APPENDIX A

1a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

MIRACLE HURSTON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 1:19-cv-04890-TWP-DLP
	)	
INDIANA GAMING COMPANY LLC,	)	
	)	
Defendant.	)	

ENTRY ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

This matter is before the Court on Cross-Motions for Summary Judgment filed by Plaintiff Miracle Hurston ("Hurston") (Filing No. 244) and Defendant Indiana Gaming Company LLC ("Indiana Gaming") (Filing No. 276). On December 11, 2019, Hurston initiated this lawsuit against Indiana Gaming bringing a number of claims arising out of alleged racial confrontations and incidents involving Hollywood Casino Lawrenceburg (the "Casino"), which is operated by Indiana Gaming (Filing No. 1). After Hurston filed his Fifth Amended Complaint (Filing No. 128), the parties filed Cross-Motions for Summary Judgment on three remaining claims: 42 U.S.C. § 1981 discrimination, breach of contract, and intentional infliction of emotional distress. For the following reasons, the Court **grants** Indiana Gaming's Motion and **denies** Hurston's Motion.

I. BACKGROUND

The factual claims in this case are extensive, and this background section provides an explanation of the facts that are relevant to the three claims and the parties cross-motions.

A. Procedural Background

On December 11, 2019, Hurston initiated this litigation against Indiana Gaming alleging a number of racial confrontations and incidents involving the Casino's employees and patrons (Filing

2a

No. 1). Hurston asserted claims of race discrimination, breach of contract, harassment, retaliation, conspiracy, and negligence—all under Indiana state law. *Id.* On December 16, 2019, the Court screened Hurston's Complaint, determined that subject-matter jurisdiction was lacking, and allowed Hurston to file an amended complaint (Filing No. 4). On January 21, 2020, Hurston filed his First Amended Complaint, alleging race discrimination under Title II of the Civil Rights Act of 1964, false imprisonment, intentional infliction of emotional distress, breach of contract, harassment, retaliation, conspiracy, and negligence (Filing No. 5). On April 17, 2020, Hurston filed his Second Amended Complaint, removing the harassment, retaliation, and conspiracy causes of action, and adding a claim under 42 U.S.C. § 1981 (Filing No. 17).

On October 26, 2020, the Court granted a motion to dismiss Hurston's claim for violation of Title II of the Civil Rights Act of 1964 as well as his false imprisonment and negligence claims (Filing No. 49 at 23). Hurston's claims for Section 1981 discrimination, intentional infliction of emotional distress, and breach of contract were permitted to proceed. *Id.* Following additional requests to amend his pleadings, on May 12, 2021, Hurston filed a motion for leave to file his fifth amended complaint (Filing No. 113). The Court granted Hurston leave to file his fifth amended complaint, which was filed on June 11, 2021 (Filing No. 128). The Fifth Amended Complaint, which is the operative complaint, brings claims against Indiana Gaming for violation of 42 U.S.C. § 1981, intentional infliction of emotional distress, and breach of contract. *Id.* After the Fifth Amended Complaint was filed, Indiana Gaming filed its Motion for Summary Judgment (Filing No. 244), and Hurston responded with his own Motion for Summary Judgment (Filing No. 276).

B. Factual Background

Indiana Gaming operates the Casino in Lawrenceburg, Indiana. Hurston is an Black male, and from 2017 through 2019, he was a frequent patron of the Casino. Hurston participated in many

3a

gambling activities at the Casino and was considered a "high stakes" player (Filing No. 246-1 at 1–2). Hurston was one of numerous Black males who contributed to the revenue stream of the Casino, but he was the only Black male ranked at the Casino's "Icon" status, based on his regular attendance. (Filing No. 277 at 1). A major part of being Icon status was receiving special privileges and benefits. *Id.*

In 2018 and 2019, Hurston was involved in several loud and disruptive disturbances at the Casino. Many of these disturbances drew a crowd of patrons and would stop gaming operations at the Casino. These incidents included Hurston yelling and cursing at other patrons while they were playing at the Casino. Some patrons complained to Casino management about Hurston's behavior, and management had multiple conversations with Hurston about behaving appropriately at the Casino (Filing No. 246-5 at 2–3).

In the early morning hours of February 14, 2018, Hurston was involved in an altercation with another Black male patron of the Casino. It was noted that disorderly conduct, public intoxication, and simple assault were parts of the altercation. The other patron made snide remarks to Hurston, and during the altercation, Hurston punched the other patron on his head, drawing blood and leaving "goose eggs" on his forehead. Hurston and the other patron did not want each other to be arrested, so neither individual was arrested (Filing No. 271-1 at 2–5). Hurston also informed the officer he would rather nothing come of the incident over getting consequences from the casino. *Id.* at 4.

On April 8, 2018, again during the early morning hours, there was a disturbance on the Casino gaming floor to which management responded. A Caucasian man had forced Hurston out of playing two spots. (Filing No. 262-1 at 2). The Caucasian man called Hurston a punk and the dealer proceeded to deal the Caucasian man a hand. *Id.* When the manager arrived, Hurston was

4a

standing behind a gaming table yelling and cursing at other patrons and an employee. The manager asked Hurston to go with him, and Hurston began yelling and cursing at the manager, which disrupted Casino operations for several minutes and drew a crowd (Filing No. 246-8 at 2; *see also* Hurston's manually-filed video evidence, Exhibit I2, at Filing No. 265 and Filing No. 266). The casino manager had previously been contacted by other Casino guests concerning fears when Hurston is around due to his abusive behaviors while gambling. Filing No. 246-8 at 2.

On December 8, 2018, Hurston was playing blackjack at the Casino, and a waitress served a drink to Hurston. A verbal altercation arose between the two when the waitress called Hurston a bitch. Hurston reported the incident, and the same manager who addressed the April 8, 2018 incident showed up at the table to address the situation. Hurston was removed, and the waitress was suspended from work for three days (Filing No. 246-1 at 3–4; *see also* Hurston's manually-filed video evidence, Exhibit U, at Filing No. 265 and Filing No. 266).

Two months later, on February 9, 2019, Hurston was playing on a slot machine when a couple began playing on the slot machine next to him. A Caucasian female blew cigarette smoke in Hurston's face and held her cigarette near his face. Hurston asked her to stop, and she verbally attacked Hurston and lunged toward him. A verbal altercation ensued, which drew a crowd as well as security personnel. The security personnel made Hurston and the other patron involved in this incident leave the Casino (Filing No. 246-1 at 4–5; *see also* Hurston's manually-filed video evidence, Exhibit T, at Filing No. 265 and Filing No. 266). By letter dated February 15, 2019, Hurston was banned from the Casino for thirty days because of his actions on February 9, 2019 (Filing No. 262-20).

Three months later, on May 18, 2019, Hurston tried to withdraw $500.00 from an ATM located inside the Casino. The transaction went through, and funds were taken out of Hurston's

5a

bank account, but the ATM did not dispense any cash. Hurston then spoke with Casino employees regarding the issue, and the employees told Hurston that they did not operate the ATM and that he would have to contact the company responsible for the ATM. Hurston responded that the "situation was some bullshit," and eventually a Casino manager offered to Hurston $150.00 in slot play for his troubles. Hurston responded that the offer was insulting, and he could "take the free play and shove it up his ass." (Filing No. 246-1 at 5; *see also* Hurston's manually-filed video evidence, Exhibit V, at Filing No. 265 and Filing No. 266.) By letter dated May 27, 2019, Hurston was banned from the Casino for one week because of his actions in response to the ATM situation (Filing No. 262-19).

On June 1, 2019, Hurston had a telephone conversation with Rod Centers ("Centers"), the general manager of the Casino. They discussed at length what had occurred with the ATM situation, and Centers acknowledged how his staff had mishandled the situation. Centers told Hurston that he would continue to train his staff on how to address various situations, and for the time being, Hurston should directly contact Centers if any additional problems arose, and he would address them for Hurston (Filing No. 246-1 at 6; *see also* Hurston's manually-filed audio evidence, Exhibit C2, at Filing No. 265 and Filing No. 266).

One week after this telephone conversation between Hurston and Centers, on June 8, 2019, a Caucasian patron approached a blackjack table where Hurston and his friend were located, and Hurston's friend asked the patron to wait to join the game because they were on a "hot streak." This individual took issue with the request and asked whether they did not want him to play because he was not black. Hurston contacted a manager, and the situation was addressed by the other patron not being allowed to play where Hurston had a marker at that time. Soon thereafter (still on June 8, 2019), Hurston and the Caucasian patron began a verbal altercation at the blackjack

6a

table on the Casino gaming floor. Hurston got up from the table to go to his room and began walking to the Casino hotel. The other patron also got up from the table at the same time and followed Hurston to the hotel. Hurston and the Caucasian patron continued talking during their walk to the hotel, and Hurston occasionally waved on the other patron to follow him when he fell behind him. At some point during the incident the Caucasian patron stated "I'm not getting on the elevator with a broke nigger with no money." (Filing No. 262-3 at 2; Filing No. 262-13 at 2). When they arrived at the hotel lobby, Hurston pushed the other patron, and the two jostled elbows while arguing with each other. Security was summoned to the scene, and after they arrived, they eventually were able to deescalate the situation (Filing No. 246-4 at 7–11; Filing No. 246-1 at 7–8; Filing No. 278-1 at 2; *see also* Hurston's manually-filed video evidence, Exhibit J, at Filing No. 265 and Filing No. 266).

Later that same day, Hurston sent a text message to Centers to explain what had happened and to complain about racism and discrimination. Hurston concluded his text message that racist situations should be taken seriously (Filing No. 262-3). Centers responded that he was out of town, but he would investigate the situation upon his return (Filing No. 246-1 at 8).

On June 13, 2019, Hurston asked Cody Turner ("Turner"), Hurston's Casino host at that time, to reserve a hotel room for him. Turner did not book a hotel room at the Casino for Hurston because the Casino was "investigating the June 8th 2019 situation," in which Hurston had been involved (Filing No. 246-1 at 8; Filing No. 246-2). Turner explained that the investigation needed to be completed before booking a room and that Hurston wasn't "banned or anything they just want to straighten this out." (Filing No. 246-2.)

An investigation into the June 8, 2019 incident began that same day (on June 8), and many members of the Casino's management and administration, including Centers, were involved in the

7a

investigation. The investigation led to the conclusion that Hurston and the other patron engaged in a loud, disruptive, and aggressive altercation had violated the Casino's policies and disrupted safe business operations. Hurston ultimately was banned from the Casino for one year because of the physical and verbal altercation that occurred on June 8, 2019. Both Hurston and the Caucasian patron involved in the altercation were banned from the Casino. Their one-year ban from the Casino began on June 14, 2019. The June 8, 2019 incident was not the first physical altercation in which Hurston had been involved at the Casino. Hurston was provided a letter dated June 14, 2019, discussing the one-year ban (Filing No. 246-6 at 2; Filing No. 246-5 at 3; Filing No. 262-7; Filing No. 271-1).

Not yet aware of the one-year ban, Hurston and a friend went to the Casino on June 14, 2019. When they entered at the Casino, a member of the Casino management approached Hurston and his friend and informed Hurston that he had been banned from the premises for one year because of the June 8, 2019 incident. Hurston and his friend left the premises after unsuccessfully attempting to get more information (Filing No. 246-1 at 8). Six months later, Hurston initiated this lawsuit (Filing No. 1).

II. SUMMARY JUDGMENT STANDARD

The purpose of summary judgment is to "pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). Federal Rule of Civil Procedure 56 provides that summary judgment is appropriate if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Hemsworth v. Quotesmith.com, Inc.*, 476 F.3d 487, 489–90 (7th Cir. 2007). In ruling on a motion for summary

8a

judgment, the court reviews "the record in the light most favorable to the non-moving party and draw[s] all reasonable inferences in that party's favor." *Zerante v. DeLuca*, 555 F.3d 582, 584 (7th Cir. 2009) (citation omitted). "However, inferences that are supported by only speculation or conjecture will not defeat a summary judgment motion." *Dorsey v. Morgan Stanley*, 507 F.3d 624, 627 (7th Cir. 2007) (citation and quotation marks omitted). Additionally, "[a] party who bears the burden of proof on a particular issue may not rest on its pleadings, but must affirmatively demonstrate, by specific factual allegations, that there is a genuine issue of material fact that requires trial." *Hemsworth*, 476 F.3d at 490 (citation omitted). "The opposing party cannot meet this burden with conclusory statements or speculation but only with appropriate citations to relevant admissible evidence." *Sink v. Knox County Hosp.*, 900 F. Supp. 1065, 1072 (S.D. Ind. 1995) (citations omitted).

"In much the same way that a court is not required to scour the record in search of evidence to defeat a motion for summary judgment, nor is it permitted to conduct a paper trial on the merits of [the] claim." *Ritchie v. Glidden Co.*, 242 F.3d 713, 723 (7th Cir. 2001) (citations and quotation marks omitted). "[N]either the mere existence of some alleged factual dispute between the parties nor the existence of some metaphysical doubt as to the material facts is sufficient to defeat a motion for summary judgment." *Chiaramonte v. Fashion Bed Grp., Inc.*, 129 F.3d 391, 395 (7th Cir. 1997) (citations and quotation marks omitted).

These same standards apply even when each side files a motion for summary judgment. The existence of cross-motions for summary judgment does not imply that there are no genuine issues of material fact. *R.J. Corman Derailment Serv., LLC v. Int'l Union of Operating Eng'rs.*, 335 F.3d 643, 647 (7th Cir. 2003). The process of taking the facts in the light most favorable to the non-moving party, first for one side and then for the other, may reveal that neither side has

9a

enough to prevail without a trial. *Id.* at 648. "With cross-motions, [the court's] review of the record requires that [the court] construe all inferences in favor of the party against whom the motion under consideration is made." *O'Regan v. Arbitration Forums, Inc.*, 246 F.3d 975, 983 (7th Cir. 2001) (citation and quotation marks omitted).

The Court notes that a "document filed *pro se* is to be liberally construed, and . . . must be held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (citations and quotation marks omitted).

> However, it is also well established that pro se litigants are not excused from compliance with procedural rules. [T]he Supreme Court has never suggested that procedural rules in ordinary civil litigation should be interpreted so as to excuse mistakes by those who proceed without counsel[.] Further, as the Supreme Court has noted, in the long run, experience teaches that strict adherence to the procedural requirements specified by the legislature is the best guarantee of evenhanded administration of the law.

Loubser v. United States, 606 F. Supp. 2d 897, 909 (N.D. Ind. 2009) (citations and quotation marks omitted).

III. DISCUSSION

In their Cross-Motions for Summary Judgment, the parties ask for entry of summary judgment on Hurston's three claims: Section 1981, breach of contract, and intentional infliction of emotional distress. The Court will address each claim in turn.

A. Section 1981 Claim

Concerning his Section 1981 discrimination claim, Hurston contends that the Casino not only fell short of treating him like a VIP, but treated him less than the average Caucasian guest who attended their establishment. (Filing No. 277 at 1). He alleges racial motivation was behind his one-year ban from the Casino. Section 1981 provides,

> All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give

10a

> evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

42 U.S.C. § 1981(a). "[T]he term 'make and enforce contracts' includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship." *Id.* at § 1981(b).

As noted by another judge in this District, "While § 1981 claims are most often brought in connection with the right to contract for employment, plaintiffs can also use the statute to enforce their rights to enter into retail contracts." *Carney v. Caesar's Riverboat Casino, LLC*, 2009 U.S. Dist. LEXIS 10462, at *8 (S.D. Ind. Feb. 11, 2009).

> "In the context of the denial of the right to make or enforce a retail contract, the appropriate parallel *prima facie* case is that (1) the plaintiff is of a racial minority, (2) he attempted to make or enforce a contract, (3) the defendant denied him the right to make or enforce the contract and (4) the defendant treated the plaintiff less favorably than other white people who were similarly situated."

Id. at *10 (quoting *Williams v. Southern Illinois Riverboat/Casino Cruises*, 2008 U.S. Dist. LEXIS 31309, at *17 (S.D. Ill. April 16, 2008) (citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973))). "To prevail [on a Section 1981 claim], a plaintiff must initially plead and ultimately prove that, but for race, it would not have suffered the loss of a legally protected right." *Comcast Corp. v. Nat'l Ass'n of African Am.-Owned Media*, 140 S. Ct. 1009, 1019 (U.S. 2020).

The parties do not dispute the existence of the first three elements of a *prima facie* case for Hurston's Section 1981 claim. Concerning the fourth element, Hurston argues that Indiana Gaming denied him the right to contract at the Casino on June 13 and 14, 2019, when it would not book a room at the hotel and told him the following day to leave the premises because he had been banned. Hurston argues that these refusals to contract with him were based on his complaint of discrimination about the June 8, 2019 incident. He argues that the Caucasian patron who was

11a

involved in the incident already had decided that he would no longer patronize the Casino when the Casino banned him, and when Hurston was involved in a physical altercation with another Black patron in February 2018, the Casino did not ban him from the premises. Hurston asserts that the Casino "clearly denied [him] the right to contract due to him complaining about a Caucasian male being permitted to harass him and make racial slurs" and "[b]ecause [he] reported Discrimination, the Hollywood Casino refused [him] the Right to Contract, and informed him that his issue was under investigation." (Filing No. 277 at 3.)

As noted above, for Hurston to satisfy the fourth element of his Section 1981 claim, he must show that but for his race, the Casino would have allowed him to contract with it on June 13 and 14, 2019. Indiana Gaming asserts that the admissible designated evidence clearly indicates that not allowing Hurston to book a hotel room or be on the premises on June 13 and 14, 2019, was based solely and entirely on Hurston's history of aggressive, disrespectful, and disruptive behavior in 2018 and 2019 toward other Casino patrons and personnel, which culminated on June 8, 2019, when Hurston had yet another physical and verbal altercation with another patron. The Casino's denial of Hurston's right to contract had nothing to do with his race and everything to do with his behavior. Like Hurston, the Caucasian patron who was involved in the altercation was banned from the Casino for one year. Indiana Gaming asserts, had Hurston's race been different, the result would have been the same—Hurston still would have been banned from the Casino. Thus, his Section 1981 claim fails.

Upon review of the admissible designated evidence, and in light of the controlling case law, the Court agrees that Hurston's Section 1981 claim must be dismissed because he cannot satisfy the fourth element of his claim, and Indiana Gaming has offered a legitimate, nondiscriminatory reason for its actions. The evidence shows a history of disruptive conduct by

12a

Hurston and the Casino giving him numerous opportunities to correct himself and remain a patron of the Casino. The evidence shows that Hurston was prohibited from booking a hotel room on June 13, 2019, because an investigation was still being conducted of his physical and verbal altercation that occurred on June 8, 2019. The evidence shows that Hurston was prohibited from staying on the premises on June 14, 2019, because he had been banned from the Casino because of his physical and verbal altercation that occurred on June 8, 2019.

Hurston's argument that the "Casino's theme of the Plaintiff being a disruptive guest" is pretextual, and "merely an effort the justify discriminatory action taken against Hurston to end the business relationship," also fails. (Filing No. 277 at 8). A plaintiff can demonstrate that the defendants explanations are pretextual either directly, by showing that "a discriminatory reason more likely motivated" the defendant's actions, or indirectly, by showing the defendants explanations are "unworthy of credence." *Senske v. Sybase, Inc.*, 588 F.3d 501, 507 (7th Cir. 2009). To show that non-discriminatory explanations are not credible, the plaintiff must point to evidence that the defendant's stated reasons are not the real reasons for the defendants action, have no grounding in fact, or are insufficient to warrant the decision. *See Boumehdi v. Plastag Holdings, LLC*, 489 F.3d 781, 792 (7th Cir. 2007) (noting that a plaintiff must identify such "weaknesses, implausibilities, inconsistencies, or contradictions" in the employer's asserted reasons that a reasonable person could find them not credible). No such admissible evidence has been designated and no reasonable jury could conclude that Indiana Gaming's purported reason for Hurston's one-year ban was a lie. The Caucasian patron involved in the same altercation received the same one-year ban from the Casino (it is irrelevant whether that patron decided he was not going to return to the Casino). Hurston was not treated less favorably than similarly situated white patrons. The fact that Hurston had not been banned from the Casino more than a

year earlier when he was in a fight with another Black patron does not negate the undisputed fact that he was banned in June 2019 because of his physical and verbal altercation in June 2019.

The evidence shows Hurston was prohibited from contracting with the Casino in June 2019 because of his behavior, not because of his race. Therefore, summary judgment is **granted** in favor of Indiana Gaming on Hurston's Section 1981 claim.

B. Breach of Contract

"The essential elements of a breach of contract action are the existence of a contract, the defendant's breach thereof, and damages." *Berg v. Berg*, 170 N.E.3d 224, 231 (Ind. 2021) (internal citation and quotation marks omitted). "[W]hether a contract exists is a question of law. The essential elements of a contract are an offer, an acceptance, and consideration." *Stardust Ventures, LLC v. Roberts*, 65 N.E.3d 1122, 1126 (Ind. Ct. App. 2016) (internal citations omitted). "[A] meeting of the minds between the contracting parties is essential to the formation of a contract. There must be mutual assent or a meeting of the minds on all essential elements or terms in order to form a binding contract." *Ind. Dep't of Corr. v. Swanson Servs. Corp.*, 820 N.E.2d 733, 737 (Ind. Ct. App. 2005) (internal citation and quotation marks omitted).

Hurston argues that Indiana Gaming or the Casino entered into a contract with him during the telephone conversation that he had with the general manager (Centers) on June 1, 2019. He argues that they agreed on a contract to resolve any future disputes involving Hurston and others at the Casino by having him work directly and exclusively with Centers to resolve the problems. Hurston argues that this contract was entered into as a means to retain him as a customer of the Casino and to prevent other actions such as Hurston complaining to the media or bringing lawsuits. He contends that this exclusive dispute resolution with Centers was accepted by him, and there was consideration for this agreement—Hurston would not file police complaints or lawsuits.

14a

Hurston asserts that Centers breached their contract when he failed to respond after the June 8, 2019 incident. He argues that he suffered damages because of "the June 14th, 2019 Breach. [He] had earned his VIP accommodations due to his player rating. Free weekly hotel stays, meals, concerts, gifts, vacations, and a personal host were not things offered to a guest who wasn't at a certain level. These expensive accommodations were lost." (Filing No. 277 at 34.)

Indiana Gaming argues that there was no contract between the parties, no contract was formed during the telephone call between Centers and Hurston, and there can be no breach because there was no contract. Moreover, Hurston's claimed damages do not flow from any alleged breach by the Casino general manager, because Centers never offered to contract with Hurston. Rather, the conversation between Centers and Hurston on June 1, 2019, was merely a conversation between a casino patron and a casino employee concerning guest services or guest relations. There was no manifestation of willingness to enter into a bargain that could give rise to an offer to enter a contract.

Furthermore, Indiana Gaming contends, there were no reasonably certain and definite contract terms to be able to form a contract. And there was no meeting of the minds regarding an intent to contract. Similarly, Indiana Gaming asserts there was no consideration—or a bargained for exchange—given to support a contract. Centers simply was cultivating customer relations in the same way he treated all other patrons of the Casino. Indiana Gaming directs the Court to an affidavit from Centers, wherein he affirms that he did not intend to enter into an agreement or contract with Hurston, and he did not extend any offer to enter into a contract with Hurston. The conversation was one of customer relations and service (*see* Filing No. 246-10).

After reviewing the designated evidence, including listening to the recorded telephone conversation that was designated, the Court concludes that no contract existed between Hurston

15a

and Indiana Gaming to support a breach of contract claim. While Hurston characterizes the telephone conversation as one including an offer and acceptance, Hurston's own view of the conversation cannot create a meeting of the minds or an intent to contract on the part of another person. The designated evidence shows that no offer to contract was extended to Hurston. There was no intent to contract on the part of Centers. Centers simply was trying to keep a customer happy by telling Hurston to contact him if he had problems in the future, and he would do his best to try to fix those problems. The telephone call truly was a customer relations effort, not a contract formation.

The Court further notes that Hurston's contention—that an offer to exclusively communicate with Centers was breached when Centers did not respond after the June 8, 2019 incident—is belied by Hurston's own allegations. Hurston informed the Court that he sent a text message to Centers to explain what had happened on June 8, 2019 and Centers responded that he was out of town, but he would investigate the situation upon his return (Filing No. 262-3; Filing No. 246-1 at 8). The designated evidence does not support the existence of a contract or a breach of contract; therefore, Indiana Gaming is entitled to summary judgment on this claim.

C. Intentional Infliction of Emotional Distress

> Intentional infliction of emotional distress is committed by one who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another. The elements of intentional infliction of emotional distress are that a defendant (1) engages in extreme and outrageous conduct that (2) intentionally or recklessly (3) causes (4) severe emotional distress to another. The requirements to prove this tort are rigorous. Intentional infliction of emotional distress is found where conduct exceeds all bounds usually tolerated by a decent society and causes mental distress of a very serious kind. Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. In the appropriate case, an intentional infliction of emotional distress claim may be disposed of by summary judgment.

16a

Harkins v. Westmeyer, 116 N.E.3d 461, 472 (Ind. Ct. App. 2018) (internal citations and quotation marks omitted).

In asking for summary judgment on his claim for intentional infliction of emotional distress, Hurston points the Court to the follow incidents:

- April 8, 2018, Hurston was removed from the Casino after the verbal altercation near the gaming table, which was addressed by management.
- May 23–July 28, 2018, a Casino employee was recording Hurston's bets, and he was improperly rated, which resulted in him missing his status goal. Hurston complained to management, and the employee again recorded Hurston's bets, after which Hurston called the employee an idiot. Hurston was removed from the Casino after this incident.
- December 8, 2018, Hurston was removed from the Casino after the incident with a waitress.
- February 9, 2019, Hurston was removed from the Casino after the incident with another patron who blew cigarette smoke in his face.
- February 15, 2019, Hurston received a thirty-day ban based on the February 9, 2019 incident.
- May 18, 2019, Hurston had an issue with an ATM, and the Casino staff did not address the issue.
- May 27, 2019, Hurston received a one-week ban based on the May 18, 2019 ATM incident.
- June 8, 2019, Hurston had the verbal and physical altercation with another patron. On June 13 and 14, 2019, the Casino refused to serve Hurston leading to his embarrassment and removal from the Casino.
- June 15, 2019, Casino security supervisor Scott Miller "Liked" a picture of Hurston on Hurston's Facebook page, which resulted in the profile photo of Scott Miller appearing on Hurston's Facebook page.

Hurston argues that "there had been continuous acts of discriminatory treatment that purposefully got worse after he put management on alert that he felt discriminated against because

17a

of his race." (Filing No. 277 at 10.) He contends that the above listed actions of the Casino were extreme and outrageous and led to him suffering embarrassment and severe emotional distress.

Indiana Gaming argues that "[t]he 'factual' allegations in Plaintiff's Amended Complaint to support his claim of intentional infliction of emotional distress do not come close to instances of 'extreme and outrageous conduct' which caused him 'severe emotional distress.'" (Filing No. 245 at 22.) The Casino's actions do not "go beyond all possible bounds of decency" as is required by the case law for this claim. Indiana Gaming points out that Hurston was involved in numerous altercations with other patrons and employees, and his removal from the Casino was an appropriate response to his behavior. He was always provided appropriate notice and was given opportunities to correct his behavior and return to the Casino. Indiana Gaming further asserts that there is no evidence that Hurston suffered severe emotional distress to support his claim.

The Court agrees that the Casino's treatment of Hurston concerning the ATM machine incident was handled poorly–and Centers admitted as much during the telephone conversation with Hurston and he apologized that a player of Hurston's capacity was not treated better. But the requirements to prove the tort of intentional infliction of emotional distress are rigorous and do not exist here. *See Westminster Presbyterian Church of Muncie v. Yonghong Cheng*, 992 N.E.2d 859, 870 (Ind. Ct. App. 2013) (citation omitted). Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, "Outrageous!" *Id.* It is the intent to harm one emotionally that constitutes the basis for the tort of an intentional infliction of emotional distress. *Cullison v. Medly*, 570 N.E.2d 27, 31 (Ind. 1991).

No reasonable factfinder would find that the Casino's conduct raised by Hurston comes close to "extreme and outrageous conduct" or conduct that "exceeds all bounds usually tolerated

18a

by a decent society" that would lead one to exclaim "Outrageous!" Hurston concedes that he was involved in several altercations and disturbances with Casino patrons (both Black and Caucasian) in 2018 and 2019, and as a result he suffered consequences, including being removed or banned from visiting the Casino for periods of time. He was always provided appropriate notice and was given opportunities to correct his behavior and return to the Casino—including the June 2019 ban which allowed him to return after a period of one year. Under the circumstances here, the Casino's conduct was not "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *Harkins*, 116 N.E.3d at 472. Simply stated, Hurston has failed to meet the rigorous requirements to prove this tort. Thus, Indiana Gaming is entitled to summary judgment on this claim.

IV. CONCLUSION

For the foregoing reasons, the Court **GRANTS** Indiana Gaming's Motion for Summary Judgment (Filing No. 244), and **DENIES** Hurston's Motion for Summary Judgment (Filing No. 276). Plaintiff Miracle Hurston's claims are **DISMISSED** on summary judgment, the trial and final pretrial conference are hereby **VACATED**, and final judgment will issue under separate order. Hurston's pending Motion for Defendant to Pay the Excess Costs, Expenses, and Attorney's Fees Due to Defendant Unreasonably Multiplying Proceedings (Filing No. 251) will be addressed under separate order after entry of final judgment.

SO ORDERED.

Date: 11/28/2022

Hon. Tanya Walton Pratt, Chief Judge
United States District Court
Southern District of Indiana

19a

DISTRIBUTION:

Miracle Hurston
1812 Grand Avenue
Middletown, Ohio 45044

Catherine A. Breitweiser-Hurst
JOHNSON & BELL, PC
breitweiserhurstc@jbltd.com

Edward W. Hearn
JOHNSON & BELL, PC
hearne@jbltd.com

APPENDIX B 20a

NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

CERTIFIED COPY

Submitted November 21, 2023*
Decided November 22, 2023

Before

FRANK H. EASTERBROOK, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 23-1099

MIRACLE HURSTON,
Plaintiff-Appellant,

v.

INDIANA GAMING COMPANY LLC,
d/b/a HOLLYWOOD CASINO
LAWRENCEBURG,
Defendant-Appellee.

Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division.

No. 1:19-cv-04890-TWP-DLP

Tanya Walton Pratt,
Chief Judge.

ORDER

Miracle Hurston sued Indiana Gaming Company LLC ("Indiana Gaming"), the operator of the Hollywood Casino Lawrenceburg, alleging race discrimination, breach of contract, and intentional infliction of emotional distress. The district court ruled

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

against Hurston at summary judgment. Because Hurston failed to create a genuine dispute of material fact on any claim, we affirm.

Background

Hurston, a Black man, was a frequent patron of Hollywood Casino (the "casino") in Lawrenceburg, Indiana, which is near the Cincinnati, Ohio, metropolitan area. He had a history of involvement in disturbances that eventually led the casino to take disciplinary action: a fight with another Black patron to which police were called (no discipline for anyone); a verbal altercation with a white patron (same); a verbal altercation with a waitress (Hurston ejected from casino, waitress suspended for three days); a verbal altercation initiated by a white patron (both parties ejected from casino, Hurston banned for thirty days); and an incident when Hurston cursed at an employee because of a malfunctioning ATM (one-week ban). Attempting to mend the relationship, Hurston spoke with the casino's general manager, who apologized for how Hurston was treated and promised to handle any future issues directly—a conversation Hurston believed to create an oral contract. Nevertheless, tensions reached a breaking point after Hurston admittedly used physical force against a white guest in response to racially disparaging statements. In response to this last disruption, the casino refused to book Hurston a hotel room while it investigated the incident, and it eventually banned him and the other guest for a year.

Hurston sued Indiana Gaming for the casino's actions. His fifth amended complaint alleged unlawful discrimination under 42 U.S.C. § 1981 and state-law claims of intentional infliction of emotional distress and breach of the purported oral contract. While the lawsuit was pending, but after the one-year ban had expired, Hurston returned to the casino in Lawrenceburg, which then banned him for life.

Litigation was contentious. During discovery, a dispute arose over whether Indiana Gaming and its attorneys had misrepresented their ability to produce incident reports from the casino's security system. The district court ordered defense counsel to show cause why she should not be sanctioned for knowingly making a false statement, and it held several evidentiary hearings on the matter. The court ultimately concluded that counsel had reasonably relied on misstatements from her client.

The parties then filed cross motions for summary judgment. Hurston also filed motions for default judgment and to recover excess costs as sanctions for the discovery violation. He also moved for leave to amend his complaint a sixth time to add claims about the lifetime ban. Hurston had tried to bring these claims in a separate lawsuit

nine months after the relevant incident, but the judge assigned to that case dismissed it for improper claim splitting (Hurston did not appeal that decision).

The district court denied Hurston's motions for default judgment and for leave to amend. As to the former, it explained that default judgment was too harsh a sanction for the misconduct. And in denying leave to amend, the court cited the late stage of the proceedings and the fact that, twice after the casino banned him for life, Hurston had amended his complaint without adding anything about the lifetime ban.

The court then entered summary judgment for Indiana Gaming, explaining that, for purposes of the § 1981 claim, no reasonable jury could conclude that the casino treated Hurston less favorably than any white patron. The court further determined that Indiana Gaming had offered Hurston's disruptive behavior as a legitimate, nondiscriminatory reason for banning him from the casino, and Hurston's evidence did not call the sincerity of the reason into question. As to Hurston's state-law claims, the court held that no contract existed as a matter of Indiana law and that no reasonable factfinder could determine Indiana Gaming's conduct to be extreme and outrageous.

After entering judgment, the court granted Hurston's motion for excess costs, concluding that Indiana Gaming and its attorneys had unreasonably multiplied the proceedings. They had made misstatements of fact and mischaracterized the show-cause order, turning a discovery inquiry into a four-day evidentiary proceeding.

Analysis

On appeal, Hurston first challenges the merits of the judgment for Indiana Gaming. We review the decision de novo and draw all reasonable inferences in favor of Hurston. *Schlaf v. Safeguard Prop., LLC*, 899 F.3d 459, 465 (7th Cir. 2018). We begin with the claim of racial discrimination under 42 U.S.C. § 1981.

Hurston's claim that the casino denied him the right to contract when it refused to book him a room and banned him from the casino for a year cannot withstand summary judgment because he lacks sufficient evidence of racially discriminatory intent. *See Pourghoraishi v. Flying J, Inc.*, 449 F.3d 751, 756–59 (7th Cir. 2006). Because he proceeded under the burden-shifting method, Hurston needed evidence from which a reasonable jury could find, among other things, that the casino treated him less

favorably than its white patrons.[1] *See Dunlevy v. Langfelder*, 52 F.4th 349, 353 (7th Cir. 2022); *Dandy v. United Parcel Serv., Inc.*, 388 F.3d 263, 272–73 (7th Cir. 2004). The best evidence Hurston produces of disparate treatment is that the casino punished him for fighting with a white patron, but not a Black patron. But each time, the other combatant received the same treatment he did. Hurston disputes this by asserting that the white patron voluntarily stopped going to the casino. But what matters is that the casino treated the man outside the protected class the same as Hurston after this fight.

Further, Indiana Gaming provided a legitimate, nondiscriminatory reason for the casino's refusal to contract with Hurston. *See Dunlevy*, 52 F.4th at 353. The casino has a written policy to eject anyone who uses offensive or threatening language or commits an act of violence, regardless of whether the person is also a victim. Citing the six different altercations involving Hurston, Indiana Gaming asserts that the one-year ban responded to increasingly aggressive and disruptive behavior. And Hurston adduced no evidence that the stated reason is pretextual; he admits to each act that led to discipline. *See id.* Indiana Gaming's justifications are not "unworthy of credence" even if, as Hurston has attested, someone else instigated the scuffles he participated in. *de Lima Silva v. Dep't of Corr.*, 917 F.3d 546, 561 (7th Cir. 2019).

That brings us to the state-law claims. The parties apparently agree that Indiana law applies to the claims, and in any event, when no party raises a choice-of-law issue, the federal court may simply apply the substantive law of the forum state. *McCoy v. Iberdrola Renewables, Inc.*, 760 F.3d 674, 684 (7th Cir. 2014).

The district court ruled for Indiana Gaming on the claim for intentional infliction of emotional distress because, based on the evidence in the record, no reasonable factfinder could conclude that the casino's conduct was extreme and outrageous or that it caused Hurston's distress. *See Wilson-Trattner v. Campbell*, 863 F.3d 589, 596–97 (7th Cir. 2017) (applying Indiana law). We agree that it was not beyond all bounds of decency for the casino to ban someone who was involved in six altercations that violated its policies, regardless of who was at fault. *Compare McCollough v. Noblesville Schs.*, 63 N.E.3d 334, 342 (Ind. Ct. App. 2016) (allegedly shoddy investigation into employee misconduct which led to discipline not extreme and outrageous) *with State v. Alvarez ex rel. Alvarez*, 150 N.E.3d 206, 219 (Ind. Ct. App. 2020) (state's knowing failure

---

[1] We have not articulated the elements of a prima facie case of discrimination in § 1981 claims relating to a retail or service contract (as opposed to an employment contract). But neither party asks us to adopt the Sixth Circuit's extra elements, *see Christian v. Wal-Mart Stores, Inc.*, 252 F.3d 862, 872 (6th Cir. 2001), nor disputes the standard articulated by the district court.

to warn residents they lived and went to school on a lead-contaminated superfund site would be extreme and outrageous conduct). Hurston also lacked evidence that the ban from Hollywood Casino caused his emotional distress—which he describes as withdrawal symptoms resulting from his gambling addiction. He submitted no evidence that he could not have gambled elsewhere.

Hurston also challenges the decisions about Indiana Gaming's discovery violation. He first argues that default judgment was the appropriate sanction, but the district court did not abuse its discretion when it awarded him only excess costs. *See Equal Emp. Opportunity Comm'n v. Wal-Mart Stores E., L.P.*, 46 F.4th 587, 599 (7th Cir. 2022). Default judgment is a drastic sanction that is appropriate under FED. R. CIV. P. 37(b)(2)(A) or the court's inherent authority only if a party's discovery misconduct resulted from willfulness, bad faith, or fault; mere mistake or inadvertence is insufficient. *Id.*; *e360 Insight, Inc. v. Spamhous Project*, 658 F.3d 637, 642–43 (7th Cir. 2011). Although the district court concluded that the actions of one casino employee "demonstrate[d] a willfulness to mislead the [c]ourt," we cannot say that its decision to impose only a monetary penalty was beyond all reason. *See Wal-Mart Stores E., L.P.*, 46 F.4th at 599. The court's ruling compensated Hurston for the multiplied proceedings, and the violation did not prejudice him—it only partially impeded one of his three claims and did not affect the outcome of the case. Restraint was also warranted because the court was exercising, in part, its inherent power to levy sanctions. *Greyer v. Ill. Dep't of Corr.*, 933 F.3d 871, 877 (7th Cir. 2019).

Hurston also argues that the district court erred by entering final judgment before issuing sanctions. But contrary to Hurston's assertions, sanctions are a collateral matter, which courts generally can resolve after a judgment is rendered. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395–96 (1990). And here, the distinction hardly matters, because the court issued the sanctions order on the heels of the judgment, before Hurston even filed his notice of appeal. To the extent that Hurston contends that the court's findings on sanctions would have made a difference in how it resolved the summary judgment motions, he is wrong. The court learned nothing new between the time it ruled on the summary judgment motions and when it issued the sanctions order. The evidentiary hearings occurred months earlier, and the court had all relevant information about the discovery violation when it considered the cross-motions for summary judgment. Waiting to issue a decision on sanctions until it could assess the effect of the evidentiary dispute on the summary judgment motions seems a prudent act of case management.

Finally, the district court did not abuse its discretion by denying Hurston leave to amend his complaint a sixth time. *See Liebhart v. SPX Corp.*, 917 F.3d 952, 964 (7th Cir. 2019). Hurston could have raised the lifetime ban in two of his prior motions for leave to amend that the court granted. Allowing Hurston to amend his complaint after the parties had moved for summary judgment would have unduly prejudiced Indiana Gaming by requiring it to re-open discovery after nearly three years of litigation. *See id.* at 965–66; *Johnson v. Cypress Hill*, 641 F.3d 867, 872–73 (7th Cir. 2011). The district court was not required to accommodate this undue delay. And if Hurston wanted to proceed with claims about the lifetime ban in his separate case, he had the option of appealing the dismissal of that action.

Hurston has not developed any other argument—including about his claim that Indiana Gaming breached an oral contract—enough to warrant discussion. *See Shipley v. Chi. Bd. of Election Comm'rs*, 947 F.3d 1056, 1062–63 (7th Cir. 2020).

AFFIRMED

26a

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen
United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

CERTIFIED COPY
A True Copy
Teste:
Deputy Clerk
of the United States
Court of Appeals for the
Seventh Circuit

FINAL JUDGMENT

November 22, 2023

Before
FRANK H. EASTERBROOK, *Circuit Judge*
MICHAEL B. BRENNAN, *Circuit Judge*
THOMAS L. KIRSCH II, *Circuit Judge*

No. 23-1099	MIRACLE HURSTON, Plaintiff - Appellant v. INDIANA GAMING COMPANY, LLC, doing business as HOLLYWOOD CASINO LAWENCEBURG, Defendant - Appellee
Originating Case Information: [redacted]	
District Court No: 1:19-cv-04890-TWP-TAB Southern District of Indiana, Indianapolis Division District Judge Tanya Walton Pratt	

The judgment of the District Court is **AFFIRMED**, with costs, in accordance with the decision of this court entered on this date.

Clerk of Court

form name: c7_FinalJudgment (form ID: 132)

Case: 23-1099 Document: 00714324255 Filed: 01/26/2024 Pages: 1 (8 of 9)

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

CERTIFIED COPY
A True Copy
Teste:
Clerk of the United States Court of Appeals for the Seventh Circuit

January 18, 2024

Before

FRANK H. EASTERBROOK, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 23-1099

MIRACLE HURSTON,
Plaintiff-Appellant,

v.

INDIANA GAMING COMPANY LLC, d/b/a HOLLYWOOD CASINO LAWRENCEBURG,
Defendant-Appellee.

Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division.

No. 1:19-cv-04890-TWP-DLP

Tanya Walton Pratt,
Chief Judge.

ORDER

Plaintiff-Appellant filed a petition for rehearing and rehearing en banc on December 29, 2023. No judge* in regular active service has requested a vote on the petition for rehearing en banc, and all the judges on the panel have voted to deny rehearing. The petition for rehearing is therefore **DENIED.**

*Circuit Judge Pryor did not participate in the consideration of this petition.

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen
United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

NOTICE OF ISSUANCE OF MANDATE

January 26, 2024

To: Roger A. G. Sharpe
UNITED STATES DISTRICT COURT
Southern District of Indiana
United States Courthouse
Indianapolis, IN 46204-0000

No. 23-1099	MIRACLE HURSTON, Plaintiff - Appellant v. INDIANA GAMING COMPANY, LLC, doing business as HOLLYWOOD CASINO LAWENCEBURG, Defendant - Appellee
Originating Case Information:	
District Court No: 1:19-cv-04890-TWP-TAB Southern District of Indiana, Indianapolis Division District Judge Tanya Walton Pratt	

Herewith is the mandate of this court in this appeal, along with the Bill of Costs, if any. A certified copy of the opinion/order of the court and judgment, if any, and any direction as to costs shall constitute the mandate.

RECORD ON APPEAL STATUS:	Entire record returned consisting of
Exhibits:	1 USB flash drive containing exhibits

form name: c7_Mandate (form ID: 135)

APPENDIX D

29a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

MIRACLE HURSTON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 1:19-cv-04890-TWP-DLP
	)	
INDIANA GAMING COMPANY LLC,	)	
	)	
Defendant.	)	

ORDER

On November 15, 2021, the Court entered an Order directing Respondent Catherine A. Breitweiser-Hurst to provide a written response showing cause why she should not be sanctioned for violating Indiana Rule of Professional Conduct 3.3(a). (Dkt. 197 at 8). On December 10, 2021, Respondent, represented by Attorney Edward Hearn, filed her response to the order to show cause. (Dkt. 205). Respondent contemporaneously moved for a hearing on the matter, which was granted. (Dkt. 209). Plaintiff Miracle Hurston responded on December 16, 2021, (Dkt. 207), and on January 6, 2022, Ms. Breitweiser-Hurst filed an amended response. (Dkt. 214). Thereafter, the Undersigned conducted four hearings on the order to show cause, on January 12, 2022; January 13, 2022; January 27, 2022; and March 10, 2022. (Dkts. 216, 217, 228, 231).

I. Background

The Show Cause Order arose out of statements Attorney Hurst made during an April 27, 2021 discovery conference, which was held to discuss a variety of

discovery disputes that had arisen between the parties, including the Defendant's response to Plaintiff's amended Request for Production.[1] (Dkt. 108). During the hearing, Attorney Hurst represented to the Court that it was not possible for her client to search for incident reports using the search term "altercations." (Id.).

> THE COURT: Is there a way to run the incident reports by name?
> MS. BREITWEISER-HURST: I have, and there is not -- individual names, yes. By category of, like, naming –
> THE COURT: Altercation.
> MS. BREITWEISER-HURST: No. So basically they have -- what I was told is, they would have to pull every incident report for that period of time, and we would have to go through them to see if, if the category of confrontation or fight.

(Dkt. 201). Based on this representation by counsel, the Court ordered the Defendant to produce all incident reports involving certain named individuals from January 1, 2018 to December 31, 2019. (Dkt. 108 at 4).

Thereafter, Plaintiff filed a motion for sanctions, which in part, argued that Attorney Hurst had knowingly misrepresented to the Court the Defendant's ability to search iTrak[2] incident reports by the category of "altercations." (Dkt. 121 at 5-6). Plaintiff pointed to an affidavit by security planning consultant, Nick Hewitt, and incident reports attached to Defendants' responses to Plaintiff's Supplemental Request for Production as support. (Dkt. 197 at 6-7; Dkt. 121-3). Finding that Plaintiff had established a strong likelihood that Attorney Hurst's statement that incident reports cannot be searched by "altercation" is misleading or false, the Court

[1] The amended Request for Production No. 1, sought "All incident reports and supporting documents involving a disturbance, confrontation between guest and an employee, confrontation between guest, regardless of removal or not at 777 Hollywood Blvd., Lawrenceburg, Indiana between dates January 1st 2018-December 31st 2019." (Dkt. 121-1 at 1).
[2] iTrak is the system Defendant uses to generate incident reports. (Dkt. 205 at 2).

ordered Attorney Hurst to show cause why she should not be sanctioned for violating Indiana Rule of Professional Conduct 3.3(a). (Dkt. 197 at 8). The Court further directed that her written response address (1) a description of the reasonable inquiry into the factual basis for asserting that incident reports cannot be searched by altercation, and (2) confirmation as to whether incident reports can be searched by altercation and, if so, the basis for her prior statement that they could not be searched by altercation.[3] (Id.).

In her response, the Respondent challenges the Court's authority to issue the show cause order. (Dkt. 205 at 6-8, 12-13). The Respondent contends that there has been no violation of Indiana Rule of Professional Conduct 3.3 because her statement to the Court that incident reports could not be searched by "altercation," but rather needed to be individually reviewed to determine whether they involved an "altercation," "is absolutely true and correct." (Dkt. 205 at 2, 8-11). The Respondent admits that Mr. Hewitt's statement that "[i]f a report shows Type (i.e., Altercation)...those criteria are available in the dropdown list and fully searchable" "is true." (Id. at 11). The Respondent nonetheless, pointing to her affidavit as well as the affidavit of Michael Bova, Defendant's Director of Security, argues that incident reports cannot be run by incident type, such as altercation, to produce any meaningful results because the casino dispatchers, who create

[3] The Court also directed Respondent to "Confirm[] compliance with the Court's April 27, 2021 Order to produce all incident reports involving certain named individuals, explaining the representation that Defendant did not have any incident reports involving Casino Manager Jerry." (Dkt. 197 at 8).

32a

the incident report and fill out the "Incident Type" do not have personal knowledge of the incident and, thus, "many times falsely label the 'Incident Type' field." (Dkt. 205 at 4-6, 10, 12). The Respondent further asserts that Defendant reviewed the Court's November 15, 2021 Order and confirmed that her statements to the Court were "100% correct and did not contain any misstatement." (Dkt. 205 at 2).

In response, the Plaintiff asserts that the Court has authority to sanction counsel; contends that iTrak is designed to do exactly what the Respondent claims it cannot do – search records; and challenges the Respondent's misclassification argument. (Dkt. 207).[4]

II. Discussion

As an initial matter, the Court has authority to sanction an attorney, including for violation of a Rule of Professional Conduct. "District courts 'possess certain inherent powers, not conferred by rule or statute, to manage their own affairs so as to achieve the orderly and expeditious disposition of cases. That authority includes the ability to fashion an appropriate sanction for conduct which abuses the judicial process.'" *Fuery v. City of Chicago*, 900 F.3d 450, 452 (7th Cir. 2018). The federal courts "'are universally acknowledged to be vested, by their very creation, with power to impose silence, respect, and decorum, in their presence, and submission to their lawful mandates.'" *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991) (quoting *Anderson v. Dunn*, 19 U.S. 204, 227 (1821)). A federal court also

[4] The Respondent also filed an amended response that corrects statements made in her original response concerning incident reports involving Casino Manager Jerry. (Dkt. 214).

33a

"'has the power to control admission to its bar and to discipline attorneys who appear before it.'" *Chambers*, 501 U.S. at 43; *see also Littler v. Martinez*, No. 2:16-cv-00472-JMS-DLP, 2019 WL 1043256, at *11 (S.D. Ind. Mar. 5, 2019) ("The Court ordered [attorney] to show cause why he should not be sanctioned for violating Rule 11 and Indiana Rule of Professional Conduct 3.3(a)."); *In re Finn*, No. 19-71144, 2020 WL 6065755, at *8 (Bankr. C.D. Ill. Aug. 28, 2020) (noting that fidelity to the Bankruptcy Code in using § 105 [(articulating the power of the court)] as a basis for sanctions "does not unduly limit the Court's authority to issue sanctions when it finds violations of the Illinois Rules of Professional Conduct and the Bankruptcy Code and Rules."); *Martinez v. City of Chicago*, 823 F.3d 1050, 1055 (7th Cir. 2016) ("One of the sanctions that this court occasionally imposes, usually after a rule to show cause has been issued, is a formal censure or reprimand of a lawyer.").

A. Affidavits of Attorney Hurst & Michael Bova

In support of her response to the show cause order, Attorney Hurst attested that:

1. The statements I made to the Court as set forth in ¶ 6[5] *supra* are absolutely true and correct. I am keenly aware of my obligations under Indiana Rule of Professional Conduct 3.3 and my duty of candor to the Court. I do not believe I have violated Rule 3.3 or any other duty to the Court. Once again, the statements I made to the Court were true and correct at the time they were made and remain correct today. There has therefore been no occasion or reason to correct any statement that I made. (Dkt. 205-1 at ¶ 10).

2. Throughout the discovery process in this case, I have been in constant contact with [Defendant] with regard to fulfilling Plaintiff's

[5] The Undersigned notes that no statements are set forth in paragraph 6 of Attorney Hurst's Affidavit. (Dkt. 205-1 at 2). Thus, the Undersigned is not sure if Attorney Hurst meant to refer to paragraph 9 or generally to the April 27, 2021 discovery conference.

request for documents and [Defendant's] recordkeeping systems. Specifically, Mike Bova is the Director of Security at Hollywood Casino Lawrenceburg and has been my primary contact at [Defendant]. In addition to consulting with Mr. Bova, I have seen many examples of [Defendant's] computer generated reports (iTrak Reporting System) and have become familiar with the system's capabilities and limitations. (Dkt. 205-1 at ¶ 11).

3. To understand why my statements to the Court as set forth in ¶ 6 *supra* are true and correct, it is imperative to understand how incident reports are generated through the iTrak Reporting System at [Defendant] and Hollywood Casino Lawrenceburg. Through consultation with my client and my investigation, I have learned the details of how this process unfolds. (Dkt. 205-1 at ¶ 12).

4. The process begins when a casino dispatcher receives a call about an incident. The casino dispatcher operates similar to a 911 dispatcher and fields calls from an office at the casino. Upon receiving a call, the casino dispatcher will then begin the process and create an incident report in the iTrak Reporting System. [*See, e.g.*, ECF No. 121-3, at 6-7]. The casino dispatcher is identified by name or initials as the "Owner" on the incident report. The casino dispatcher will then proceed to fill out the "Reference" field on the incident report based on the information received from the call. The "Reference" field on an incident report does not have a dropdown box or menu. Rather, the casino dispatcher who fields the call manually types a description. Consequently, these descriptions vary greatly and there is no uniformity to them.

5. *The casino dispatcher will also fill out the "Incident Type" field* on the incident report in the iTrak Reporting System. Unlike the "Reference" field, the "Incident Type" field does contain a dropdown box/menu. There are fifteen (15) choices on the "Incident Type" dropdown box/menu. Seven of these choices relate generally to criminal activity: alleged theft, *altercation*, arrest, cheat offense, criminal activity, property damage, and trespass. *It is important to note that the descriptions entered by the casino dispatcher in the* "Reference" and *"Incident Type" fields are based solely on what is relayed to him or her in the initial phone call they receive and is not based on any personal knowledge of what the actual situation/incident involves.* This is because the casino dispatcher only receives calls and does not go to the scene of an incident of perform, any follow-up investigation after receiving the initial call. (Dkt. 205-1 at ¶ 14) (emphasis added).

35a

6. Next, the casino dispatcher will send either a casino security officer or a manager (a "responder") to the scene of the reported incident - similar to a police officer being dispatched to the scene of a potential crime after a 911 call. The responder addresses the incident in person and will thereafter access the iTrak Reporting System and the initial report created by the casino dispatcher. The responder is identified by name or initials as "Operator ID" on the incident report. *The responder will then fill out "Narrative" section of the incident report. It is important to note that this is the only section of the incident report that accurately reflects what transpired at the incident (as opposed to the "Reference" and "Incident Type" fields) because it is filled out by the responder after he or she has personally deployed to the incident and viewed it firsthand.* (Dkt. 205-1 at ¶ 15) (emphasis).

7. As one might imagine *given the fact that the* "Reference" *and "Incident Type" fields are filled out by the casino dispatcher (who is not the individual who actually responds to the incident), the iTrak Reporting System at [Defendant] is replete with instances where the "Reference" and "Incident Type" fields are incorrectly labeled.* The descriptions and labels for the fields are many times inaccurate and attempting to search using these fields will yield inaccurate results. The only way to achieve accurate results and, for example, obtain all reports for actual "altercations" at the casino is to read and review the "Narrative" field and the descriptions of the actual incidents filed by the responders on all of the incident reports and mak[e] a determination of whether or not it actually involved an "altercation." The is obviously a time-consuming and intensive process. (Dkt. 205-1 at ¶ 16) (emphasis added).

Attorney Hurst also offered the affidavit of Michael Bova, the Defendant's Director of Security, in support of her response to the show cause order. Mr. Bova attested that:

1. I have received and reviewed the Court's November 15, 2021 Order in this matter. Specifically, I have reviewed the paraphrased question posed to Ms. Breitweiser-Hurst in the last paragraph of Page 5 and I have reviewed and understand the quoted response of Ms. Breitweiser-Hurst on the top of Page 6 of order which states: "I asked and there is not. By individual name, yes. By category of like naming altercation, no. So basically, what I was told is that they would have to pull every incident report for that period of time and

we would have to go through them to see if it fits the category of confrontation or fight." [ECF No. 197, at 6]. (Dkt. 205-2 at ¶ 3).

2. The statements made by Ms. Breitweiser-Hurst to the Court are absolutely true and correct – both in terms of: (1) the substance of what she stated (i.e., that searching can accurately be done by name, but not by category such as "altercation"); and (2) that we did, in fact, convey this information to Ms. Breitweiser-Hurst. (Dkt. 205-2 at ¶ 4).

3. The process by which an incident report is created on the iTrak Reporting System at the Casino is fairly straightforward one and explains why Ms. Breitweiser-Hurst's statements to the Court are correct. The process unfolds as follows:

   • A casino dispatcher (who is stationed at an office at the Casino and operates like a 911 dispatcher) receives a call about an incident.

   • Upon receiving a call, the casino dispatcher begins the process of creating an incident report in the iTrak Reporting System filling out the following items:

   (i) The casino dispatcher who opens and creates the initial incident report is identified in the incident report's user identification field as the "Owner." After opening an incident report, the casino dispatcher will proceed to fill out the "Reference" field on the incident report based on the information received from the call. The "Reference" field on an incident report does not have a dropdown box or menu. Rather, the casino dispatcher will manually type a description based on what is relayed in the phone call. These descriptions will vary greatly as a result.

   (ii) *The casino dispatcher will also fill out the "Incident Type" field on the incident report in the iTrak Reporting System.* Unlike the "Reference" field, the "Incident Type" field does contain a dropdown box/menu. There are fifteen (15) choices on the "Incident Type" dropdown box/menu at the Casino. Seven (7) of these choices relate generally to criminal activity: alleged theft, altercation, arrest, cheat offense, criminal activity, property damage, and trespass. Once again, just as with the "Reference" field, the casino dispatcher will fill out the "Incident Type" field based solely

> on what is relayed to him or her in the initial phone call they receive and is not based on any personal knowledge of what the actual situation/incident involves. As a result, incidents are routinely miscategorized due to the limited information available to dispatchers.

• The casino dispatcher will then send either a casino security officer or a manager (a "responder") to the scene of the reported incident – similar to a police officer being dispatched to the scene of a potential crime after a 911 call

• The responder who is dispatched to the scene of the incident addresses the incident in person and will thereafter access the iTrak Reporting System and the initial report created by the casino dispatcher and fill out the following information:

> (i) The responder who edits an incident report subsequent to its creation by dispatch is identified in the incident report's user identification field in the "Operator ID" box.
>
> (ii) The responder will then fill out the "Narrative" section of the incident report. It is important to note that this is the only section of the incident report that accurately reflects what transpired at the incident (as opposed to the "Reference" and "Incident Type" fields) because it is filled out by the responder after he or she has personally deployed to the incident and viewed it firsthand [See, e.g., ECF No. 121-3, at 6-7]. (Dkt. 205-2 at ¶ 5).

4. *The fact that the "Reference" and "Incident Type" fields are completed by the casino dispatcher who has no direct or firsthand knowledge of what the incident actually involves creates a situation where these fields are often incorrectly filled out. Consequently, searching these fields will not yield accurate or complete results.* (Dkt. 205-2 at ¶ 6) (emphasis added).

5. I understand that some of the Court's questions regarding the veracity and completeness of Ms. Breitweiser-Hurst's statements to the Court stem from the Affidavit of Nick Hewitt (Plaintiff's expert) dated May 22, 2021. I have reviewed Mr. Hewitt's affidavit and I do not believe it contradicts or calls into question Ms. Breitweiser-Hurst's statements to the Court at all. In fact, I believe it perfectly corroborates Ms. Breitweiser-Hurst's statements – and my statements. (Dkt. 205-2 at ¶ 8).

6. Mr. Hewitt notes that there is a "dropdown list setup" for "Type" (more accurately "Incident Type" on the Casino's iTrak Reporting System) and states that "[I]f a report shows Type (*i.e.*, Altercation)...those criteria are available in the dropdown list and fully searchable." *See* Hewitt Aff., at ¶ 8. However, as Mr. Hewitt concedes and acknowledges, this search is only possible and will only yield accurate results if the user inputs the proper category. Specifically, Mr. Hewitt states, "If the user selected the correct type, specific and category when creating the incident record it is searchable within that criteria." *Id.* (emphasis added). *As set forth in ¶¶ 5-7 supra, this is not what occurs with regularity with incidents recorded in the Casino's iTrak Reporting System. The system is full of instances where the "user" (i.e., the casino dispatcher) did not "select the correct type [of incident]." This is why the search for something like "altercation" will not yield accurate results.* As Mr. Hewitt concedes, the system is only searchable *if* the user makes the right selection on the dropdown menu – something which does not happen on a regular basis with the Casino's iTrak Reporting System. (Dkt. 205-2 at ¶ 9).

From the affidavits of Attorney Hurst and Mr. Bova, a large contention as to why incident reports cannot be searched by "altercation" is because the search will not "yield accurate results" due to casino dispatchers selecting the wrong incident type. (Dkt. 205-1 at ¶¶ 14-16; Dkt. 205-2 at ¶¶ 5-6, 9). As would later come out multiple times throughout the 4-day hearing, this contention is inaccurate. As described below, incident reports can be searched by the word "altercation" in the report's "Incident Type" field. That field is completed either by the responding officer, who has personal knowledge of the incident, or the dispatcher.

B. Order to Show Cause Hearings

The Court notes that Respondent, in her response, and her counsel during the hearings continuously mischaracterized the Court's Order, conflating the Court's directive into an inquiry that was never asked. (Dkt. 197). The Court's

directive to Attorney Hurst was simple: in light of Plaintiff's assertion that you misrepresented Defendant's ability to search iTrak incident reports by "altercation," (1) "descri[be] the reasonable inquiry into the factual basis" for this assertion," and (2) "confirm[] whether incident reports can be searched by altercation and, if so, the basis for [your] prior statement that they could not." (Dkt. 197 at 8). Respondent and her counsel, though, morphed the Court's questions into a question about the credibility or reliability of the search, which was never asked.

Throughout the four-day hearing, the Court spent an extensive amount of time having to continuously explain the purpose of the show cause and the questions the Court wanted answered.

> THE COURT: I think where I am really trying to direct you, Mr. Hearn, is...similar to what I have outlined in the order, and this is where -- this might be where there was confusion in the questioning. I wanted to know...whether or not [the Casino's iTrak incident reports] could be run by altercation. What we are answering is the –
> MR. HEARN: The program?
> THE COURT: Yes. I know that each customer has the option to opt in to certain categories, to certain language, and so, when you are doing your direct with Mr. Bova, that is really the heart of what I am needing the answer to.
> MR. HEARN: Well, I appreciate the question very much, Your Honor, because I will just tell you as part of my opening, when I read the transcript, which I have many times, of the April hearing, I did not understand that you were asking about the capabilities of the computer program. My understanding, and I think what the evidence will show today is, that Ms. Hurst also, if that is what you intended, did not understand that. What I read and what I think the evidence will show today is, because that -- those words, "computer program" or "capabilities of the program" were not used, was that you were asking consistent with what occurred in March, how does Hollywood Casino categorize these, and can they do search and pull? And that is what we believe the evidence will show Miss Hurst understood you to be asking, and that was why she gave the answer that she did. And I think what we will also show today, I just think for the benefit of, first of all,

> responding to the rule to show cause, that also to the benefit of the case is, the only way to get, accurately get categories of type of incidents is to read the narrative. Mr. Bova will testify. You have got to read the narrative for everyone of about 1800 incident reports....
> THE COURT: Yes, sir, and I think just to make the record clear and to give context for what occurred, I do note that, Mr. Hearn, you were not present for that conference. There was extensive back and forth, the transcript as far as purposes of the response, was limited to that one question. In the context of what had occurred both in March and April, there was extensive, almost two-hours' worth of conversation regarding the capability of the system itself. And if we just transplanted the word, is there a way to run the incident report by altercation, that was the direct question asked to Attorney Hurst, and her answer to that question was no....All sides were trying to get to what were the capabilities of this system. We knew that the search terms were extensive that Mr. Hurston had presented before, and so we were trying. ...to really focus in on how to make the request for production search terms usable by [the Defendants].

(Dkt. 221 at 10:12-11:23, 13:1-22).

> THE COURT: ...[As to Mr. Bova's testimony, he testified that even though the iTrak incident reports may be] ran by altercation, using the drop down box, [this method] would not have been particularly relevant to Mr. Hurston's lawsuit, [because]...Mr. Bova would have to go back through and read the narrative section. The Court's question, though, going back to the Court's question, was simply, is there a way to run the incident by altercation? And so just to put kind of a point as to the direct examination when we are talking to Mr. Bova regarding what led up to Mrs. Hurst's answer, I really want to -- I wanted to make sure that you appreciated that bullet on page 8 of the November 15th order, a description of the reasonable inquiry into the factual basis we are asserting, that the incident report cannot be searched by altercation, and I think what we are inserting in that language is the suggestion of relevant, can't be searched, you know, for relevancy. I wasn't asking a relevancy question. I was asking a functionality question.
> MR. HEARN: I think where the disconnect -- I think this is where the disconnect is because first of all, I want to point out that in -- I read that transcript and that, from that hearing many, many times. And what you're saying is, is that Ms. Hurst said it can't be done. Actually, the first thing she said is no; and then, she said, it can be by name. What she is going to tell you is, when she said that, by name, yes. What she meant by that was naming the category so that what she was telling you was the capability of the system was we can search it by names and

> categories, but we can't get -- what she told me to do in March was figure out how the client, the Defendant, categorizes these. And so looking back at that bullet point, when you asked us to address -- or Miss Hurst to address -- is the factual basis for asserting that incident reports cannot be searched by altercation, again, I am reading that in context of responding of what you told her to do in March, not inserting the word whether the program can search incident reports.
> THE COURT: I am not changing what I directed. I am not changing the context of what I asked her in April. I am not changing the context of what my order outlined in November. As if we take the full order from November 15th, I represented that the capability. I explained an outline. The Court is trying to -- was trying to figure out the capability of the iTrak system. The iTrak incident reports, by altercation, on page 6 in his motion for sanctions, the Plaintiff argued that Attorney Hurst knowingly misrepresented the Defendant's ability to search for iTrak incident reports by altercations.
> MR. HEARN: All I am saying is that question wasn't asked of her at the April hearing, and if that was your intention, I think what she is going to tell you is, she didn't interpret it that way. She didn't interpret that you were asking her the capabilities of the computer program because then -- when she provided her answers she said, you can search by name. Yes, you can search by name, but by categories, the only way to get the results -- the last sentence of her answer says this. The only way to get the results is to manually search them, and that is what Mr. Bova is about to explain to you was their conversation leading up to that statement to you in April.
> THE COURT: Again, I didn't ask what -- we are conflating the question. The question was, is there a way to run the incident report by altercation? And so I still haven't heard from Mr. Bova the answer to that question, is there a way to run it?
> MR. HEARN: Actually, I -- I can go over that again. I think he did answer that, but I will go over it again. Let me pull that incident report back up.
> THE COURT: Because I thought his answer to that question was yes.
> .....
> MR. HEARN: You are right. That is what he said. The capability is, he can run it, but because of the way the casino categorizes them is inaccurate. It is not going to get you reliable results.

(Dkt. 221 at 51:16-54:24). (*See also* Dkt. 221 at 55:17-56:21, 78:11-81:13, 81:25-82:23; Dkt. 222 at 13:13-18:23, 20:25-25:16).

When directed with the Court's pointed question of whether incident reports can be searched by "altercation," Mr. Bova responded in the affirmative.

> THE COURT: ....what I am listening for [is a response to Plaintiff's accusation as outlined in] my November 15th...order....[specifically] on page 7 of my order I lay out: The Defendant's expert maintains that the casino does not have a drop down topic list for disturbance or confrontation. He does not interestingly address the availability of the drop down option to search by altercation. This category was provided in all three of the incident reports that Mr. Hurston raised in his motions for sanctions, and so that is where I am trying to direct you....
> MR. HEARN: I think the Court gathered that from the response of Mr. Hurston's motion for default, which you construed to be a motion for sanctions. I do see that there is a discussion of drop down boxes in that response, but I don't see that there was an indication that that was the capability of the computer program. So I guess I am not -- that part of your question I didn't follow. I am sorry.
> THE COURT: That is what I was asking for...so we can....move the hearing forward, to answer that question pointedly, is the variability of the drop down option to search incident reports by altercation?
> MR. HEARN: Yeah, I think he said it. It will do that, but it is not going to get you reliable –
> THE COURT: Okay.
> MR. HEARN: I can ask him that again.
> THE COURT: No. I just need to affirm that answer. That is the Court's understanding, Mr. Hearn, but I wanted to confirm with you that he has answered that question.
> MR. HEARN: I think he has.
> THE COURT: I -- and you can reask it so that we have it on the record. You go right ahead.
> ...
> Q Based on your understanding of the capability of the iTrak system, if you access that system, is it possible for you to do a search for incident type by searching this line item right here where it says incident type and do a search for the word altercation?
> A Yes.

(Dkt. 221 at 57:24-60:9).

43a

During Mr. Bova's examination, he also testified, in direct contradiction to his affidavit, that the responding officer is the person who completes the "Incident Type" field.

> MR. HEARN: Here is the question. Who is the person that fills out this information where it says incident type under details of the incident on page 1 of the exhibit?
> A That would be the responding officer, supervisor, manager, the person that is getting ready to fill out the narrative of the report.

(Dkt. 221 at 36:3-8).

> PLAINTIFF: ...Then, once you use the dispatch record, did you testify that -- did you testify that the dispatcher also creates the, the incident type?
> A No. That is the supervisor, manager does things. So on the specific report that you're showing, the owner, the dispatcher would have been Sarah Riehle. The supervisor manager would have been Jesse Vanosdol, and Jesse Vanosdol would have put that altercation label on this report.

(Dkt. 221 at 87:25-88:7).

> PLAINTIFF: Okay. So the person actually filling out the incident type, then, is actually the one who is -- so you would agree that the one who is -- this drop down right here is the one who actually observes the situation and knows what is going on?
> A The person that puts the incident type in, correct. They are the ones that are going to do the investigation, and then, they write the narrative.

(Dkt. 221 at 89:1-8).

This testimony is counter to Attorney Hurst's and Mr. Bova's affidavits. (*See* Dkt. 205-1 at ¶ 16 ("As one might imagine given the fact that the 'Reference' and 'Incident Type' fields are filled out by the casino dispatcher (who is not the individual who actually responds to the incident), the iTrak Reporting System at [Defendant] is replete with instances where the 'Reference' and 'Incident Type' fields are incorrectly labeled."); (*See* Dkt. 205-2 at ¶ 6 ("The fact that the

44a

"Reference" and "Incident Type" fields are completed by the casino dispatcher who has no direct or firsthand knowledge of what the incident actually involves creates a situation where these fields are often incorrectly filled out. Consequently, searching these fields will not yield accurate or complete results."); (*See* Dkt. 205-2 at ¶ 9 ("The system is full of instances where the 'user' (*i.e.*, the casino dispatcher) did not 'select the correct type [of incident].' This is why the search for something like 'altercation' will not yield accurate results.")).

When presented with this discrepancy, counsel was not prepared to address this issue. Nor did Respondent's counsel appear to appreciate the significance of this discrepancy given the fact that Respondent's counsel relied on Mr. Bova's affidavit in representing to the Court why the show cause order should be discharged, and the basis Attorney Hurst and Mr. Bova asserted in their affidavits for why the incident reports could not be searched by altercation was because of inaccuracies by the dispatcher – who has no personal knowledge of the incident – in completing the "Incident Type" field. (Dkt. 222 at 2:15-10:6, 11:15-13:13, 18:24-20:18, 25:25-26:1, 26:12-29:24, 34:5-11). Respondent's counsel did ultimately agree that there is a contradiction between Mr. Bova's affidavit and his hearing testimony. (Dkt. 222 at 27:16-25).

C. Finding

In the present case, after reviewing the briefing and listening to extensive argument, the Court finds that the statements made by Attorney Hurst during the April 27, 2021 discovery conference and in her December 10, 2021 affidavit that

45a

incident reports cannot be searched by altercation IS false. As was confirmed during the show cause hearing, the incident reports can be searched by altercation. (Dkt. 221 at 57:24-60:9, 77:3-78:4). The Court was able to glean, however, that the results of a search using the drop down option of "altercation" may not encompass all incidents involving altercations at the Casino. Even though the Court did not reach the question of reliability of the reports because of Attorney's Hurst misunderstanding of the question and the Court's November 15, 2021 Order, (Dkt. 197 at 8; Dkt. 221 at 10:12-11:23, 13:1-22, 51:16-54:24, 55:17-56:21, 78:11-81:13, 81:25-82:23; Dkt. 222 at 13:13-18:23, 20:25-25:16), the Court now understands why Ms. Hurst answered the question in the negative. Relying on Mr. Bova's inaccurate affidavit, Attorney Hurst's in good faith understood that the iTrak incident reports could not be ran by "altercation" and that this search method would be unreliable because of who completes the report. From Mr. Bova's testimony it is clear that incident reports may be ran by "altercation" and that it is the responding officer and not the dispatcher that completes the narrative section and completes the incident type field increasing its reliability. (Dkt. 221 at 36:3-8, 87:25-88:7, 89:1-8).

Under the circumstances, the Undersigned does not find that Attorney Hurst knowingly made false statements to the Court. IND. R. PROF'L CONDUCT 3.3(a)(1). From reviewing Attorney Hurst's affidavit and Mr. Bova's affidavit, it is clear that Attorney Hurst's assertions concerning the capabilities of Defendant's iTrak reporting system are based on the representations she received from her client. This is also supported by Attorney Hurst's statements in her affidavit and hearing

46a

testimony that her comments were based on information provided to her by her client, via its Director of Security Michael Bova. (Dkt. 205-1 at ¶ 11; Dkt. 228). Mr. Bova confirmed as much during his testimony. (Dkt. 221 at 60:14-61:19, 63:2-17). While the veracity of several statements made by Mr. Bova have been called into question, there is no indication that Attorney Hurst was aware of the falsity of the statements. Attorney Hurst reasonably relied on statements made by her client.

III. Conclusion

For the reasons outlined above, the Undersigned hereby **DISCHARGES** the Order to Show Cause.

So ORDERED.

Date: 3/22/2022

Doris L. Pryor
United States Magistrate Judge
Southern District of Indiana

Distribution:

All ECF-registered counsel of record via email

MIRACLE HURSTON
1812 Grand Avenue
Middletown, OH 45044

APPENDIX E
47a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

MIRACLE HURSTON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 1:19-cv-04890-TWP-DLP
	)	
INDIANA GAMING COMPANY LLC,	)	
	)	
Defendant.	)	

ORDER

This matter comes before the Court on the Plaintiff's Motion for Defendant to Pay the Excess Costs, Expenses, and Attorney's Fees Due to Defendant Unreasonably Multiplying Proceedings, Dkt. [251]. For the reasons that follow, Plaintiff's Motion is **GRANTED**.

I. Background

This case centers on the Plaintiff's allegations of racial discrimination in violation of 42 U.S.C. § 1981, and state law claims of intentional infliction of emotional distress and breach of contract against the Defendant. (Dkts. 1, 49, 127, 128). Over the course of this nearly 3-year litigation, the Undersigned has held numerous discovery conferences with the parties regarding the Defendant's surveillance footage and incident reports, the resulting conduct of which is the focus of Plaintiff's motion. Specifically, on April 27, 2021, the Court held a discovery conference with the parties during which defense counsel, Attorney Catherine Breitweiser-Hurst, represented to the Court that it was not possible for her client to

48a

search for incident reports using the search term "altercations" but that it was possible to search by individual names. (Dkt. 108). Based on this representation by counsel, the Court ordered the Defendant to produce all incident reports involving certain named individuals from January 1, 2018 to December 31, 2019. (Dkt. 108 at 4).

Plaintiff subsequently presented evidence to the Court, through a subject matter expert on security hardware and management systems, that the iTrak system used by the Defendant can, in fact, be searched by search terms including "altercation," a fact which would suggest that Defendant and its counsel had presented misleading or false statements to the Court. (Dkt. 121). Thereafter, in its November 15, 2021 ruling on Plaintiff's Renewed and Supplemental Motion for Default Judgment Sanctions (Dkt. 120), the Court ordered Attorney Breitweiser-Hurst to show cause why she should not be sanctioned for asserting that incident reports cannot be searched by the category of "altercation." (Dkt. 197 at 5-8). The Court further directed that her written response address (1) a description of the reasonable inquiry into the factual basis for asserting that incident reports cannot be searched by altercation, and (2) confirmation as to whether incident reports can be searched by altercation and, if so, the basis for her prior statement that they could not be searched by altercation.[1] (Id.).

[1] The Court also directed Respondent to "Confirm[] compliance with the Court's April 27, 2021 Order to produce all incident reports involving certain named individuals, explaining the representation that Defendant did not have any incident reports involving Casino Manager Jerry." (Dkt. 197 at 8).

49a

On December 10, 2021, Attorney Breitweiser-Hurst, represented by Attorney Edward Hearn, filed her response to the order to show cause and contemporaneously moved for a hearing, which was granted. (Dkts. 205, 209). The Undersigned proceeded to conduct four hearings on the order to show cause, on January 12, 2022; January 13, 2022; January 27, 2022; and March 10, 2022. (Dkts. 216, 217, 228, 231).

While the motion to show cause for Attorney Breitweiser-Hurst was pending, Mr. Hurston filed a motion requesting default judgment due to Defendant and its counsel's perjury and failure to comply with the Court's previous orders. (Dkt. 218).

On March 22, 2022, the Court stated as follows: "From the affidavits of Attorney Hurst and Mr. Bova, a large contention as to why incident reports cannot be searched by "altercation" is because the search will not "yield accurate results" due to casino dispatchers selecting the wrong incident type. (Dkt. 205-1 at ¶¶ 14-16; Dkt. 205-2 at ¶¶ 5-6, 9). As would later come out multiple times throughout the 4-day hearing, this contention is inaccurate. As described below, incident reports can be searched by the word "altercation" in the report's "Incident Type" field. That field is completed either by the responding officer, who has personal knowledge of the incident, or the dispatcher." (Dkt. 234 at 10). Perhaps more importantly, the Court also noted that:

> Respondent, in her response [to the Court's show cause order], and her counsel during the hearings continuously mischaracterized the Court's Order, conflating the Court's directive into an inquiry that was never asked. (Dkt. 197). The Court's directive to Attorney Hurst was simple: in light of Plaintiff's assertion that you misrepresented Defendant's ability to search iTrak incident reports by "altercation," (1) "descri[be]

50a

> the reasonable inquiry into the factual basis" for this assertion," and (2) "confirm[] whether incident reports can be searched by altercation and, if so, the basis for [your] prior statement that they could not." (Dkt. 197 at 8). Respondent and her counsel, though, morphed the Court's questions into a question about the credibility or reliability of the search, which was never asked.
>
> Throughout the four-day hearing, the Court spent an extensive amount of time having to continuously explain the purpose of the show cause and the questions the Court wanted answered.

(Dkt. 234 at 10-11). Finally, when presented with the discrepancies between the testimony presented by Ms. Breitweiser-Hurt and Mr. Bova at the show cause hearing and in their affidavits:

> counsel was not prepared to address this issue. Nor did Respondent's counsel appear to appreciate the significance of this discrepancy given the fact that Respondent's counsel relied on Mr. Bova's affidavit in representing to the Court why the show cause order should be discharged, and the basis Attorney Hurst and Mr. Bova asserted in their affidavits for why the incident reports could not be searched by altercation was because of inaccuracies by the dispatcher – who has no personal knowledge of the incident – in completing the "Incident Type" field. (Dkt. 222 at 2:15-10:6, 11:15-13:13, 18:24-20:18, 25:25-26:1, 26:12-29:24, 34:5-11). Respondent's counsel did ultimately agree that there is a contradiction between Mr. Bova's affidavit and his hearing testimony. (Dkt. 222 at 27:16-25).

(Dkt. 234 at 16). Nevertheless, the Court discharged the order to show cause for Attorney Breitweiser-Hurst, finding that she did not knowingly make false statements to the Court in violation of Indiana Rule of Professional Conduct 3.3 and that she had reasonably relied on statements made by her client. (Dkt. 234 at 17-18).

On March 31, 2022, Plaintiff withdrew his Motion for Default Judgment for Perjury and Failure to Comply (Dkt. 218) and Defendant withdrew its Motion for

51a

Summary Judgment (Dkt. 145) so that the parties could instead participate in a settlement conference with the Undersigned on May 10, 2022. (Dkt. 241). The entry, however, permitted the parties to refile their motions after the settlement conference, if appropriate. (Id.). The case did not settle at the May 10, 2022 settlement conference (Dkt. 247) and, thus, Plaintiff refiled his Motion for Default Judgment for Perjury and Failure to Comply with Court Orders as the present Motion for Defendant to Pay Excess Costs, Expenses, and Attorney's Fees Due to Defendant Unreasonably Multiplying Proceedings. (Dkt. 251). Defendant filed a response on June 14, 2022 and Plaintiff did not file a reply. (Dkt. 267).

II. Legal Standard

Federal Rule of Civil Procedure 37, as well as the Court's inherent power to manage discovery, provides the Court with broad authority to sanction a party who abuses the discovery process. *Malibu Media, LLC v. Tashiro*, No. 1:13-cv-00205-WTL-MJD, 2015 WL 2371597, at *10 (S.D. Ind. May 18, 2015). Sanctions serve two purposes: to penalize parties who do not follow the rules and to deter others tempted by the notion that abusive conduct has no serious consequences. *Grevishes v. Univ. Rsch. Ass'n, Inc.*, 417 F.3d 752, 758-59 (7th Cir. 2005); *see also* Fed. R. Civ. P. 37(b)(2)(A)(vi); *Malibu Media*, 2015 WL 2371597, at *21. A discovery sanction must be proportional to the offense, *Allen v. Chicago Transit Auth.*, 317 F.3d 696, 703 (7th Cir. 2003), and is determined by assessing "the egregiousness of the conduct in question in relation to all aspects of the judicial process." *Dotson v. Bravo*, 321 F.3d 663, 667 (7th Cir. 2003).

52a

III. Discussion

In the present motion, Mr. Hurston contends that discovery sanctions are appropriate because the Defendant and its client made misrepresentations to the Court that, in turn, unreasonably multiplied the proceedings and caused Plaintiff to incur additional time and money to attend. (Dkt. 251 at 3-4). Specifically, because of the Defendant's conduct and misrepresentations, this Court was forced to continue the January 12, 2022 show cause hearing three times, transforming a simple hearing into a four-day affair. (Id.). Defendant maintains in response that the Plaintiff filed the motion that necessitated the show cause hearing and, also, that one of the hearing days needed to be continued because Plaintiff had requested to review the hearing transcript. (Dkt. 267 at 3-4). Furthermore, Defendant maintains that Ms. Breitweiser-Hurst never made false statements to the Court. (Id. at 4-5).

Contrary to the Defendant's argument that Ms. Breitweiser-Hurst never made false statements to the Court, the Undersigned has already concluded that Ms. Breitweiser-Hurst's statements made during the April 27, 2021 discovery conference and in her December 10, 2021 affidavit were false. (Dkt. 234 at 16-17). What the Court went on to conclude, however, was that Ms. Breitweiser-Hurst was relying on the representations made by her client, Mr. Bova, when making her statements. (Id. at 16-18). Moreover, although Defendant claims that Mr. Bova did not give false testimony and did not intend to mislead the Court, the fact remains that Mr. Bova's affidavit regarding why incident reports cannot be searched by "altercation" resulted in multiple delays and hearings that were ultimately

53a

unnecessary. For example, although Mr. Bova's affidavit stated that incident reports cannot be searched by "altercation" because the search will not "yield accurate results" due to casino dispatchers selecting the wrong incident type, (Dkt. 205-2 at ¶¶ 5-6, 9), during Mr. Bova's examination, however, he testified, in direct contradiction to his affidavit, that the responding officer is the person who completes the "Incident Type" field. (Dkt. 221 at 36:3-8; 87:25-88:7; 89:1-8). Moreover, defense counsel, Edward Hearn, ultimately agreed that there was a contradiction between Mr. Bova's affidavit and his hearing testimony. (Dkt. 222 at 27:16-25). Mr. Bova thus provided misstatements to the Court. While the Defendant asserts that "[t]here is no evidence that Mr. Bova ever stated to the Court in any manner that *only* dispatchers or *only* managers/security officers fill in the 'Incident Type' label in incident reports," (Dkt. 237-1 at 9), Mr. Bova's affidavit at least demonstrates a willfulness to mislead the Court.

Perhaps more importantly, Ms. Breitweiser-Hurst and her counsel, Mr. Hearn, seemed to fundamentally misunderstand the Court's instructions and orders given at multiple conferences and in written entries, as outlined previously. For example, in its Show Cause Order the Court directed Ms. Breitweiser-Hurst to, "in light of Plaintiff's assertion that you misrepresented Defendant's ability to search iTrak incident reports by 'altercation,' (1) 'descri[be] the reasonable inquiry into the factual basis' for this assertion,' and (2) 'confirm[] whether incident reports can be searched by altercation and, if so, the basis for [your] prior statement that they could not.'" (Dkt. 197 at 8; Dkt. 234 at 11). Nevertheless, Ms. Breitweiser-Hurst and

54a

her counsel transformed that simple directive into a question about the reliability or credibility of any search into the incident reports and the Undersigned was required to spend a good part of the show cause hearing redirecting Defendant's counsel to the question that was actually asked. Contrary to the Defendant's assertion, the bulk of the delay in conducting the show cause hearing over four separate days was largely due to the conduct of Mr. Bova, Ms. Breitweiser-Hurst, and Mr. Hearn.

Without the misrepresentations submitted to the Court by Mr. Bova and Ms. Breitweiser-Hurst, discovery into the incident reports could have occurred almost a year sooner, and the Court would not have been required to hold a show cause hearing at all. Instead, however, Defendant still argues that "the proceedings Plaintiff complains of in this Motion were precipitated by Plaintiff's unsuccessful motion [the motion for default]." While Plaintiff's motion for default was unsuccessful in outcome, the result of that motion was a finding by the Court that Defendant's counsel had submitted false statements to the Court – moreover, it was only through the dogged pursuit of discovery by the Plaintiff that these misrepresentations were uncovered. *See Littler v. Martinez*, No. 2:16-cv-00472-JMS-DLP, 2020 WL 42776, at *38 (S.D. Ind. Jan. 3, 2020) ("In another case against a less capable or tenacious pro se litigant, [Defendants'] failure to turn over the video evidence could have resulted in summary judgment in their favor based on false evidence. It is paramount that the Court deter such misconduct."). As such, based on the nature of the misrepresentations made to the Court and the unnecessary enlargements of the show cause hearing based on counsel's misunderstandings, the

55a

Court concludes that a sanction is warranted. Accordingly, the Court finds it appropriate for the Defendant and its counsel to pay to the Plaintiff the amount of $2,500.00.

IV. Conclusion

For the reasons stated above, Plaintiff's Motion for Defendant to Pay the Excess Costs, Expenses, and Attorney's Fees Due to Defendant Unreasonably Multiplying Proceedings, Dkt. [251], is **GRANTED**. Defendant and its counsel shall pay to the Plaintiff the amount of $2,500.00 within seven days of this Order.

So ORDERED.

Date: 12/9/2022

Hon. Doris L. Pryor
United States District Court
Southern District of Indiana

Distribution:

All ECF-registered counsel of record via email

MIRACLE HURSTON
1812 Grand Avenue
Middletown, OH 45044

APPENDIX F
56a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

MIRACLE HURSTON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 1:19-cv-04890-TWP-DLP
	)	
INDIANA GAMING COMPANY LLC,	)	
	)	
Defendant.	)	

ORDER DENYING MOTION FOR LEAVE TO FILE AMENDED COMPLAINT

This matter is before the Court on a Motion for Leave to File Amended Complaint (Filing No. 281) filed by *pro se* Plaintiff Miracle Hurston ("Hurston"). Nearly three years ago, on December 11, 2019, Hurston initiated this action by filing a Complaint (Filing No. 1), which he promptly amended as a matter of right on January 21, 2020 (Filing No. 5). Thereafter, Hurston requested and was granted leave to file several amended complaints. On February 22, 2021, Hurston again requested leave to amend his pleading, explaining that he wanted "to amend and add defendant Indiana Gaming Company LLC dba Hollywood Casino Lawrenceburg asserting no new claims or facts." (Filing No. 82.) On May 12, 2021, Hurston filed another motion for leave to amend, explaining that the "amended complaint will name defendants Indiana Gaming Company LLC dba Hollywood Casino Lawrenceburg, and Penn National Gaming INC. . . . [, and] [t]he amended complaint will include only the current remaining claims . . . ." (Filing No. 113.) The Court again granted Hurston leave to amend, and his Fifth Amended Complaint (the operative pleading in this matter) was filed on June 11, 2021 (Filing No. 128).

Approximately five months later, on November 2, 2021, Hurston initiated a new lawsuit against Indiana Gaming by filing a complaint under case number 1:21-cv-02768-TWP-DLP. In

57a

that case, Hurston asserted claims for race discrimination under Title II of the Civil Rights Act of 1964 and 42 U.S.C. § 1981, retaliation under 42 U.S.C. § 1981, retaliation under Title VII of the Civil Rights Act of 1964, retaliation under 42 U.S.C. § 12203, and intentional infliction of emotional distress. His claims were based upon an incident that occurred on February 12, 2021, at the Hollywood Casino Lawrenceburg, which is operated by Indiana Gaming. Indiana Gaming moved to dismiss the second lawsuit on the basis that the second action was improperly claim splitting and duplicative of this ongoing civil action.

The Court granted the motion to dismiss, finding that the second case was improperly claim splitting and duplicative. The Court explained,

> Hurston's pleadings in both cases sue one defendant—Indiana Gaming. The parties in the two cases are identical. The factual allegations in both cases are the same—a long history of numerous contentious racial interactions between Hurston and the Casino's employees and patrons. The relief sought in the cases is the same—money damages and injunctive relief to allow Hurston to again be a patron of the Casino. While Hurston alleges that this 2021 action is based on a more recent event—his expulsion from the Casino on February 12, 2021—that event occurred well before Hurston sought leave to amend his pleadings in the 2019 case on May 12, 2021, and well before the Court granted him leave to file his Fifth Amended Complaint on June 11, 2021. ***Hurston could have and should have added the February 12, 2021 incident to his Fifth Amended Complaint in the 2019 case if he wanted to pursue relief for that related incident.*** This case is duplicative of the pending 2019 case and improperly splits claims; therefore, this case must be dismissed.

Hurston v. Ind. Gaming Co. LLC, No. 1:21-cv-02768-TWP-DLP, 2022 U.S. Dist. LEXIS 35483, at *10–11 (S.D. Ind. Mar. 1, 2022) (emphasis added).

Hurston filed a motion to reconsider the dismissal of his second lawsuit, which the Court denied, furthering explaining,

> Hurston also argues that he was not permitted to add new claims by amending his complaint in his separate earlier-filed case, so he would be left without recourse if he was not permitted to bring this second lawsuit against Indiana Gaming. Hurston is incorrect in this assertion as explained in the Court's dismissal

> Order—he could have and should have asked for leave to add new allegations in his separate earlier-filed case rather than filing a duplicative, claim-splitting case.

Hurston v. Ind. Gaming Co. LLC, No. 1:21-cv-02768-TWP-DLP, 2022 U.S. Dist. LEXIS 116650, at *9–10 (S.D. Ind. June 30, 2022).

The day after the Court denied the motion to reconsider dismissal of the second lawsuit, Hurston filed his pending Motion for Leave to File Amended Complaint (Filing No. 281) in this civil action. He seeks to amend his Fifth Amended Complaint to add the claims he tried to bring in the second lawsuit based upon the February 12, 2021 incident at the Hollywood Casino Lawrenceburg. Hurston argues that he should be permitted to amend his pleading in the interest of justice and judicial economy. And Hurston contends that Indiana Gaming will not be unduly prejudiced by an amendment.

Indiana Gaming opposes any further amendment to the pleadings because it would severely prejudice Indiana Gaming, and Hurston has unduly delayed. Pursuant to this Court's Order, the deadline for Hurston to file amended pleadings was June 29, 2020 (Filing No. 58 at 2). On February 22, 2021, Hurston filed his fifth motion for leave to amend the pleadings, and he specifically stated that he was not asserting new facts or claims (Filing No. 82). This is despite the fact that the claims and facts he now wants to add had occurred only ten days earlier on February 12, 2021. Hurston waited nine months to pursue any action (the second lawsuit) for the alleged February 12, 2021 incident. Hurston did not seek to add such claims to this current civil action until July 1, 2022—seventeen months after the alleged incident.

Indiana Gaming argues it would be unfairly prejudiced by an amendment because this three-year old case is in its last stages. Hurston already has been deposed, discovery already has closed, a settlement conference already took place, the jury trial is scheduled to be held in a few months, and cross-motions for summary judgment are currently pending. If another amended

59a

complaint is permitted, the parties will need fact discovery to be reopened, and Indiana Gaming will need to re-depose Hurston and engage in a completely new set of discovery concerning the new allegations regarding the February 2021 incident. Indiana Gaming argues that this additional discovery would require it to incur substantial additional costs. Amending the complaint to add new claims at this point would set the case back to "square one" after dispositive motions already have been prepared and filed and would further delay this old case.

Courts are instructed to deny leave to amend for such reasons as "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [and] futility of amendment." *Airborne Beepers & Video, Inc. v. AT&T Mobility LLC*, 499 F.3d 663, 666 (7th Cir. 2007) (internal citation and quotation marks omitted).

The Court has previously allowed Hurston multiple opportunities to amend his pleadings. The deadlines to file amended pleadings, to complete discovery, and to file dispositive motions have expired. Permitting Hurston to again amend the complaint would delay these proceedings and prejudice Indiana Gaming—discovery has been completed, the parties have filed cross-motions for summary judgment, and the trial date is fast approaching. The time for amending the complaint is over. *See Johnson v. Cypress Hill*, 641 F.3d 867, 873 (7th Cir. 2011) (finding that prejudice would result from amendment "well after the close of discovery and on the eve of summary judgment proceedings"). If Hurston wanted to bring claims for the February 12, 2021 incident, he could have and should have sought leave to bring those claims on February 22, 2021, or May 12, 2021, when he filed two other motions for leave to amend the complaint.

Accordingly, Hurston's Motion for Leave to File Amended Complaint (Filing No. 281) is **DENIED.**

60a

SO ORDERED.

Date: 11/4/2022

Hon. Tanya Walton Pratt, Chief Judge
United States District Court
Southern District of Indiana

Distribution:

Catherine A. Breitweiser-Hurst
JOHNSON & BELL, PC
breitweiserhurstc@jbltd.com

Edward W. Hearn
JOHNSON & BELL, PC
hearne@jbltd.com

Miracle Hurston
1812 Grand Avenue
Middletown, OH 45044

APPENDIX C 61a

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

MIRACLE HURSTON,	)	
Plaintiff,	)	
V.	)	CASE NO. 1:19-CV-04890-TWP-DLP
INDIANA GAMING COMPANY LLC, dba	)	HONORABLE JUDGE TANYA WALTON PRATT
HOLLYWOOD CASINO LAWRENCEBURG,	)	HONORABLE JUDGE DORIS L. PRYOR
Defendant,	)	AFFIDAVIT OF _____ OF THE LAWRENCEBURG POLICE DEPARTMENT

1. My name is ~~ASST.~~ CHIEF BRIAN MILLER I am a resident of the state of Indiana and I work for the Lawrenceburg Police Department. I am over 18years of age. I am of sound mind and I am not taking any medication nor have I ingested any alcohol that would impair my memory of the facts stated in this affidavit. If called to testify in court I could and would testify truthfully to the following based upon my own personally knowledge.

2. The attached Police Report Reference # L18-00804 was prepared in the ordinary course of business and the attached photocopy is a true and accurate representation of the original report that was filed with the police department.

Pursuant to 28 U.S. Code § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true.

Signature

9/20/21
Date

62a

LAWRENCEBURG POLICE DEPARTMENT

Exhibit F
PoliceReport

Incident #: L18-00804

Reporting Officer: TROY COCHRAN

Report Time: 02/14/2018 02:02:05

Incident

Incident Nature CITIZEN DISPUTE	Address 777 HOLLYWOOD BLVD; HOLLYWOOD CASINO HOTEL LAWRENCEBURG, INDIANA 47025	Occurred From 02/14/2018 02:02:05
Occurred To 02/14/2018 02:02:05	Received By BRIAN BEATTY	How Received TELEPHONE
Contact KAREN	Disposition CLEARED ADULT NO ARREST	Miscellaneous Entry
Disposition Date 02/14/2018	Cleared N	Judicial Status
Cleared Date	Clearance CLEARED BY RESPONSIBLE OFFICER	Cargo Theft Related

Responding Officer(s)
DAVID SCHWARZ
TROY COCHRAN

Case Numbers
18-0140

Offenses

DISORDERLY CONDUCT

Completed?	Method Of Entry	Gambling Motivated?
Premises Entered?	Location Type	Cargo Theft Related?
Statute 35-45-1-3	Description PUBLIC ORDER-DISORDERLY CONDUCT	Category

63a

INTOXICATED PERSON/DRUNK

Completed?	Method Of Entry	Gambling Motivated?
Premises Entered?	Location Type	Cargo Theft Related?
Statute 7.1-5-1-3	Description PUBLIC INTOXICATION BY ALCOHOL/DRUGS (DRUNKENNESS)	Category

ASSAULT, NO WEAP, AGG INJURY

Completed? C	Method Of Entry	Gambling Motivated?
Premises Entered?	Location Type	Cargo Theft Related?
Statute 35-42-2-1(B)(1)	Description 35-42-2-1(B)(1) (Simple Assault) : Battery Against A Public Safety Official : 6 : F	Category

CRIMINAL MISCHIEF

Completed? C	Method Of Entry	Gambling Motivated?
Premises Entered?	Location Type	Cargo Theft Related?
Statute 35-43-1-2	Description CRIMINAL MISCHIEF	Category

Persons

FORTE, DONALD
SUSPECT

Address	Phone	DOB
CINCINNATI OHIO 45247		
Race BLACK, NON-HISP	Sex M	Ethnicity
Height 6'01"	Weight 192	

HURSTON, MIRACLE F
SUSPECT

Address	Phone	DOB
1812 GRAND AVE MIDDLETOWN OHIO 45044	( ) -	02/22/1989
Race	**Sex**	**Ethnicity**
BLACK, NON-HISP	M	
Height	**Weight**	
5'11"	180	

Narratives

Original Narrative

03/16/2018 11:19:14

Neither subject wanted the other to be arrested. Hurston had property damaged and wants to think about the options I gave him regarding case being reviewed by prosecutor.

Witness - 740-357-0729 room 329 Mrs. Hopper.

In-car camera remote was out of range and did not turn on when I engaged it.

Report complete.

On February 14, 2018, at approx. 02:02 hours, I (Troy Cochran) responded to Hollywood Casino Hotel for an unknown altercation. Upon arrival Ofc. Schwarz advised me to meet him on the 2 level of the hotel. When I got off the elevator on the second floor, I observed house keeping cleaning up blood. I then met with Ofc. Schwarz and casino security at room 262. Casino security includes; Tim Schnieder, Kevin Bill, and Ethan.

I observed Tim speaking to the tenant of room 262 who was identified as Donald Forte. I observed Mr. Forte to have unsteady balance, slurred speech, and strong odor of alcohol. I further observed Mr. Forte to have blood on his clothes and injuries including several goose eggs to the right of the forehead.

Mr. Forte refused to allow pictures be taken. Mr. Forte refused medical treatment. Mr. Forte stated that he did not want anything regarding this matter to be recorded in any way. Mr. Forte stated that he has a career and does not want his name documented for the public to see. Mr. Forte provided vague information about the incident. He stated that the person that caused his injury was known by the casino. Mr. Forte stated that his assailant was very mouthy and has a number of complaints against him. Mr. Forte indicated that his assailant caught him off guard. Mr. Forte refused to answer questions when asked specifics. Mr. Forte stated that he did not call on us. I was informed that Mr. Forte notified the front desk and they contacted security. Mr. Forte stated he did not handle matters like this by involving courts.

Mr. Forte proceeded to leave his room leaving many questions unanswered. Security was able to identify Mr. Forte's alleged assailant using surveillance as Miracle Hurston. I was further informed that Mr. Hurston was staying in room 354. I spoke to Mr. Hurston who was very cooperative and provided a detailed account. Mr. Hurston included that a female patron was on the elevator at the time of the altercation. She was later identified again using surveillance as Mrs. Hopper. Mrs. Hopper was staying in room 329 and wishes to stay anonymous. I spoke to Mrs. Hopper over the phone (740)357-0729 and obtained her statement.

Mr. Hurston had a swollen hand and cuts on his knuckles. Mr. Hurston stated that he had checked in earlier this evening. He stated after getting in his room he found bed bugs and requested a new room over the phone. He stated that the front desk had the new room keys ready for him when came down. He stated that Mr. Forte was at the front desk at this time checking in. That the front desk staff stopped serving Mr. Forte to give Mr. Hurston his new keys Mr. Hurston indicted that Mr. Forte made a disgruntled comment.

Mr. Hurston and Mr. Forte both indicated that they have crossed paths at the casino but do not know each other on a personal level. Mr. Forte stated several times that Mr. Hurston is mouthy. Mr. Hurston stated that Mr. Forte was on the elevator when he started back up to his new room. Mr. Hurston stated that Mr. Forte was struggling to get the elevator security key to take in order to go up. Mr. Hurston stated that he made a playful comment and proceeded to assist by using his room key for the elevator. Mr. Hurston stated that he commented to Mr. Forte congratulating him on winning at the casino. Mr. Hurston stated when the elevator stopped at the second

65a

floor Mr. Forte stepped off and turned around facing him. Mr. Hurston stated that Mr. Forte told him, "you need to learn to keep your damn mouth shut". Then Mr. Forte knocked Mr. Hurston's bag out of his hands. Mr. Hurston stated his phone and computer got damaged in the process.

Pictures of a phone and computer both with cracked screens were taken. Mr. Hurston stated after Mr. Forte knocked the bag out of his hand he came after him. Mr. Hurston stated as soon as Mr. Forte grabbed him he started fighting back. Mrs. Hopper stated she observed a taller black male get off the elevator on the second floor. She stated he turned around and stated, " you need to learn to keep your damn mouth shut". She further stated he appeared intoxicated and angry. She also stated that the shorter black male was still on the elevator. That he was replying in a playful manner before she exited. Mrs. Hopper stated she could tell by the taller male it was about to go down so she exited the elevator. Mrs. Hopper stated she got off on the second floor and took the stairs up to her room. She stated as she was walking away from the elevator she could hear a scuffle but did not see what happened. She indicated the shorter male was staying on the third floor.

Mr. Hurston also stated he did not want to see Mr. Forte in jail. He was only concerned about his damaged property. He stated the value of the phone was $100.00 and the computer $200.00. He stated that the reason he did not report the incident was concerns of getting consequences from the casino. Mr. Hurston stated he rather nothing come of the incident over getting consequences from the casino. I advised Mr. Forte of Mr. Hurston's request for reimbursement. He declined and insisted there was no female witness on the elevator. I advised Mr. Forte of the possibility of criminal charges. Mr. Forte stated he was not going to jail. He stated if Mr. Hurston wanted to press charges let him. I informed both subjects if further altercations occurred tonight, both could end up in jail. Mr. Hurston stated he would contact me if he decided to pursue a review by prosecutor. No further at this time.

Supplemental Narrative 02/14/2018 03:41:58 DONALD HASTINGS JR

CAD Call info/comments
==========

MEET WITH BIKE PATROL IN THE LOBBY REF A GUEST HAD SOME SORT OF ALTERCATION WITH ANOTHER PERSON