts electronic filing system and served
 10 with docket filings even though she is supposedly not there, opposing counsel cherry picked a defense,
 11 and filed dismissals until they addressed plaintiff's complete case, but they were untimely in doing so.

12
 13 Electronic Court Filings Numbers (ECF Nos. 1 = Original Complaint, dated 8/8/13 - filed in person, but
 14 the court has the document filing as 1-1 for the Main Document; 8 = Amended Complaint, with all
 15 documents – 6 EEO's with 2 EEOC cases, Pre-complaint Counselor, EEOC, Affidavits, employee
 16 statements, accolades, medical, final agency decision, performance reports, and other supporting
 17 documentation was filed, just the same as (ECF No. 1), (ECF No. 8) was filed in person, dated 10/15/13
 18 – from the court, but not put on the docket sheet until 2/26/14, and the court has it with 8 & 11 mixed
 19 together, with the Amended Complaint document filed; plaintiff not understanding why an Amended
 20 Complaint was even needed; 20 = ENE, dated 7/29/14, yet plaintiff was not granted the liberty for the
 21 evaluation, even though she filed a plethora of supporting documents, from the start. Plaintiff requested
 22 several times, even after she terminated Attorney Sharon Nelson on 2/23/16, and filed with the court in
 23 81, dated 2/29/16, but to no avail. 18 = Defendants 1st dismissal, filed late, dated 7/28/14, and
 24 defendants argued jurisdiction, exhaust of administrative Remedies, timeliness, and referencing
 25 plaintiff's book, that was published in 2012, that's it. 23 = Judge Richard F. Boulware, II was assigned
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1 the case, and then, District Judge, Miranda M. Du was off the case, and now she's, Chief Judge. There
2 was no due process after Judge Du; 30 = Opposing Counsel (Brian Pugh), Ms. McGee and her assistant,
3 Rosemary Garity, created a Discovery Plan/Scheduling Order (DPSO, dated 9/11/14, and opposing
4 counsel was disclosing documents with plaintiff. However, 37 = Krystal Gallagher entered the case and
5 took over from Brian Pugh, dated 9/25/14, and motions to stay and extensions were giving for over three
6 and a half years. No Discovery, or working with counsel, and plaintiff was even instructed to not email
7 opposing counsel, by Krystal Gallagher, who became, Krystal Rosse, and was told not to call, by
8 opposing counsel, Roger W. Wenthe. 39 = Plaintiff asked the court to Clarify/Correct the record, but it
9 was later denied. 49 = Order from the court to stay discovery, per opposing counsel's request. 54 =
10 Plaintiff's Motion to expedite ruling on request for representation because of plaintiff's disabilities,
11 dated 9/3/15, but it was later denied. 57 = On 9/11/15, over two years from her initial filing of 8/8/13,
12 Ms. McGee appeared before District Judge, Richard F. Boulware, II, and he stated to plaintiff that she
13 may have been discriminated against, but ignorance is not a defense. Plaintiff is mentally disabled, not
14 ignorant, and her very large documentation proves such. She was very successful, prior to becoming
15 disabled from actions and behaviors of Nevada, postal service. Judge Boulware, II ordered Krystal
16 Rosse to do a limited discovery from 9/2009 through 9/2011, of plaintiff's medical file, EEOC file,
17 depositions of plaintiff's medical providers, and she could submit new evidence in another dismissal,
18 and she did that and plaintiff did not get her discovery, was not allowed to speak at her own doctors
19 deposition, even though no evidence was shown that Attorney Nelson had agreed to plaintiff not being
20 able to speak and ask questions. Through filings of 90, dated 3/8/16, 91, dated 3/18/16, 92, and 93, dated
21 3/22/16, unfortunately, plaintiff's motions were not addressed until 5/20/16, which was after Dr. Jenkins
22 deposition, dated 3/30/16, plaintiff did not get to respond in the testimony of her doctor. Judge
23 Ferenbach stated that he was on vacation, so plaintiff did not understand why the court did not appoint
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1 someone else to take up his responsibilities, this is methodical corruption. Plaintiff believes that
2 opposing counsel, Krystal Rosse, wanted to see if she got adversity from Dr. Jenkins, but the truth is the
3 truth. Yet, transcript testimony is incorrect and doesn't reflect all that the doctors said, including Dr.
4 Mary J. Reed. Dr. Reed's deposition was taken on 4/6/16, and Ms. Rosse asked Dr. Reed if plaintiff was
5 ever incapacitated, and Dr. Reed said yes, when she was moving various places, had cardiac problems,
6 panic attacks, and things of that nature, but that was never considered by the court. The transcripts and
7 exhibits or compromised, and all of this is in court filings from plaintiff, but the court never considered
8 it, see 136 and all 14 exhibits for more information. Court transcripts are compromised as well, what
9 happened in court is not what all happened, and there is a produced narrative to reflect the narrative,
10 which is biased, and conforming to defendant's narrative. Plaintiff had poor cognition, poor memory,
11 confusion, lack of understanding, lack of concentration, hearing loss, lack of focus, and things just don't
12 register with her brain, and she still has challenges in every area, then and now, but she was worse off,
13 then. Ms. McGee could not adjust to Ms. Rosse's name change from Gallagher, so she called her "Her",
14 and that is not Ms. McGee's nature or personality, to not properly address anyone. Opposing counsel,
15 Brian Pugh, did not address plaintiff's case in its entirety, and Judge Boulware, II should not have
16 allowed the case to be addressed with more lies and corruption. Plaintiff submitted motions for Default
17 Judgement, Sanctions, Motions to Compel, and many more, but to no avail. Plaintiff has submitted
18 multiple requests for help, but the court saw fit to deny all requests. Other filings are 106 = defendants
19 renewed dismissal, the 2nd of many more that were allowed. 136 = Plaintiff's Response to 106, 140 =
20 Order denying 62 = plaintiff's request to clarify and correct the record. 143 = Plaintiff explanation of
21 Extraordinary Circumstances, coupled with 136. 144 = Order further denying plaintiff's filings and
22 mixing both plaintiff response to defendant's 2nd dismissal 136, with defendants 137 = Motion to Strike,
23 and plaintiff's 139 = Response to 137, this was addressed to the court, but to no avail. 166 = Court Order
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1 denying part and granting part of defendant dismissal, it's insidious. 167 = Plaintiff's Motion for Judge
2 Boulware, II to reconsider 166, but to no avail. 170 = Defendants 3rd or 4th dismissal, but this was for
3 Plaintiff's Section 1981 Claim. Even though all factors were met, and the law is in plaintiff's favor,
4 Judge Boulware, II found it appropriate to grant defendant's motion to dismiss. See, 172, 173, 174, and
5 177. 181 = Plaintiff filed a Motion for Obstruction of Justice, but to no avail. See 191 through 195,
6 regarding discovery, default judgement, and summary judgement, along with 201, 203, 205, and 206
7 with other issues.
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10 Plaintiff wants it to be known that the numbers or the issues were not brought out specifically for her to
11 talk about, and she had every filing that was stated for the hearings, but she did not know when what
12 issue was been addressed. The court knew she couldn't hear, and was mentally compromised, just by her
13 slurred speech, aimless stare, and startled when her name was called. She remembers saying 6/19 at the
14 9/11/15 hearing, but what she was trying to tell Judge Boulware, II is she remembers writing the 6/19/09
15 letter, but her mental conditions worsened after that. Plaintiff did not watch TV, listen to music, read, or
16 take care of her personal needs, because she was psychotic, and could not focus on any tasks. She had
17 caregivers until May of 2012, because she was mentally, physically, and emotionally incapacitated.
18 Plaintiff did not create her retirement party, or write letter and flyers for notification to it, because her
19 mental, physical, and emotional disabilities precluded her from doing so. Still, to this day, plaintiff has
20 mental, physical, and emotional challenges that impede on her quality of life, but she is doing better. She
21 has confusion, racing thoughts, nightmares, lack of understanding, and comprehension, along with
22 depressing feelings, and it is hard for her to focus on a task. She is physically cripple, and she has
23 hearing and vision loss. This is the results of her Peripheral Sensory Neuropathy. She still has heart
24 palpitations, and she is still under the care of all specialties. Ms. McGee received the investigation file
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on 6/19/09, and some other priority packages with the investigation documents in it later; and requested the Final Agency Decision for the 2008 EEO Case. After reading some of the file, she could not believe what she read, and she lost her memory, and something else happened, but she's not specific of what. Thereafter, she was not communicating on demand, and plaintiff does not remember the same letters being submitted, and don't know how they were submitted. However, it was attempted to be explained in (ECF No. 136, and the exhibits), see Dr. Lubit's report, and plaintiff's filings. Also, see more efforts by plaintiff (ECF Nos. 214 – 224, 226, 228, 234, 235). For plaintiff's most recent request to Re-Open her case base on the above caption, this is plaintiff 4th request. Please see, (ECF Nos. 277 through 279), Dr. Miram E. Shapiro report regarding plaintiff's latest testing dated 6/1/2021 & 6/8/2021, along with other providers reports. These requests and documents have been submitted to the court in said filings, but District Judge Richard F. Boulware, II states no new evidence was submitted by plaintiff, and plaintiff did not follow requirements. The documents are mixed, like 278 was filed before 279, but 278 documents are in 279, how can that happen, but in an intentional manner. Much more unprofessional behavior that was not properly argued at hearings that should have been argued; thus, plaintiff was not afforded Due process because of her mental disabilities, and she deserves justice.

III. LEGAL FACTS

Plaintiff relied on several laws, Federal Rules of Civil Procedure, Case Law, Constitution of the United States of America, Factual Documents, and the Whole Truth to support and prove her case; please see the following.

Rule 26 – Duty to Disclose; General Provisions Governing Discovery

(a) Required Disclosures.

(1) Initial Disclosure.

1 (A) In General. Except as exempted by Rule 26(a)(1)(B) or as otherwise stipulated or ordered by the
2 court, a party must, without awaiting a discovery request, provide to the other parties:

3 (i) the name and, if known, the address and telephone number of each individual likely to have
4 discoverable information—along with the subjects of that information—that the disclosing party may
5 use to support its claims or defenses, unless the use would be solely for impeachment;
6

7 Rule 30 – Depositions by Oral Examination Federal Rule of Civil Procedure, 30(a)(b)(C)(d)(2)(B)(C)

8 (C) After the Deposition. At the end of a deposition, the officer must state on the record that the
9 deposition is complete and must set out any stipulations made by the attorneys about custody of the
10 transcript or recording and of the exhibits, or about any other pertinent matters.
11

12 “The Fifth Amendment says to the federal government that not one shall be “deprived of life, liberty or
13 property...
14

15 Due Process of Law: Fair treatment through the normal judicial system, especially as a citizen’s
16 entitlement.
17

18 Rule 37. Failure to Make Disclosures or to Cooperate in Discovery; Sanctions

19 (b) Failure to Comply with a Court Order.

20 (2) Appropriate Court. A motion for an order to a party must be made in the court where the action is
21 pending. A motion for an order to a nonparty must be made in the court where the discovery is or will be
22 taken.

23 (1) Sanctions Sought in the District Where the Deposition Is Taken. If the court where the discovery is
24 taken orders a deponent to be sworn or to answer a question and the deponent fails to obey, the failure
25 may be treated as contempt of court. If a deposition-related motion is transferred to the court where the
26 action is pending, and the court orders a deponent to be sworn or to answer a question and the deponent
27 fails to obey, the failure may be treated as contempt of either the court where the discovery is taken or
28 the court where the action is pending.

(2) Sanctions Sought in the District Where the Action Is Pending.

(A) For Not Obeying a Discovery Order. If a party or a party's officer, director, or managing agent—or a witness designated under Rule 30(b)(6) or 31(a)(4)—fails to obey an order to provide or permit discovery, including an order under Rule 26(f), 35, or 37(a), the court where the action is pending may issue further just orders. They may include the following:

- (i) directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims;
- (ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;
- (iii) striking pleadings in whole or in part;
- (iv) staying further proceedings until the order is obeyed;
- (v) dismissing the action or proceeding in whole or in part;
- (vi) rendering a default judgment against the disobedient party; or
- (vii) treating as contempt of court the failure to obey any order except an order to submit to a physical or mental examination.

(B) For Not Producing a Person for Examination. If a party fails to comply with an order under Rule 35(a) requiring it to produce another person for examination, the court may issue any of the orders listed in Rule 37(b)(2)(A)(i)—(vi), unless the disobedient party shows that it cannot produce the other person.

(C) Payment of Expenses. Instead of or in addition to the orders above, the court must order the disobedient party, the attorney advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

(c) Failure to Disclose, to Supplement an Earlier Response, or to Admit.

(1) Failure to Disclose or Supplement. If a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless. In addition to or instead of this sanction, the court, on motion and after giving an opportunity to be heard:

1 (A) may order payment of the reasonable expenses, including attorney's fees, caused by the failure.

2 (B) may inform the jury of the party's failure; and

3 (C) may impose other appropriate sanctions, including any of the orders listed in Rule 37(b)(2)(A)(i)—
4 (vi).

5 1st Amendment: Freedom of speech, press, religion, assembly, and petition.

6 5th Amendment: No one shall be deprived of life, liberty or property without due process of law....

7 7th Amendment: Rights in Civil Cases..... the right of trial by jury shall be preserved....

8 13th Amendment: Abolish Slavery.....Free Labor.....

9 14th Amendment: If you are born or naturalized in the United States then you are a citizen of the
10 United States.

11 15th Amendment: You cannot prevent a person from voting because of race, color, or creed.

12
13 Stoll vs. Runyon: The doctrine of equitable tolling "applies when the plaintiff is prevented from
14 asserting a claim by wrongful conduct on the part of the defendant, or when extraordinary circumstances
15 beyond the plaintiff's control made it impossible to file a claim on time." Stoll v. Runyon, 165 F.3d 1238
16 (9th Cir. 1999).

17
18 Equitable Tolling; Mental Incompetence. Mental incompetence may equitably toll administrative
19 deadlines if a plaintiff meets a two-part test. Bills v. Clark, 628 F.3d 1092, 1099 (9th Cir.2010); Stoll v.
20 Runyon, 165 F.3d 1238, 1242 (9th Cir.1999). First, a plaintiff "must show his mental impairment was an
21 'extraordinary circumstance' beyond his control" by demonstrating the impairment was so severe that
22 either "(a) plaintiff was unable rationally or factually to personally understand the need to timely file, or
23 (b) plaintiff's mental state rendered him unable personally to prepare [a complaint] and effectuate its
24 filing." Bills, 628 F.3d at 1099-1100. Second, the plaintiff "must show diligence in pursuing the claims
25 to the extent he could understand them, but that the mental impairment made it impossible to meet the
26 filing deadline under the totality of the circumstances...." Id. at 1110.

27
28 Johnson v. Lucent Technologies Inc., 653 F.3d 1000 (9th Cir. 2011).

1 The standard for equitable tolling based on mental impairment is delineated by *Bills v. Clark*, 628 F.3d
2 1092, 1099-100 (9th Cir.2010):

3 (1) First, a petitioner must show his mental impairment was an "extraordinary circumstance" beyond his
4 control by demonstrating the impairment was so severe that either

5 (a) petitioner was unable rationally or factually to personally understand the need to timely file, or

6 (b) petitioner's mental state rendered him unable personally to prepare a habeas petition and effectuate
7 its filing.

8 (2) Second, the petitioner must show diligence in pursuing the claims to the extent he could understand
9 them, but that the mental impairment made it impossible to meet the filing deadline under the totality of
10 the circumstances, including reasonably available access to assistance.

11 *Id.* This reiterates the stringency of the overall equitable tolling test: the mental impairment must be so
12 debilitating that it is the but-for cause of the delay, and even in cases of debilitating impairment the
13 petitioner must still demonstrate diligence. *Id.* at 1100.

14 *Yow Ming Yeh v. Martel*, 751 F.3d 1075 (9th Cir. 2014).

15
16 *French vs. Office of Personnel Management*, The doctrine of equitable tolling "applies when the
17 plaintiff is prevented from asserting a claim by wrongful conduct on the part of the defendant, or when
18 extraordinary circumstances beyond the plaintiff's control made it impossible to file a claim on time."
19 *Stoll v. Runyon*, 165 F.3d 1238 (9th Cir. 1999).

20 file, or (b) plaintiff's mental state rendered him unable personally to prepare[a complaint] and effectuate
21 its filing." *Bills*, 628 F.3d at 1099-1100. Second, the plaintiff "must show diligence in pursuing the
22 claims to the extent he could Equitable Tolling;. Mental Incompetence Mental incompetence may
23 equitably toll administrative deadlines if a plaintiff meets a two-part test. *Bills v. Clark*, 628 F.3d 1092,
24 1099 (9th Cir.2010); *Stoll v. Runyon*, 165 F.3d 1238, 1242 (9th Cir.1999). First, a plaintiff "must show
25 his mental impairment was an 'extraordinary circumstance' beyond his control" by demonstrating the
26 impairment was so severe that either "(a) plaintiff was unable rationally or factually to personally
27 understand the need to timely understand them, but that the mental impairment made it impossible to
28 meet the filing deadline under the totality of the circumstances...." *Id.* at 1110.

Johnson v. Lucent Technologies Inc., 653 F.3d 1000 (9th Cir. 2011).

The standard for equitable tolling based on mental impairment is delineated by Bills v. Clark, 628 F.3d 1092, 1099-100 (9th Cir.2010):

(1) First, a petitioner must show his mental impairment was an "extraordinary circumstance" beyond his control by demonstrating the impairment was so severe that either

(a) petitioner was unable rationally or factually to personally understand the need to timely file, or

(b) petitioner's mental state rendered him unable personally to prepare a habeas petition and effectuate its filing.

(2) Second, the petitioner must show diligence in pursuing the claims to the extent he could understand them, but that the mental impairment made it impossible to meet the filing deadline under the totality of the circumstances, including reasonably available access to assistance.

Id. This reiterates the stringency of the overall equitable tolling test: the mental impairment must be so debilitating that it is the but-for cause of the delay, and even in cases of debilitating impairment the petitioner must still demonstrate diligence. Id. at 1100.

Yow Ming Yeh v. Martel, 751 F.3d 1075 (9th Cir. 2014).

The doctrine of equitable tolling "applies when the plaintiff is prevented from asserting a claim by wrongful conduct on the part of the defendant, or when extraordinary circumstances beyond the plaintiff's control made it impossible to file a claim on time." Stoll v. Runyon, 165 F.3d 1238 (9th Cir. 1999).

Equitable Tolling; Mental Incompetence. Mental incompetence may equitably toll administrative deadlines if a plaintiff meets a two-part test. Bills v. Clark, 628 F.3d 1092, 1099 (9th Cir.2010); Stoll v. Runyon, 165 F.3d 1238, 1242 (9th Cir.1999). First, a plaintiff "must show his mental impairment was an 'extraordinary circumstance' beyond his control" by demonstrating the impairment was so severe that either "(a) plaintiff was unable rationally or factually to personally understand the need to timely file, or (b) plaintiff's mental state rendered him unable personally to prepare[a complaint] and effectuate its filing." Bills, 628 F.3d at 1099-1100. Second, the plaintiff "must show diligence in pursuing the claims

1 to the extent he could understand them, but that the mental impairment made it impossible to meet the
2 filing deadline under the totality of the circumstances...." Id. at 1110.

3 Johnson v. Lucent Technologies Inc., 653 F.3d 1000 (9th Cir. 2011).

4 The standard for equitable tolling based on mental impairment is delineated by Bills v. Clark, 628 F.3d
5 1092, 1099-100 (9th Cir.2010):

6 (1) First, a petitioner must show his mental impairment was an "extraordinary circumstance" beyond his
7 control by demonstrating the impairment was so severe that either

8 (a) petitioner was unable rationally or factually to personally understand the need to timely file, or

9 (b) petitioner's mental state rendered him unable personally to prepare a habeas petition and effectuate
10 its filing.

11 (2) Second, the petitioner must show diligence in pursuing the claims to the extent he could understand
12 them, but that the mental impairment made it impossible to meet the filing deadline under the totality of
13 the circumstances, including reasonably available access to assistance.

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15 debilitating that it is the but-for cause of the delay, and even in cases of debilitating impairment the
16 petitioner must still demonstrate diligence. Id. at 1100.

17 Yow Ming Yeh v. Martel, 751 F.3d 1075 (9th Cir. 2014).

18
19 French vs. Office of Personnel Management: Holding that a mentally incompetent pro se claimant
20 should not "alone....be charged with the task of establishing his case" for disability benefits based upon
21 mental incompetency.

22
23 Taylor v. Merit Sys. Prot. Bd.

24
25 French v. Office of Personnel Management, 810 F.2d 1118 (ed. Cir. 1987) we held that it was an abuse
26 of discretion to dismiss as untimely a mentally incompetent man's pro se claim for disability retirement
27 benefits. Thus, I was denied making me whole from the harm that was done to me and the judge, jury,
28

1 executioner, and decision maker was all working as one, I never was afforded a jury or discovery, but I
2 possess monumental supporting documentation to prove my case.

3
4 Federal Rules of Civil Procedures (December 1, 2019)

5 (Due Process) was violated, the rule of law was violated, the Constitution was violated, the same rules
6 that applied to the postal service did not apply to me, because opposing counsel were untimely twice,
7 responding to the initial complaint and after District Judge Boulware, II denied my case in part and
8 granted in part, opposing counsel did not timely, nor even file an "Answer", but none of that mattered.
9 The Initial Complaint was moving along (ECF No. 1 - 3), and discovery was in process under District
10 Judge Miranda Du, all of a sudden Magistrate Judge Cam Ferenbach was starting to stop this
11 progression and ultimately Ordered me to file an Amended Complaint and then District Judge Richard
12 F. Boulware, II took over and the ENE – Evaluator was no longer on the docket to mediate the
13 supporting documentation that was filed with my Initial Complaint. My assistant walked me through the
14 best she could because she is not a lawyer. Even though things were in writing, I could not address them
15 in court, because I was traumatized and still today I suffer the catastrophic damages that the postal
16 service put upon me, and I have relocated across the country 13 times since 8/25/08, and seven of those
17 moves were within a year and a half. This is just my case, and I can't tell it all because I was psychotic,
18 traumatized, and immobilized, so there are years in between that I don't remember things happening,
19 and once again, this is just my case, not the so many others that is going through right today. I have the
20 CD of Dr. Mary J. Reed's Deposition Testimony and the written form does not match the video form. I
21 only remember two exchanges of questioning, yet it was four. Opposing counsel, Krystal (Gallagher)
22 Rosse, asked Dr. Reed "If at any time that you were treating Ms. McGee, was she Incapacitated", and
23 Dr. Reed stated yes, when she was having panic attacks, moving, caregiver, cardiac problems, and
24 things like that. Ms. Rosse turned it to me and I said I'm done, Ms. Rosse tried to talk again, and I said,
25 I'm done again and then it was over and the reporter and videographer stopped recording, however, in
26 the written document of the testimony states something else was said, but it wasn't. Court hearings were
27 traumatizing to me and I could not hear, understand, or remember what was said, so I would be in a
28 trance. I was mentally incoherent so my assistant pulled my arm and I came out of my daze and sat

down, but I could not here or understand what Judge Boulware. II was saying to Ms. Rosse. This disease will not rid itself without accountability to dissuade against such atrocities.

Manatt v. Bank of America, 339 F.3d 792 (9th Cir. 2003) in response, Congress amended § 1981 to include within its definition of making and enforcing contracts....We have recognized that the “legal principles guiding a court in a Title VII dispute apply with equal force in a § 1981 action. “Manatt v. Bank of Am., NA. 339 F.3d 792. 797 (9th Cir. 2003) Reynaga v. Roseburg Forest Products, 847 F.3d 678 (9th Cir. 2017).

Postal Service Reorganization Act– Sovereign Immunity:the postal service is like any other business that can sue and be sued. POSTAL SERVICE v. FLAMINGO INDUSTRIES (USA) LTD. (02-1290) 540 U.S. 736 (2004) 302 F.3d 985, reversed

Chisholm v. United States Postal Service: CHISHOLM v. UNITED STATES POSTAL SERVICE 516 F. Supp. 810 (W.D.N.C. 1980), 665 F. 2d 482 – 1981 Chisholm v. United States Postal Service, Chisholm v. United States Postal Service, 570 F. Supp. 1044 (W.D.N.C. 1983). Although the elements of the case changed the litigation process to Title VII, there was no violation of law stating that the USPS could not be sued under Section 1981, because it can. Otherwise, plaintiff CBOCS West, Inc., v. Hedrick G. Humphries: CBOCS West, Inc., v. Hedrick G. Humphries, 553 U.S. 442 (2008) would not have brought suit under Section 1981, and there are no time requirements for filing Section 1981 cases.

12(g) JOINING MOTIONS.

(2) Limitation on Further Motions. Except as provided in Rule 12(h)(2) or (3), a party that makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion.

12 (h) WAIVING AND PRESERVING CERTAIN DEFENSES.

(2) When to Raise Others. Failure to state a claim upon which relief can be granted, to join a person required by Rule 19(b), or to state a legal defense to a claim may be raised:

1 (A) in any pleading allowed or ordered under Rule 7(a);

2 (B) by a motion under Rule 12(c); or

3 (C) at trial.

4 (3) Lack of Subject-Matter Jurisdiction. If the court determines at any time that it lacks subject-matter
5 jurisdiction, the court must dismiss the action.

6
7 Defendant (ECF No. 170) = This Motion on failure to state a claim is not allowed under Rule 12(g)(2)
8 because defendant failed to raise it in the two prior motions to dismiss and it does not fall under
9 12(h)(2). This is not a pleading allowed under rule 7(a). This is not a motion under rule 12(c) because it
10 is not a motion for judgment on the pleadings. This is not the trial stage.

11 Lack of subject matter does not apply as outlined below.

12 A. Legal Standards

13 1. Sovereign Immunity

14 Defendant's facial challenge accepting as true the allegation in the amended complaint fails miserably.
15 This is not an action against the United States but rather against the USPS in which sovereign immunity
16 has been waived. Defendant cites no ninth circuit or supreme court cases that support their position.
17 They cite no case law regarding the USPS at all.

18 39 U.S. Code § 409 - Suits by and against the Postal Service

19 (a)

20 Except as otherwise provided in this title, the United States district courts shall have original but not
21 exclusive jurisdiction over all actions brought by or against the Postal Service

22 (b)

23 Unless otherwise provided in this title, the provisions of title 28 relating to service of process, venue,
24 and limitations of time for bringing action in suits in which the United States, its officers, or employees
25 are parties, and the rules of procedure adopted under title 28 for suits in which the United States, its
26 officers, or employees are parties, shall apply in like manner to suits in which the Postal Service, its
27 officers, or employees are parties.(showing USPS is separate)

28 (d)

(1) For purposes of the provisions of law cited in paragraphs (2)(A) and (2)(B), respectively, the Postal Service—

(A)

shall be considered to be a “person”, as used in the provisions of law involved; and

(B)

shall not be immune under any other doctrine of sovereign immunity from suit in Federal court by any person for any violation of any of those provisions of law by any officer or employee of the Postal Service.

(g)

(1) Notwithstanding any other provision of law, legal representation may not be furnished by the Department of Justice to the Postal Service in any action, suit, or proceeding arising, in whole or in part, under any of the following:

(A)

Subsection (d) or (e) of this section.

(B)

Subsection (f) or (g) of section 504 (relating to administrative subpoenas by the Postal Regulatory Commission).

(C)

Section 3663 (relating to appellate review).

The Postal Service may, by contract or otherwise, employ attorneys to obtain any legal representation that it is precluded from obtaining from the Department of Justice under this paragraph.

(h)

A judgment against the Government of the United States arising out of activities of the Postal Service shall be paid by the Postal Service out of any funds available to the Postal Service, subject to the restriction specified in section 2011(g).

The Supreme Court explained that: [S]uch waivers by Congress of governmental immunity in case of such federal instrumentalities should be liberally construed. . . . Hence, when Congress establishes such

1 an agency, authorizes it to engage in commercial and business transactions with the public, and permits
2 it to "sue and be sued," it cannot be lightly assumed that restrictions on that authority are to be implied.
3 Rather if the general authority to "sue and be sued" is to be delimited by implied exceptions, it must be
4 clearly shown that certain types of suits are not consistent with the statutory or constitutional scheme,
5 that an implied restriction of the general authority is necessary to avoid grave interference with the
6 performance of a governmental function, or that for other reasons it was plainly the purpose of Congress
7 to use the "sue and be sued" clause in a narrow sense. In the absence of such showing, it must be
8 presumed that when Congress launched a governmental agency into the commercial world and endowed
9 it with authority to "sue or be sued," that agency is not less amenable to judicial process than a private
10 enterprise under like circumstances would be.

11 Federal Housing Administration, Region 4 v. Burr 309 U.S. 242 (1940).

12
13 The distinction between an action properly maintained against the agency and one against the United
14 States is whether the funds to satisfy any monetary judgment will come from separate agency funds or
15 from the public Treasury. CIVIL ACTIONS AGAINST THE UNITED § 6.51, at 417-18,

16
17 The Postal Service has the authority to "sue and be sued," 39 U.S.C. § 401(1) (1982) (Postal Service
18 may "sue and be sued in its official name"). and has its own claims settlement authority. Id. § 401(8)
19 (Postal Service may "settle and compromise claims by or against it"); id. § 2603 (Postal Service may
20 "adjust and settle" claims for damage to property and persons). By statute, a "judgment against the
21 Government of the United States arising out of activities of the Postal Service shall be paid by the Postal
22 Service out of any funds available to the Postal Service.' Id. § 409(e). The Supreme Court has held that
23 "[b]y launching 'the Postal Service into the commercial world,' and including a sue-and-be-sued clause
24 in its charter, Congress has cast off the Service's 'cloak of sovereignty' and given it the 'status of a
25 private commercial enterprise.' " Loeffler, 108 S. Ct. at 1970 (quoting Library of Congress v. Shaw, 478
26 U.S. 310, 317 n.5 (1986); Franchise Tax Bd., 467 U.S. at 520). Thus, the Postal Service "is designed to
27 be self-supporting and to operate very much like a commercial business." Perez v. United States, 830
28 F.2d 54, 60 (5th Cir. 1987).... Federal government corporations are amenable to suit in much the same

manner as the sue-and-be-sued clause agencies, except that even the last vestiges of sovereign immunity have largely been stripped away from these instrumentalities. Judgments against government corporations, including awards incidental to litigation, are payable from corporation funds without any appropriation by Congress to pay the judgment. *Walling v. Norfolk S. Ry.*, 162 F.2d 95, 97 (4th Cir. 1947) (judgment for costs against government corporation is payable from corporation funds without the need for an appropriation by Congress to pay the judgment).... Because many government corporations are financially self-sufficient and are designed to operate much like commercial businesses, it is appropriate to regard their immunity from legal process very narrowly. Courts should construe waivers of sovereign immunity broadly when a governmental entity's activities "are primarily commercial and . . . those activities aspire to profitability." *A.L.T. Corp. v. Small Business Admin.*, 823 F.2d 126, 128 (5th Cir. 1987). *Gregory C. Sisk, Interim Attorney's Fees Awards against the Federal Government*, 68N.C. L. Rev.117 (1989). Available at:<http://scholarship.law.unc.edu/nclr/vol68/iss1/11>

2. The USPS is not limited to Title VII claims for discrimination and again defendant cites zero case law regarding the USPS which waived sovereign immunity.

3. Dismissal under Fed. R. Civ. P. 12(b)(6)

As outlined above a motion under rule 12(b)(6) cannot be brought in this third motion to dismiss.

Further the defendant has accepted as true all the allegations in the amended complaint in regard to this motion.

We have recognized that the "legal principles guiding a court in a Title VII dispute apply with equal force in a § 1981 action." *Manatt v. Bank of Am., NA*, 339 F.3d 792, 797 (9th Cir. 2003) *Reynaga v. Roseburg Forest Products*, 847 F.3d 678 (9th Cir. 2017).

Plaintiff has set forth prima facie elements regarding her claims, merely by EEO's, EEOC, Affidavits, ECF Nos, 1, 8, 136, 139, 143, 167, 173, 181, and throughout her case.

Race discrimination 1981

1. African American

2. Adverse actions of denial of promotion based on race, hostile environment based on race consisting of and retaliation based on race consisting of

REYNAGA V. ROSEBURG FOREST PRODUCTS 13 vicariously or through negligence. See Steiner v. Showboat Operating Co., 25 F.3d 1459, 1462–63 (9th Cir. 1994). Reynaga v. Roseburg Forest Products, 847 F.3d 678 (9th Cir. 2017).

SHOW YOU MADE THE PRIMA FACIE UNDER THE FOLLOWING

In addition to facing liability by creating a hostile work environment, an employer is liable under Title VII and § 1981 when it subjects an employee to disparate treatment....

To show a prima facie case of disparate treatment, a plaintiff must offer evidence that “give[s] rise to an inference of unlawful discrimination.” *Sischo-Nownejad v. Merced Cmty. Coll. Dist.*, 934 F.2d 1104, 1110 (9th Cir. 1991) (quoting *Tex. Dep’t of Cmty. Affairs v. Burdine*, 450 U.S. 248, 250, 253 (1981)).

One way to establish an inference of discrimination is by satisfying the prima facie elements from *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973): (1) the plaintiff belongs to a protected class, (2) he was performing according to his employer’s legitimate expectations, (3) he suffered an adverse employment action, and (4) similarly situated employees were treated more favorably, or other circumstances surrounding the adverse employment action give rise to an inference of discrimination. *Hawn v. Exec. Jet Mgmt., Inc.*, 615 F.3d 1151, 1156 (9th Cir. 2010); *Godwin v. Hunt Wesson, Inc.*, 150 F.3d 1217, 1220 (9th Cir. 1998) (citing *McDonnell Douglas*, 411 U.S. at 802).... However, nothing compels the parties to use the *McDonnell Douglas* framework. *McGinest*, 360 F.3d at 1122. In the alternative, a plaintiff may simply produce direct or circumstantial evidence demonstrating that a discriminatory reason “more likely than not motivated” the employer. *Metoyer v. Chassman*, 504 F.3d 919, 931 (9th Cir.

REYNAGA V. ROSEBURG FOREST PRODUCTS 22 2007) (citation omitted); see also *Hawn*, 615 F.3d at 1155 (explaining that a plaintiff may show an inference of discrimination “through comparison

to similarly situated individuals, or any other circumstances surrounding the adverse employment action [that] give rise to an inference of discrimination”) (internal quotation marks and citation omitted). Either way, we require “very little evidence to survive summary judgment in a discrimination case, because the ultimate question is one that can only be resolved through a searching inquiry—one that is most appropriately conducted by the factfinder, upon a full record.” *Schnidrig v. Columbia Mach., Inc.*, 80 F.3d 1406, 1410 (9th Cir. 1996) (internal quotation marks and citation omitted).... To establish a prima facie case of retaliation, Efrain must show “that he undertook a protected activity under Title VII, his employer subjected him to an adverse employment action, and there is a causal link between those two events.” *Vasquez*, 349 F.3d at 646.... Similar to the disparate treatment context, if Efrain establishes a prima facie case, the burden then shifts to Roseburg to advance a legitimate, nonretaliatory reason for any adverse employment action taken against Efrain. *REYNAGA V. ROSEBURG FOREST PRODUCTS* 27 25 F.3d at 1464–65. If Roseburg meets this burden, then Efrain “has the ultimate burden of showing that [Roseburg’s] proffered reasons are pretextual.” *Id.* at 1465. *Reynaga v. Roseburg Forest Products*, 847 F.3d 678 (9th Cir. 2017).

Defendant doesn’t have sovereign immunity to be sued and Title VII is not the exclusive remedy for Plaintiff’s race discrimination claim. Accordingly, for the foregoing reasons, Plaintiff’s § 1981 claim should stand and FRCP 12(b)(6) cannot be brought up again in this third dismissal. Plaintiff’s Original Complaint and her Amended Complaint, along with all five Claims are mutually appropriate and supported under both Title VII and Civil Rights, Section § 1981. Plaintiff’s § 1981, does not have the time constraint that Title VII has, so why the court did not grant plaintiff’s case is a mystery. Plaintiff believes that the court is supposed to find the truth, follow the law, based on the factual evidence, and with what plaintiff submitted, it appears that the court had a different agenda.

IV. CONCLUSION

Plaintiff requests the court to Re-Open her case due to new factual evidence that has never been seen or considered before by the court. She has also, explained discrepancies with her filings, opposing counsel, her disabilities, and the law; and the court should grant her request. Plaintiff’s mental and physical

1 conditions precluded her from due process under law. She was incapacitated and could not properly
2 speak and understand what was required of her to fight and prove her case even though there were
3 consistent filings on record with the assistance of Rosemary Garity. (Exhibit 1) shows plaintiff's
4 deficits, disabilities, and health conditions; because of the Nevada Sierra District Postal Service's
5 actions and behaviors; by management, towards Ms. McGee; and the documentation is throughout the
6 case. Plaintiff has had 30 plus medical providers as she has suffered gravely and is still affected today.
7 Also, she is still under the care of healthcare providers. Plaintiff's health condition precluded and
8 impeded upon her ability to further prove her case; thus, she is asking the court to Re-Open her case
9 based on new evidence. Plaintiff knows that the evidence and law that has been filed in motions and
10 pleadings overwhelmingly proves her case, but it is unfortunate that she was not capable of presenting it
11 orally due to her incapacitation; therefore, she asks the court to Re-Open her case based on new
12 evidence and error of the court to allow her due process under law. Plaintiff's evidence is
13 insurmountable to say the least to prove her case, with an impartial, unbiased, professional, an ethical
14 court. Plaintiff request that her case be Re-Opened based on new supporting evidence, along with
15 changing her address to the above.

16
17 Respectfully submitted this 3rd day of September 2022,

18 /s/ Lola McGee

19 Lola McGee

20 *Plaintiff Pro Se*
21
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28

CERTIFICATE OF SERVICE

I, Lola McGee, Plaintiff certify that this **PLAINTIFF'S 4th MOTION TO RE-OPEN HER CASE BASED ON NEW AND OLD FACTUAL MEDICAL EVIDENCE - ALONG WITH LACK OF DUE PROCESS – CORRUPTION – FAILURE TO ACKNOWLEDGE INCAPACITATION – AND ULTIMATELY DENIED JUSTICE IN HER CASE** was filed and served via the courts electronic filing system on September 3, 2022 to the following:

Clerk, US District Court,
District of Nevada
333 S. Las Vegas Blvd.
Las Vegas, NV 89101

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/s/ Lola McGee
Lola McGee
Plaintiff Pro Se

Date: 9-3-22

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3

4 Lola McGee)

5 Plaintiff)

6 v.)

Case No. 2:13-cv-01426-RFB-VCF

7 Louis DeJoy,)

8 Postmaster General,)

9 United States Postal Service)

[PROPOSED] ORDER

10 Defendant)

11
12 The Court grants plaintiff's 4th Motion to Re-Open her case based on new and old supporting evidence.
13
14
15
16
17

18 IT IS SO ORDERED:

19 _____
20 HONORABLE RICHARD F. BOULWARE, II

21 UNITED STATES DISTRICT JUDGE

22 DATED: _____
23
24
25
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