[DO NOT PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

No. 23-11337

Non-Argument Calendar

ANDREW HORACE,

Plaintiff-Appellant,

versus

MD NOW MEDICAL CENTERS, INC.,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 9:22-cv-81965-DMM

Before WILSON, LUCK, and LAGOA, Circuit Judges.

PER CURIAM:

Andrew Horace, proceeding *pro se*, appeals the district court's order dismissing his third amended complaint against MD Now Medical Centers, Inc. ("MD Now"), under Federal Rule of Civil Procedure 12(b)(6). On appeal, Horace argues that (1) the district court erred when it excluded evidence of his medical records and expert witness statements and (2) the court failed to apply the correct law. For the following reasons, we affirm.

I. BACKGROUND[1]

Horace initiated this case against MD Now in Florida state court on March 22, 2022. Attached to this initial complaint is what appears to be a medical provider's note following Horace's visit for a "[c]ontusion of nose." Horace subsequently amended his complaint several times.

In his third amended complaint, filed on November 21, 2022, Horace alleged the following facts. On March 5, 2022, Horace went to MD Now, an "Urgent Care" operator, to have a PCR COVID test done. Jaylen Williams, an MD Now employee, met Horace in the lobby and appeared dissatisfied and had "poor body demeanor."

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[1] Because we are reviewing a dismissal under Rule 12(b)(6), we take the factual allegations in Horace's complaint as true and construe them in the light most favorable to Horace as the plaintiff. *Timson v. Sampson*, 518 F.3d 870, 872 (11th Cir. 2008).

Williams gave Horace an uncomfortable feeling, but Horace decided to go to the medical room with Williams. Williams asked Horace to sit at the edge of his chair and tilt his head back, at which time Williams "forcefully inserted the swab in [his] left nostril in a stabbing action." Horace moved his body back, and his eyes began to water. Williams then told Horace that the doctor would see him shortly. Dr. Rami T. Mansour then entered the room. Horace told Dr. Mansour what happened, but Dr. Mansour did not show him compassion. Horace then reported what happened to the front desk and returned to the center to complain to the manager. According to Horace, he filed a complaint with the U.S. Department of Health and Human Services Office for Civil Rights on March 9, 2022, which issued a closure letter to MD Now to share with its staff as part of an ongoing training to be in compliance with applicable nondiscrimination laws.

Horace alleged that MD Now "must abide by Federal Civil Rights laws," but did not do so. According to Horace, Kathy Vaughn assured him that Williams was no longer employed by MD Now following his complaint. Horace alleged that Williams's conduct towards him was "[u]nequivocally discriminatory." He cited Article 25 of the United Nations Universal Declaration of Human Rights, which lists medical care as a human right, and claimed that Williams violated that right.

Horace alleged two claims against MD Now. First, he alleged that MD Now violated Title VII of the Civil Rights Act of 1964 by discriminating against him on the basis of sexual

orientation. Horace claimed that: his sexual orientation was "not consistent with [MD Now's] perception of acceptable gender roles"; that his voice was "high pitched" and he appeared "well groomed" on the day of the alleged incident; that Williams immediately categorized him as gay when he met him based on his appearance; and that Williams caused him intentional harm because of his sexual orientation. Second, he alleged that MD Now violated his due process rights under the Fifth Amendment when MD Now subjected him to a discriminatory environment, intentionally inflicted him harm because of his sexual orientation, and did not provide the required standard of care. Horace did not attach any medical records or expert witness statements to his third amended complaint.

MD Now removed the case to federal court. Then, MD Now moved to dismiss Horace's third amended complaint. MD Now argued that there were no facts alleged that showed that Williams knew of Horace's sexual orientation, or acted thereupon, beyond a speculative level. MD Now also argued that there were no objective facts showing that Horace's sexual orientation played a role during Williams's nasal swab. As to the Title VII claim, MD Now contended that Horace failed to state a claim because Title VII only prohibits unlawful employment practices and noted that Horace was not its employee or applicant. As to the Fifth Amendment claim, MD Now argued that the claim failed because the Fifth Amendment does not apply to private actors such as itself. Horace opposed MD Now's motion.

The district court granted MD Now's motion to dismiss. As to the Title VII claim, the court concluded that Horace could not avail himself of Title VII given that he did not allege to be MD Now's employee. As to the Fifth Amendment claim, the court found that the claim failed because the Fifth Amendment restricts government actions and MD Now is a private institution. And even construed broadly under another federal law, the district court found his claims of discrimination were too speculative to survive dismissal. The court found that any further amendments would be futile. Accordingly, the district court dismissed Horace's third amended complaint with prejudice.

Horace then appealed and attached to his notice of appeal a receipt of payment to an urgent care center for "[n]asal swelling" and the medical provider's note following his visit for "[c]ontusion of nose" that was attached to his initial complaint.

II. ANALYSIS

We review *de novo* a district court's ruling on a Rule 12(b)(6) motion to dismiss, "accepting the allegations in the complaint as true and construing them in the light most favorable to the plaintiff." *Timson v. Sampson*, 518 F.3d 870, 872 (11th Cir. 2008). To survive a Rule 12(b)(6) motion to dismiss, a complaint must allege sufficient facts to state a claim that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

While we hold *pro se* pleadings to a less stringent standard than pleadings drafted by attorneys and thus liberally construe *pro se* pleadings, we will not "serve as *de facto* counsel for a party" or

"rewrite an otherwise deficient pleading in order to sustain an action." *Campbell v. Air Jam. Ltd.*, 760 F.3d 1165, 1168-69 (11th Cir. 2014) (quoting *GJR Invs., Inc. v. County of Escambia*, 132 F.3d 1359, 1369 (11th Cir. 1998)). Additionally, issues not clearly raised by a *pro se* litigant are deemed abandoned. *Timson*, 518 F.3d at 874. A claim is abandoned on appeal when it is made in passing or raised in a perfunctory manner without supporting arguments or authority. *Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 681 (11th Cir. 2014). Further, an issue that was not raised in the district court and is raised for the first time on appeal is considered forfeited, and we will not address it absent extraordinary circumstances. *Access Now, Inc. v. Sw. Airlines Co.*, 385 F.3d 1324, 1331–32 (11th Cir. 2004) (noting that we may exercise our discretion to consider a forfeited issue when: (1) the issue involves a pure question of law and refusal to consider it would result in a miscarriage of justice; (2) the party lacked an opportunity to raise the issue at the district court level; (3) the interest of substantial justice is at stake; (4) the proper resolution is beyond any doubt; or (5) the issue presents significant questions of general impact or of great public concern).

Here, Horace has forfeited his argument that the district court erred when it did not consider his medical records and expert witness statements because he did not raise this argument to the district court nor demonstrates on appeal that any of the *Access Now* exceptions to forfeiture apply. *See id.* Further, Horace has abandoned his argument that the court failed to apply the correct law by making only passing reference to this argument in his initial brief. *Sapuppo*, 739 F.3d at 681; *Timson*, 518 F.3d at 874. Indeed,

Horace does not explain how the district court failed to apply the correct law, state what the correct law is, or describe how any evidence would demonstrate that he pled a plausible claim for relief under Title VII or the Fifth Amendment.

Accordingly, we affirm the district court's dismissal order.

AFFIRMED.

APPENDIX B

DECISION OF THE SOUTHERN DISTRICT COURT OF FLORIDA

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 22-CV-81965-MIDDLEBROOKS

ANDREW L. HORACE,

Plaintiff,

v.

MD NOW URGENT CARE,

Defendant. /

ORDER GRANTING MOTION TO DISMISS

THIS CAUSE comes before the Court upon Defendant's Motion to Dismiss. (DE 19-1). Plaintiff, proceeding *pro se*, filed what I construe to be a response on March 20, 2023. (DE 20). For the following reasons, Defendant's Motion is granted.

Plaintiff initiated this action in Florida state court on March 22, 2022. (DE 1-2 at 1). The state court granted Plaintiff leave to amend his complaint on two occasions. (*Id.* at 1). On November 21, 2022, Plaintiff filed his Third Amended Complaint alleging, for the first time, violations of federal law. (*Id.* at 1-2). Specifically, Plaintiff alleges that he walked into an MD Now Urgent Care facility for a COVID test and was subsequently injured when an employee ("the MD Employee") "forcefully inserted the swab in Plaintiff's left nostril in a stabbing action." (DE 1-3 at 1). Plaintiff alleges that the MD Employee intentionally injured Plaintiff because of "discrimination/hate" in violation of Title VII (Count I) and the Fifth Amendment Due Process Clause (Count II). (*Id.* at 4-5). Plaintiff describes himself as "a male whose sexual orientation is not consistent with Defendant's perception of acceptable gender roles." (*Id.* at 4).

On December 21, 2022, Defendant removed the case to this Court. (DE 1). Before doing so however, on the same day, Defendant filed a Motion to Dismiss the Third Amended Complaint. (*See* DE 10 at 3). On January 17, 2023, Plaintiff moved to remand the case and/or strike Defendant's Motion to Dismiss. (DE 4). On March 6, 2023, I denied Plaintiff's motion, directed Defendant to refile its Motion to Dismiss, and allowed Plaintiff fourteen days to file a response. (DE 18). On March 20, 2023, Plaintiff seems to have filed a response. (DE 20).

Plaintiff begins his March 20 filing with "PLAINTIFF'S RESPONSE IN COMPLIANCE WITH 3/6/23 COURT ORDER . . . . " (*Id.*). However, rather than provide any substantive response to Defendant's Motion, Plaintiff seems to provide a copy of the Third Amended Complaint. (*See Id.* at 4). In any event, turning to Defendant's Motion, it is evident that Plaintiff's complaint does not state a cause of action under federal law.

Plaintiff cannot avail himself of Title VII given that he does not allege to be an employee of MD Now. The Due Process Clause of the Fifth Amendment restricts government actions—MD Now is a private institution. Even construed broadly under another federal law, Plaintiff's claims of discrimination are too speculative to survive dismissal. Plaintiff alleges that his "natural high pitched voice" and "well groom[ing]" were enough for the MD Employee to "immediately [categorize] him as a gay male." (DE 1-3 at 4). On this basis alone, Plaintiff alleges that the MD Employee "intentionally caused [him] harm . . . because of his sexual orientation." (*Id.*). With these facts alone I do not see how Plaintiff can state any cause of action for discrimination.

Given that Plaintiff has amended his complaint three times and I find that further amendments would be futile, I will dismiss with prejudice.

According, it is hereby **ORDERED AND ADJUDGED** that:

(1) Defendant's Motion to Dismiss (DE 19-1) is **GRANTED.**

(2) To the extent Plaintiff sought leave to amend in his response (DE 20) that is also **DENIED.**

(3) Plaintiff's Third Amended Complaint (DE [1-3]) is **DISMISSED WITH PREJUDICE.**

(4) The Clerk of Court shall **CLOSE THIS CASE** and **DENY AS MOOT** all pending motions.

SIGNED in Chambers at West Palm Beach, Florida this 24th day of March, 2023.

Donald M. Middlebrooks
United States District Judge

cc: Honorable William Matthewman
Counsel of Record
Andrew L. Horace, Plaintiff
3714 E. Sandpiper Drive #9
Boynton Beach, FL 33436

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 22-CV-81965-MIDDLEBROOKS

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Plaintiff,

v.

MD NOW URGENT CARE,

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SIGNED in Chambers at West Palm Beach, Florida this 24th day of March, 2023.

Donald M. Middlebrooks
United States District Judge

cc: Honorable William Matthewman
Counsel of Record
Andrew L. Horace, Plaintiff
3714 E. Sandpiper Drive #9
Boynton Beach, FL 33436

APPENDIX C

Pretrial Scheduling Order from District Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 22-81965-Civ-Middlebrooks/Matthewman

Exhibit 2

ANDREW HORACE,

Plaintiff(s),

v.

MD NOW MEDICAL CENTERS, INC.,

Defendant(s).
_____/

PRETRIAL SCHEDULING ORDER
AND ORDER REFERRING CASE TO MEDIATION

THIS CAUSE is before the Court upon order of reference from the Honorable Donald M. Middlebrooks, United States District Judge. [DE 7]. The Court held a scheduling conference on February 17, 2023, via Zoom video teleconference. Pursuant to S.D. Fla. L. R. 16.1(b), the Court **ORDERS** the following:

1. **Trial:** This case is set for trial before U.S. District Judge Donald M. Middlebrooks during the two-week trial period commencing August 14, 2023, at 9:00 a.m., with a calendar call set for August 9, 2023, at 1:15 p.m. This Court hereby advises the parties of the opportunity to consent to a specially set trial before a U.S. Magistrate Judge pursuant to 28 U.S.C. § 636(c). A fully executed consent form should be filed within 30 days from this Order's date if the parties wish to consent to trial before a U.S. Magistrate Judge. A sample form is attached as Appendix A to this Scheduling Order.

2. **Pretrial Discovery, Rule 26(f) Conference and Discovery Plan:** Pretrial discovery shall be conducted in accordance with S.D. Fla. L.R. 16.1 and 26.1, and the Federal Rules of Civil Procedure. The parties are directed to meet and confer pursuant to Federal Rule of Civil Procedure 26(f). The parties must consider the nature and basis of their claims and defenses and the possibilities for promptly settling or resolving the case; make or arrange for the disclosures required by Rule 26(a)(1); discuss any issues about preserving discoverable information; and develop a proposed discovery plan. The parties' joint discovery plan must be filed by the deadline set forth in paragraph 10 this Order and include:

(1) an estimated valuation of the case from the perspective of Plaintiff(s) and Defendant(s);
(2) the date for exchanging initial disclosures pursuant to Rule 26(a)(1);
(3) the subjects on which discovery may be needed;
(4) whether the Parties can agree to limit discovery on particular issues through stipulation;
(5) what document discovery is needed;
(6) whether discovery should be conducted in phases;
(7) whether the Parties expect to have disclosure, discovery, or preservation of electronically stored information, and if so, explain:
    (a) the main information and documents sought;
    (b) the expected costs of e-discovery; and
    (c) whether alternatives to e-discovery are possible.
(8) what individuals each side intends to depose;
(9) any issues about claims of privilege or of protection as trial-preparation materials, including—if the parties agree on a procedure to assert these claims after production—whether to ask the court to include their agreement in an order under Federal Rule of Evidence 502;
(10) what changes should be made in the limitations on discovery imposed by the Federal Rules of Civil Procedure or the Local Rules; and
(11) whether early mediation or a settlement conference with a Magistrate Judge prior to the close of discovery would be helpful.

No pretrial conference shall be held in this action, unless the parties so request or the Court determines, *sua sponte*, that a pretrial conference is necessary. Should a pretrial conference be set, the deadlines set forth in this Order shall remain unaltered.

3. **Pretrial Stipulation:** Counsel must meet at least 45 days prior to the beginning of the trial calendar to confer on the preparation of a Joint Pretrial Stipulation. The Joint Pretrial Stipulation shall be filed by the date set forth below and shall conform to S.D. Fla. L.R. 16.1(e). The Court will not accept unilateral pretrial stipulations and will strike *sua sponte* any such submissions. Should any of the parties fail to cooperate in preparing the Joint Pretrial Stipulation, all other parties shall file a certification with the Court stating the circumstances. Upon receipt of such certification, the Court will issue an order requiring the non-cooperating party or parties to show cause why such party or parties (and their respective attorneys) should not be held in contempt for failure to comply with the Court's order. The pretrial disclosures and objections required under Fed. R. Civ. P. 26(a)(3) should be served, but not filed with the Clerk's Office, as the same information is required to be attached to the parties' Joint Pretrial Stipulation.

4. **Cases Tried Before A Jury:** In cases tried before a jury, at least ONE WEEK prior to the beginning of the trial calendar, the parties shall submit A SINGLE JOINT SET of proposed jury instructions and verdict form, though the parties need not agree on the proposed language of each instruction or question on the verdict form. Where the parties do agree on a proposed instruction or question, that instruction or question shall be set forth in Times New Roman 14-point typeface. Instructions and questions proposed only by the plaintiff(s) to which the defendant(s) object shall be italicized. Instructions and questions proposed only by defendant(s) to which plaintiff(s) object shall be bold-faced. Each jury instruction shall be typed on a separate page and, except for Eleventh Circuit Pattern instructions clearly identified as such, must be supported by citations to authority. In preparing the requested jury instructions, the parties shall use as a guide the Pattern Jury Instructions for civil cases approved by the Eleventh Circuit,

including the directions to counsel contained therein. A copy of the proposed jury instructions and verdict form shall be sent in Word or WordPerfect format to: middlebrooks@flsd.uscourts.gov.

5. **Cases Tried Before The Court:** In cases tried before the Court, at least ONE WEEK prior to the beginning of the trial calendar, a copy of the proposed Findings of Fact and Conclusions of Law shall be sent in Word or WordPerfect format to: middlebrooks@flsd.uscourts.gov. Proposed Conclusions of Law must be supported by citations to authority.

6. **Exhibits:** All exhibits must be pre-marked. A typewritten exhibit list setting forth the number, or letter, and description of each exhibit must be submitted at the time of trial. The parties shall submit said exhibit list on Form AO 187, which is available from the Clerk's office.

7. **Motions to Continue Trial:** A Motion to Continue Trial shall not stay the requirement for the filing of a Pretrial Stipulation and, unless an emergency situation arises, such Motion will not be considered unless it is filed at least 20 days before the date on which the trial calendar is scheduled to commence.

8. **Pretrial Motions:** Any party filing a pretrial motion shall submit a proposed order granting the motion.

9. **Non-compliance with This Order:** Non-compliance with any provision of this Order may subject the offending party to sanctions or dismissal. It is the duty of all counsel to enforce the timetable set forth herein in order to ensure an expeditious resolution of this cause.

10. **Pretrial Schedule:** The parties shall adhere to the following schedule, which shall not be modified absent compelling circumstances. Any motions to modify this schedule shall be directed to the attention of U.S. District Judge Donald M. Middlebrooks.

March 1, 2023 ✓	Discovery Plan shall be filed. See Fed. R. Civ. P. 26(f)(3).
March 1, 2023 ✓	Joinder of Additional Parties and Amend Pleadings.
March 9, 2023 N/A	Any motions for class certification shall be filed.
March 9, 2023 ✓	Plaintiff(s) shall provide opposing counsel with a written list with the names and addresses of all expert witnesses intended to be called at trial and only those expert witnesses listed shall be permitted to testify. Plaintiff(s) shall also furnish opposing counsel with expert reports or summaries of its expert witnesses' anticipated testimony in accordance with Fed. R. Civ. P. 26(a)(2). Within the 30-day period following this disclosure, Plaintiff(s) shall make their experts available for deposition by Defendant(s). The experts' deposition may be conducted without further Court order.
April 6, 2023	Defendant(s) shall provide opposing counsel with a written list with the names and addresses of all expert witnesses intended to be called at trial and only those expert witnesses listed shall be permitted to testify. Defendant(s) shall also furnish opposing counsel with expert reports or summaries of its expert witnesses' anticipated testimony in accordance with Fed. R. Civ. P. 26(a)(2). Within the 30-day period following this disclosure, Defendant(s) shall make its experts available for deposition by Plaintiff(s). The experts' deposition may be conducted without further Court order.
Note:	The above provisions pertaining to expert witnesses do not apply to treating physicians, psychologists or other health providers.
May 4, 2023	Parties shall furnish opposing counsel with a written list containing the names and addresses of all witnesses intended to be called at trial and only those witnesses listed shall be permitted to testify.
June 1, 2023	All discovery shall be completed.
June 15, 2023	All Pretrial Motions, including summary judgment motions and *Daubert* motions, and motions *in limine* shall be filed.
July 17, 2023	Joint Pretrial Stipulation shall be filed. Designations of deposition testimony shall be made.

July 31, 2023	Objections to designations of deposition testimony shall be filed. Late designations shall not be admissible absent exigent circumstances.
August 7, 2023	Jury Instructions or Proposed Findings of Fact and Conclusions of Law shall be filed.

11. **Order of Referral to Mediation/Settlement Conference:** Pursuant to Local Rule 16.2, this case is referred to mediation as follows:

a. All parties must complete mediation or a settlement conference at least 60 days before the scheduled trial date.

b. The parties may request a settlement conference before the undersigned Magistrate Judge in lieu of mediation with a certified mediator. Such conference will satisfy the requirement of court-ordered mediation, assuming good faith participation by the parties. To make the request, a designated party should contact Judge Matthewman's Chambers by email at matthewman@flsd.uscourts.gov (copying opposing counsel) within 60 days of this Order's date with proposed conference dates. Thereafter, an order will issue setting forth the date, time, place, and procedures for the settlement conference.

c. ✓ Otherwise, Plaintiff(s)'s counsel, or other designated counsel, shall schedule a mediation conference. The parties are encouraged to avail themselves of the services of any mediator on the List of Certified Mediators, maintained in the office of the Clerk of the Court, but may select any other mediator. The parties shall agree upon a mediator and file a Notice of Mediator Selection within 14 days of the date of this Order. If there is no agreement, lead counsel shall promptly file a Request for Clerk to Appoint Mediator. The Clerk of the Court shall then designate, on a blind rotation basis, a mediator from the List of Certified Mediators. If the parties cannot mutually agree to a place, date, and time for the mediation, they may move the Court for an order dictating the place, date, and time.

d. The appearance of counsel and each party or representatives of each party with full authority to enter into a full and complete compromise and settlement is mandatory. If insurance is involved, an adjuster with authority to settle up to the policy limits or the most recent demand, whichever is lower, shall attend.

e. The Court may impose sanctions against parties or counsel who do not comply with the attendance or settlement authority requirements. The mediator shall report non-attendance and may recommend imposition of sanctions by the Court for non-attendance.

f. If the parties elect to proceed to mediation but no complete settlement is reached, they may move for a settlement conference before the undersigned later in the proceedings.

12. Settlement: If the case is settled, counsel shall promptly inform the Court by calling the chambers of U.S. District Judge Donald M. Middlebrooks at (561) 514-3720 and, within 10 days of notification of settlement to the Court, submit an appropriate Motion and proposed order for dismissal, pursuant to Federal Rule of Civil Procedure 41(a). The parties shall attend all hearings and abide by all time requirements unless and until an order of dismissal is filed.

DONE AND ORDERED in Chambers at West Palm Beach in the Southern District of Florida, this 17th day of February 2023.

William Matthewman

WILLIAM MATTHEWMAN
United States Magistrate Judge

APPENDIX A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

NOTICE OF RIGHT TO CONSENT TO DISPOSITION OF A CIVIL CASE BY A U.S. MAGISTRATE JUDGE

Counsel shall review this notice with their client(s) before executing their notice of consent to trial before a U.S. Magistrate Judge.

Under 28 U.S.C. § 636(c), a U.S. Magistrate Judge may, upon the consent of all the parties in a civil case, conduct all proceedings, including a trial and all post-judgment proceedings. A consent form is attached and is also available from the Clerk of the Court.

You have a right to trial by a U.S. District Judge. Your decision to consent to the referral of your case to a U.S. Magistrate Judge for disposition is entirely voluntary on your part; your lawyer cannot make this decision for you. You may, without adverse substantive consequences, withhold your consent, but this will prevent the Court's jurisdiction from being exercised by a Magistrate Judge. If any party withholds consent, the identity of the parties consenting or withholding consent will not be communicated to any Magistrate Judge or to the District Judge to whom the case has been assigned.

Parties cannot withdraw their consent once given, although a District Judge may vacate a referral upon a showing of extraordinary circumstances by a party. An appeal from a judgment entered by a Magistrate Judge shall be taken directly to the U.S. Court of Appeals for this judicial circuit in the same manner as an appeal from any other judgment of this District Court.

APPENDIX D

Fla.Civ.P.1.190

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF FLORIDA

CASE NO.22-81965-Civ-Middlebrooks/Matthew man

Exhibit 3

ANDREW HORACE,

Plaintiff,

V.

MD NOW MEDICAL CENTERS, INC.,

Defendant.

_____/

DISCOVERY PLAN/JOINDER OF PARTIES/AMEND PLEADINGS

Introduction

This is an axiomatic Discrimination case of sexual orientation, including medical battery defined under Section 784.03, Florida Statutes, which is punishable as provided in section 775.082 or section 775.083. Battery is a crime under title XLVI. Plaintiff is seeking at least 1 $ million dollars in compensatory damages (physical, psychological, and continued emotional withdrawals, anxiety and fear), and $1 million dollars in punitive damages for intentionally inflicting pain and causing harm onto Plaintiff. Healthcare is a human right. Every patient should treated fairly with dignity/compassion/respect under the care of medical professionals.

NO JOINDER OF PARTIES

Plaintiff request that MD NOW MEDICAL CENTERS, INC produce the following documents or materials in conjunction with this matter. If an objection is made, state the reason for the objection. If denying the matter set forth in detail the reasons why the answering party cannot produce the requesting materials. All statement's from Kathy Vaughn and Rami Mansour must be signed and notarized. All discovery/statements must be completed by June 1st, 2023 and filed in the United States District Court Southern District of Florida.

Request for production.

1. Any reports/complaints from other patient's regarding Jaylen Williams work performance
2. Jaylen Williams pre-hire assessment record

III. Did Jaylen Williams perform other COVID nasal swabs test on patients under your supervision?

IV. Did Jaylen Williams perform other COVID nasal swab test on March 5, 2022?

V. Did Jaylen Williams give Plaintiff the proper standard of Care?

VI. Is stabbing a patient in the nose the proper way to perform a COVID nasal swab?

VII. When a medical professional intentionally stabs a patient, is this medical battery?

VIII. Was it right, that Jaylen Williams should have been terminated after his unacceptable behavior against Plaintiff?

IX. Did Plaintiff complain to you on March 5,2022 that Jaylen William stabbed him in the nose?

X. Do you rotate or thrust while performing a COVID nasal swab test

XI. Did Jaylen Williams complain to you of any problems or issues he may be having on March 5, 2022, that will potentially prevent him to perform below the standard of care with patient's

AMENDED PLEADING

COUNT 111

(Title XLVI-Medical Battery)

1. Plaintiff brings this action under Title XLV §§766.110 for damages caused by Defendant's intentional infliction/harm committed against Plaintiff.

2. Chapter 784: ASSAULT; BATTERY; CULPABLE NEGLIGENCE

3. It is indisputable that Jaylen Williams act was intentional

4. Jaylen Williams intent was to harm Plaintiff .Fact, Jaylen Williams did not say sorry to Plaintiff after his malicious act was done in his care

3. Jaylen Williams employment application
4. Jaylen Williams termination date
5. Who terminated Jaylen William?
6. Why Jaylen Williams was terminated?
7. MD Now Medical Centers, Inc. Non-Discrimination Notice
8. The letter MD Now Medical Centers, Inc. received from the U.S Department of Health and Human Services Office for Civil Rights on sexual orientation regarding Plaintiff's complaint
9. Plaintiff's grievance report given to Corporate (via phone) on March 7th, 2022
10. MD Now Medical Center's, Inc insurance policy limits.
11. MD Now Medical Center's Inc. Mission/Vision Statement?
12. How many complaints have Jaylen Williams had since his employment w/ MD Now Medical Center's Inc.?
13. A List of ALL employees who worked on March 5, 2022
14. A summary from Rami Mansour ME152615 on how to perform a COVID nasal swab test
15. A statement from Kathy Vaughn regarding Plaintiff's verbal complaint on March 7, 2022
    I. On August 17th 2022 (via phone), did you assure Plaintiff Jaylen Williams was no longer with the company?
    II. Do you think Jaylen Williams unacceptable behavior was right?
    III. Do you think Plaintiffs deserved to be treated unfairly on March 5, 2022 at MD Now Urgent Care Center
    IV. Did Plaintiff receive the proper standard of care by Jaylen Williams?
16. The following questions are directed to Rami Mansour (Medical Doctor)

    Yes or No

    I. Is it normal for a patient to suffer a contusion after a COVID nasal swab test?
    II. Is it normal for a patient to have complication/flares ups after a COVID nasal swab test i.e. swelling/continued discomfort?

5. Jaylen Williams caused Plaintiff physical, psychological, continued emotional withdrawals, anxiety and fear.

6. Jaylen Williams intentionally stabbed Plaintiff in the nose while performing a COVID nasal swab and not given Plaintiff the right to standard of care

7. The Defendant is a sophisticated employer who has actual knowledge of the requirements of Title XLV, as amended.

8. The failure of Defendant to adhere to the mandates of the Act was willful and its violations of the provisions of the Act were willful.

9. The Plaintiff was subjected to disparate treatment by the Defendant.

10. Defendant, through its practices and policies as an employer, willfully, and with malicious or reckless disregard of Plaintiff's protected rights, committed medical battery against Plaintiff on account of his sexual orientation.

11. If, however, the reason(s) proffered by Defendant are found to be with merit, Plaintiff's sexual orientation, was a motivating factor in act of medical battery

12. As a direct and proximate result of the Defendant's intentional conduct, Plaintiff suffered physical, psychological, and continued emotional withdrawals, anxiety and fear.

13. Plaintiff is entitled to such affirmative relief as may be appropriate, including, but not limited to emotional distress, pursuant to the provisions of XLV §§766.110.

14. Plaintiff, based on information and belief, alleges that Defendant's actions were done with malice, and with intentional disregard for his protected rights under Title XLV 776.110. Therefore, Plaintiff is also entitled to punitive damages from Defendant in a sum according to proof at trial.

CERTIFICATE OF SERVICE

I HEREBY CERTITY, that a true and correct copy was filed in the United States District Court Southern District of Florida on this 1st day of March, 2023 and a true and correct copy was emailed to Drew Levin; dlevin@conroysimberg.com

APPENDIX E

Agreed Joint Discovery Plan

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

CASE NO.: 9:22-CV-81965-DMM

ANDREW HORACE,

Plaintiff,

v.

MD NOW MEDICAL CENTERS, INC.,

Defendant.
_____/

JOINT DISCOVERY PLAN

Pro Se Plaintiff, ANDREW HORACE, and, Defendant, MD NOW MEDICAL CENTERS, INC. ("MD NOW"), by and through its undersigned counsel, in accordance with the Pretrial Scheduling Order and Order Referring Case to Mediation [DE 15], hereby file this Joint Discovery Plan, as follows:

(1) **An estimated valuation of the case from the perspective of Plaintiff(s) and Defendant(s);**

Plaintiff's estimated valuation of the case is $2 million. Defendant has no estimated case valuation at this time;

(2) **The date for exchanging initial disclosures pursuant to Rule 26(a)(1);**

Initial disclosures due March 17th, 2023;

(3) **The subjects on which discovery may be needed;**

Plaintiff's alleged incident and medical treatment, and damages;

(4) Whether the Parties can agree to limit discovery on particular issues through stipulation;

Not at this time;

(5) What document discovery is needed;

Requests for production regarding Plaintiff's alleged incident and medical treatment, and damages;

(6) Whether discovery should be conducted in phases;

No;

(7) Whether the Parties expect to have disclosure, discovery, or preservation of electronically stored information, and if so, explain:

(a) the main information and documents sought;

(b) the expected costs of e-discovery; and

(c) whether alternatives to e-discovery are possible.

No;

(8) What individuals each side intends to depose;

Defendant intends to depose Plaintiff and Plaintiff's fact witnesses and treating physicians; Plaintiff intends to depose Kathy Vaughn, Rami Mansour, Jaylen Williams, and a front desk employee of Defendant;

(9) Any issues about claims of privilege or of protection as trial-preparation materials, including—if the parties agree on a procedure to assert these claims after production—whether to ask the court to include their agreement in an order under Federal Rule of Evidence 502;

Not applicable at this time;

(10) What changes should be made in the limitations on discovery imposed by the Federal Rules of Civil Procedure or the Local Rules; and

None at this time;

(11) Whether early mediation or a settlement conference with a Magistrate Judge prior to the close of discovery would be helpful.

The Parties will mediate by June 9th.

Dated: March 3, 2023

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document on via e-service on this 3rd day of March, 2023.

CONROY SIMBERG
Attorney for Defendant, MD NOW MEDICAL CENTERS, INC.
3440 Hollywood Boulevard, Second Floor
Hollywood, FL 33021
Telephone: (954) 961-1400
Facsimile: (954) 518-8696
Primary Email: eservicehwd@conroysimberg.com
Secondary Email: dlevin@conroysimberg.com

By: /s/ Drew M. Levin
Drew M. Levin, Esquire
Florida Bar No. 0048419

All folders | DL From: DML-Drew M. Levin ×

AL

Home View Help

New mail | Quick steps | Read / Un

Folders

- Inbox
- Junk Email 1
- Drafts
- Sent Items
- Deleted Items
- Archive
- Notes
- Conversation History
- RSS Feeds
- Unwanted
- Create new folder
- Search Folders

Groups

RE: MEDIATION CONFERENCE

You replied on Fri 3/3/2023 2:30 PM

DL DML-Drew M. Levin <dlevin@conroysimberg.com>

To: You Fri 3/3/2023 1:48 PM

Cc: CLG-Cindy L. Goldberg

Hi, Mr. Horace,

Based on our telephone conversation just now, below is the joint discovery plan information that we have agreed to. If it is an accurate reflection of our conversation, and you agree, please respond that I can put this information into a formal joint discovery plan and file the document with the court today.

If there is any change that needs to be made, kindly point out where the change is needed.

(1) Plaintiff estimated valuation of the case is $2 million. Defendant has no case valuation at this time
(2) Initial disclosures due March 17th
(3) Plaintiff's alleged incident and medical treatment, and damages
(4) Not at this time
(5) Requests for production regarding Plaintiff's alleged incident and medical treatment, and damages
(6) No
(7) No
(8) Defendant intends to depose Plaintiff and Plaintiff's fact witnesses and treating physicians; Plaintiff intends to depose Cathy Vaughn, Rami Mansour, Jaylen Williams, and a front desk employee of Defendant.
(9) Not applicable at this time
(10) None at this time

APPENDIX F

Fla.Stat.38.23 "used time granted to move case to Federal after 8 months"

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO. 50-2022CA002573XXXXMB

ANDREW L. HORACE,

Plaintiff,

v.

MD NOW MEDICAL CENTERS, INC,

Defendant.
_____/

ORDER GRANTING DEFENDANT'S MOTION FOR EXTENSION OF TIME REGARDING MEDIATION ORDER

THIS CAUSE having come on to be heard on September 15, 2022, on Defendant's Motion to Vacate Mediation Order, or in the Alternative, for Extension of Time, and the Court having heard argument of counsel for Defendant, and argument of *pro se* Plaintiff, and being otherwise duly advised in the premises, it is hereupon,

ORDERED AND ADJUDGED that said Motion be, and the same is hereby **GRANTED IN PART**, as follows:

The Court grants an enlargement of 45 days for the parties to conduct mediation. In this Court's prior Order dated August 29, 2022, this Court set a deadline of October 31, 2022 for the parties to conduct mediation. Therefore, that deadline is hereby extended to December 15, 2022.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida.

502022CA002573XXXXMB 10/12/2022
Scott Kerner Circuit Judge
ADMINISTRATIVE OFFICE OF THE COURT

502022CA002573XXXXMB 10/12/2022
Scott Kerner
Circuit Judge

Copies furnished to:
Jonathan C. Abel, Esquire
Conroy Simberg
3440 Hollywood Boulevard
Second Floor
Hollywood, FL 33021
jabel@conroysimberg.com
eservicehwd@conroysimberg.com

Andrew L. Horace
3714 East Sandpiper Drive
Apartment 9
Boynton Beach, FL 33436-2457
Andrew4637@hotmail.com

APPENDIX G

US Dept. of Health and Human Services/OCR; MD Now notice

You are encouraged to review this information closely and to share it with your staff as part of the ongoing training you provide to your workforce to ensure MD Now's compliance with applicable nondiscrimination laws and to ensure that individuals have an equal opportunity to participate in MD Now's programs, activities, and/or services.

Based on the foregoing, OCR is closing this case without further investigation, effective the date of this letter. OCR's determination as stated in this letter applies only to the allegations in this complaint that were reviewed by OCR.

If you have any questions regarding this matter, please contact Cassie Harris, Investigator, at 404-562-7860 (Voice) or 404-562-7884 (TDD).

Sincerely,

for Barbara Stampul
Regional Manager

Enclosure: Sexual Orientation and Gender Identity Discrimination Technical Assistance

EXHIBIT 6

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Office for Civil Rights

Southeast Region • Atlanta Federal Center
Suite 16T70 • 61 Forsyth Street, S.W. • Atlanta GA 30303
Voice - (800) 368-1019 • TDD - (800) 537-7697
Fax - (202) 619-3818 • http://www.hhs.gov/ocr

April 27, 2022

Via Email

Attn: Compliance Officer
MD Now Medical Centers, Inc.
2272 N Congress Ave
Boynton Beach, FL 33436
compliance@mdnow.com

Transaction Number 22-470994

Dear Compliance Officer:

On March 9, 2022, the U.S. Department of Health and Human Services (HHS), Office for Civil Rights (OCR), received the above-captioned complaint from Andrew Horace alleging that MD Now Medical Centers, Inc. ("MD Now") is not compliant with Section 1557 of the Affordable Care Act (Section 1557).[1] Specifically, Andrew Horace alleges that on March 5, 2022, MD Now staff at the 2272 N Congress Ave, Boynton Beach location treated him unprofessionally and without compassion because of his sexual orientation.

OCR enforces Federal civil rights laws that prohibit discrimination based on race, color, national origin, disability, age, or sex (including sexual orientation and gender identity) in health and human services programs that receive Federal financial assistance from HHS. Additionally, OCR has jurisdiction over discrimination on the basis of disability in programs and activities conducted by HHS, and health and human services programs administered by state and local public entities. OCR also enforces the Health Insurance Portability and Accountability Act (HIPAA) Privacy, Security and Breach Notification Rules.

The laws that OCR enforces include Section 1557, which prohibits discrimintion on the basis of race, color, national origin, sex, age, or disability in certain health programs and activities.

OCR has reviewed the complainant's allegations in this matter and has determined to resolve this matter through the provision of technical assistance. To that end, OCR has enclosed material explaining how the prohibition on discrimination on the basis of sex under Section 1557 includes a prohibiton on discrimination on the basis of sexual orientation or gender identity. You may also find additional information on our website at https://www.hhs.gov/civil-rights/for-individuals/section-1557/index.html. You also may sign up for our civil rights listserv at http://www.hhs.gov/ocr/civilrights/crdlistservsignup.html, and you will receive notices when we post updated materials to our website as well as other current civil rights information.

[1] Section 1557 of the Affordable Care Act, 42 U.S.C. 18116.

You are encouraged to review this information closely and to share it with your staff as part of the ongoing training you provide to your workforce to ensure MD Now's compliance with applicable nondiscrimination laws and to ensure that individuals have an equal opportunity to participate in MD Now's programs, activities, and/or services.

Based on the foregoing, OCR is closing this case without further investigation, effective the date of this letter. OCR's determination as stated in this letter applies only to the allegations in this complaint that were reviewed by OCR.

If you have any questions regarding this matter, please contact Cassie Harris, Investigator, at 404-562-7860 (Voice) or 404-562-7884 (TDD).

Sincerely,

for Barbara Stampul
Regional Manager

Enclosure: Sexual Orientation and Gender Identity Discrimination Technical Assistance

MD NOW® URGENT CARE

EXHIBIT 1

Not in compliance

Nondiscrimination Notice

Nondiscrimination and Accessibility Requirements

MD Now Medical Centers, Inc. (hereinafter referred to as "MD Now") complies with applicable Federal civil rights laws and does not discriminate on the basis of race, color, religion, national origin, age, disability, marital status, gender, gender identity, or sexual orientation.

MD Now provides free aids and services to people with disabilities to communicate effectively with us, such as:

- Qualified sign language interpreters
- Written information in other formats (large print, audio, accessibleelectronic formats, other formats)

Provides free language services to people whose primary language is not English, such as:

- Qualified interpreters
- Information written in other languages

Spanish
ATENCIÓN: Si habla español, tiene a su disposición servicios gratuitos de asistencia lingüística. Llame al 888–MDNOW–911

French Creole
ATANSYON: Si w pale Kreyòl Ayisyen, gen sèvis èd pou lang ki disponib gratis pou ou. Rele 888–MDNOW–911

Vietnamese
CHÚ Ý: Nếu bạn nói Tiếng Việt, có các dịch vụ hỗ trợ ngôn ngữ miễn phí dành cho bạn. Gọi số 888–MDNOW–911

Portuguese
ATENÇÃO: Se fala português, encontram-se disponíveis serviços

APPENDIX H

Initial Rule 26 disclosure medical/expert witness

Sent Items | DL To: DML-Drew M. Levin | AL

Home View Help

New mail | Quick steps | Read / Un

Folders

- Inbox 9
- Junk Email
- Drafts
- Sent Items
- Deleted Items 59
- Archive
- Notes
- Conversation History
- RSS Feeds
- Unwanted
- Create new folder
- Search Folders

Groups

EXPERT WITNESSES

You forwarded this message on Thu 3/9/2023 11:54 AM

AL

Reply | Reply all | Forward

To: DML-Drew M. Levin

Thu 3/9/2023 8:08 AM

Cc: CLG-Cindy L. Goldberg

Morning Drew,

Per Court order for March 9, 2023 the witness experts are listed below:

Once I obtain summaries, I will send to you.

Amber Niles
7229 W. Oakland Park Blvd ; ste 101
Lauderhill, FL 33313

Laquanda Brown
950 SW Fenway Rd
Port St Lucie, FL

Respectfully,

Sent from Outlook

Reply | Reply all | Forward

INITIAL RULE 26 DISCLOSURES

A L <andrew4637@hotmail.com>
Tue 3/21/2023 8:36 PM
To:DML-Drew M. Levin <dlevin@conroysimberg.com>

2 attachments (894 KB)
DOC032123-001.pdf; DOC032123.pdf;

Drew,

I have attached the documents that will support my claim. Pascal Gedeon who also works for FoundCare has been included in the witness list. When can I expect the list of Mediators?

Please confirm March 24, @ 1 pm for Amber Niles deposition or another time on the 24th. Thank you.

Sent from Outlook

From: DML-Drew M. Levin <dlevin@conroysimberg.com>
Sent: Tuesday, March 21, 2023 10:39 AM
To: 'A L' <andrew4637@hotmail.com>
Subject: RE: DEPOSITION

Hi, Mr. Horace,

Thank you. I will respond via email to your expert disclosure later today.

Please provide me with dates to set your deposition.

Please let me know when you will be serving your initial Rule 26 disclosure.

Best regards,

Drew

CONROY SIMBERG

DREW M. LEVIN
PARTNER
(954) 961-1400
(954) 518-1370 (Direct)
(954) 518-8696 (Direct Fax)

3440 Hollywood Boulevard
Second Floor
Hollywood, FL 33021

APPENDIX I

Article 25 of the United Nations of Declarations of Human Rights

caused by the breach. etc

Nonetheless, Drew M Levin also stated: 1 Plaintiff is correct that the Defendant's Motion to Dismiss contained a ***scrivener's error***, and should have referred to Plaintiff's operative pleading as the "Third" Amended Complaint—not the "Fourth" Amended Complaint. It was not a scrivener's error. Mr. Levin already knew beforehand that it was not Plaintiff's fourth Amendment Complaint. The Honorable Judge Scott Kerner corrected him in the last hearing of November 17, 2022 for saying Plaintiff's fourth Amended Complaint. Ultimately, I proved to this Court that Mr. Levin was dishonest by saying; it was a **scrivener's** ***error. A Court shall grant leave whenever justice so deserves.***

In addition, no person should be stripped of liberty or treated unfairly in regards of how one chooses to express themselves as a whole or in any medical entity ***See; Palm Beach County Ordinance No. 2017-046 and Article 25 of the United States Nations Universal Declarations of Human Rights list medical care as a basic Human Right.***

✓ ***WHEREFORE****, Plaintiff ask this Court to move this case without any further delay and dishonesty demonstrated by* Drew M. Levin Florida Bar No.0048419 and Incorporate the Memorandum of Law as Plaintiff's case is exceptionally clear of Defendant's civil discrimination ***that occurred on March 5, 2022 by Jaylen Williams.***

CERTIFICATE OF SERVICE

I hereby certify that on this day of the 31st of January 2023, I have filed the foregoing document with the United States Court Southern District of Florida West Palm Beach Division and emailed a copy to Drew M Levin; dlevin@conroysimberg.com

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF FLORIDA

WEST PALM BEACH DIVISION

CASE NO.: 9:22-CV-81965-DMM

ANDREW HORACE

Plaintiff,

V.

MD NOW MEDICAL CENTERS, INC.

Defendant.

PLAINTIFF WILL PROCEED PRO SE IN RESPONSE TO JANUARY 20TH 2023 ORDER AND INCORPORATED MEMORANDUM OF LAW

Plaintiff, Pro Se, by and through its undersigned counsel, in accordance with the Federal Rules of Civil Procedure and the L.R. of the S.D. Florida United States District Court, hereby files this Response of January 20th order and Incorporated Memorandum of Law, in support thereof, states;

Drew M Levin Florida Bar No.0048419 stated in his Motion to Dismiss: ***Plaintiff incorrectly states that "Plaintiff's claim was established in State Court. . ." None of Plaintiff's attempts at pleading State law claims in State court survived the motions to dismiss. The meaning: established : (1.having been in existence for a long time and therefore recognized and generally accepted.) See exhibit AB (Counsel is aware)*** In Plaintiff's case, this suit has been ongoing for 8 months which is a lengthy time. It is ***axiomatic*** that Defendant's Employee (Jaylen Williams) committed a malicious act by intentionally inflicting pain and causing harm to Plaintiff. Consequently, Jaylen Williams was terminated due to his misconduct following complaint by the Plaintiff. Furthermore, it's appalling that Drew M. Levin never denied or mentioned in any of his Motion's Jaylen Williams was terminated because of the following but not limited to: **professional duty owed to the patient; (2) breach of such duty; (3) injury**