PART V - AUTHENTICATION	
A. PRINTED REPORTER NAME (If you wish to be labeled too)	B. SIGNATURE (are you sure about this?)
C. PRINTED WHINER NAME (you really are going out on a limb here)	D. SIGNATURE OF WHINER (you have got to be shitting me!)
We, as the Dept, take hurt feelings seriously. If you don't have someone who can give you a hug and make things all better, please let us know and we will promptly dispatch a "hugger" to you ASAP. In the event a "hugger cannot be found, an EMS Team will be dispatched to soak your socks in coal oil to prevent ants from crawling up your leg and eating their way up your candy ass. If you are in need of supplemental support, upon written request, we will make every reasonable effort to prvide you with a "blankie", a "binky" and/or a bottle if you so desire.	

PART III - INJURY

(Circle all that apply)

1. WHICH EAR WERE THE HURTFULL WORDS SPOKEN INTO?	2. IS THERE PERMANENT FEELING DAMAGE?
LEFT RIGHT BOTH	YES NO MAYBE
3. DID YOU REQUIRE A "TISSUE" FOR TEARS?	4. HAS THIS RESULTED IN A TRAUMATIC BRAIN INJURY?
YES NO MULTIPLE	YES NO MAYBE

PART IV - REASON FOR FILING THIS REPORT

(Mark all that apply)

	I am thin skinned		The Dept needs to fix my problems		Two beers is not enough
	I am a wimp		My feelings are easily hurt		My hands should be in my pockets
	I have woman / man-like hormones		I didn't sign up for this		I was not offered a tissue
	I am a crybaby		I was told that I am not a hero		Someone requested a tissue
	I want my mommy		The weather is too cold		All of the above and more

NARRATIVE *(Tell us in your own sissy words how your feelings were hurt, as if anyone cared)*

HURT FEELINGS REPORT

To use this form, it must be physically placed in the hands of any Law Enforcement Officer

DATA REQUIRED BY THE PRIVACY ACT OF 1974

AUTHORITY:	5 USC 301, Departmental Regulation, 10 USC 3013 and a log of other regulations too
PRINCIPAL PURPOSE:	To assist whiners in documenting hurt feelings
ROUTINE USES:	Whiners should use this form to seek sympathy from someone who cares
DISCLOSURE:	Disclosure is voluntary, however, repeated whining may lead to your file being stamped "candy ass" or some other appropriate term

PART I - ADMINISTRATIVE DATA

A. WHINER'S NAME (Last, First, MI)	B. WHINER'S AGE	C. WHINER'S SEX	D. DATE OF REPORT

E. TYPE OF WHINE USED	F. NAME OF THE PERSON FILLING OUT THIS FORM

PART II - INCIDENT REPORT

A. DATE FEELINGS WERE HURT	B. TIME OF HURTFULNESS	C. LOCATION OF HURTFUL COMMENTS

D. WAS ANYONE SYMPATHETIC TO WHINER (*Please include paid witnesses*)	E. NAME OF PERSON WHO HURT YOUR PANSY ASS FEELINGS

F. HOW LONG DID YOU WHINE	G. WHICH FEELINGS WERE HURT

HURT FEELINGS REPORT

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OPINION, U.S. COURT OF APPEALS FOR THE EIGHTH CIRCUIT (AUGUST 23, 2023)

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

LARISA DIRKZWAGER,

Plaintiff-Appellant,

v.

ARCHER-DANIELS-MIDLAND COMPANY,

Defendant-Appellee.

No. 22-3657

Appeal from United States District Court
for the District of North Dakota – Western

Submitted: August 18, 2023
Filed: August 23, 2023
[Unpublished]

Before: GRUENDER, BENTON, and STRAS, Circuit Judges.

PER CURIAM.

North Dakota resident Larisa Dirkzwager appeals the district court's[1] order enforcing a settlement

[1] The Honorable Daniel L. Hovland, United States District Judge for the District of North Dakota.

agreement and dismissing her employment discrimination action. Having jurisdiction under 28 U.S.C. § 1291, this court affirms.

Contrary to Dirkzwager's contention on appeal, the district court had jurisdiction to enforce the settlement agreement because it had original jurisdiction over her employment discrimination claims, and the case was still pending. *See* 28 U.S.C. § 1331 (district courts have original jurisdiction of all civil actions arising under laws of United States); *Wilson v. Wilson*, 46 F.3d 660, 664 (7th Cir. 1995) (district court possesses power to enforce settlement agreement in case pending before it).

This court concludes that the district court did not clearly err in finding that the oral agreement reached at the settlement conference was enforceable, that it did not materially differ from the written agreement, and that Dirkzwager did not provide a sufficient justification for revoking it. *See W. Thrift & Loan Corp. v. Rucci*, 812 F.3d 722, 724-25 (8th Cir. 2016) (standard of review; oral settlement agreement was enforceable when parties confirmed existence of enforceable agreement before magistrate judge even though parties did not memorialize it); *Sheng v. Starkey Labs.*, 117 F.3d 1081, 1083 (8th Cir. 1997) (settlement agreements that do not expressly resolve ancillary issues can be enforceable; perceiving no clear error when district court found that settlement did not hinge on tax treatment of payment or on other particulars); *Justine Realty Co. v. American Nat'l Can Co.*, 976 F.2d 385, 391 (8th Cir. 1992) ("In the absence of mistake or fraud, a settlement agreement will not be lightly set aside."). This court declines to consider arguments that Dirkzwager raises for the first time on appeal.

See Shanklin v. Fitzgerald, 397 F.3d 596, 601 (8th Cir. 2005) ("Absent exceptional circumstances, we cannot consider issues not raised in the district court.").

The judgment is affirmed. *See* 8th Cir. R. 47B.

ORDER, U.S. DISTRICT COURT FOR THE DISTRICT OF NORTH DAKOTA (NOVEMBER 28, 2022)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

LARISA DIRKZWAGER,

Plaintiff,

v.

ARCHER-DANIELS MIDLAND COMPANY,

Defendant.

Case No. 1:20-cv-212

Before: Daniel L. HOVLAND,
District Judge, United States District Court.

ORDER GRANTING MOTION TO ENFORCE SETTLEMENT AGREEMENT

Before the Court is a motion to enforce settlement agreement filed by Archer-Daniels Midland Company ("ADM"), on November 11, 2022. *See* Doc. No. 72. ADM seeks to enforce the terms of a settlement agreement reached after a settlement conference earlier this year. The Plaintiff, Larisa Dirkzwager, did not respond to the motion. Failure to respond to a motion may be deemed an admission the motion is well-taken. D.N.D. Civ. L. R. 7.1.

A day-long court-sponsored settlement conference was held on August 11, 2022. Magistrate Judge Clare R. Hochhalter hosted the settlement conference which was held in person in at the U.S. District Courthouse in Bismarck, North Dakota. Dirkzwager, who is otherwise proceeding pro se, was appointed counsel for assistance at the settlement conference. The case settled and the terms of the settlement were placed on the record. Closing documents were due on October 21, 2022, but Dirkzwager refused to sign the agreement. The Court held a status conference on October 4, 2022, at which the Judge Hochhalter reminded Dirkzwager that the settlement agreement was binding and encouraged her to work with her attorney and sign the settlement agreement. The Court has reviewed the settlement agreement and finds it accurately reflects what the parties agreed to on August 11, 2022. Dirkzwager has failed and refused to sign the settlement agreement and has not shown good cause for her failure to do so.

"A settlement agreement is a contract between parties, and thus contract law applies." *Lund v. Swanson*, 956 N.W.2d 354, 358 (N.D. 2021). "When a settlement is fairly made before trial, it 'takes on the character of a contract between the parties and is final and conclusive, and based on good consideration.'" *Kuperus v. Willson*, 709 N.W.2d 726, 730-31 (N.D. 2006) (quoting *Bohlman v. Big River Oil Co.*, 124 N.W.2d 835, 837 (N.D. 1963)). Oral settlement agreements are enforceable where the parties have agreed on the essential terms. *Tarver v. Tarver*, 931 N.W.2d 187, 190 (N.D. 2019).

This Court has the authority to dismiss this action with prejudice based on the parties' unambiguous

settlement agreement. *Harper Enters., Inc. v. Aprilia World Serv. USA, Inc.*, 270 F. App'x 458, 460 (8th Cir. 2008); *Welo v. AdvisorNet Fin., Inc.*, 2021 WL 9036939, at *2 (D.N.D. Dec. 16, 2021), report and recommendation adopted, 2022 WL 2612118 (D.N.D. Jan. 31, 2022)). North Dakota law "looks with favor upon compromise and settlement of controversies between parties, and where the settlement is fairly entered into, it should be considered as disposing of all disputed matters which were contemplated by the parties at the time of the settlement." *Vandal v. Peavey Co.*, 523 N.W.2d 266, 268 (N.D. 1994). A settlement can only be set aside upon a "showing of fraud, duress, undue influence, or any other grounds for rescinding a contract." *Id.*

The Court, having carefully considered ADM's motion to enforce the settlement agreement, as well as all files, records, and proceedings herein, GRANTS ADM's motion (Doc. No. 72) and ORDERS as follows:

1. The parties shall abide by the terms of the settlement agreement reached on the record on August 11, 2022, and specifically as reduced to writing in the Settlement and Release Agreement which the Court incorporates herein. *See* Doc. No. 74-6.

2. The case is dismissed with prejudice with each party to bear its own costs and fees.

IT IS SO ORDERED.

Dated this 28th day of November, 2022.

/s/ Daniel L. Hovland
District Judge
United States District Court

ORDER, U.S. DISTRICT COURT FOR THE DISTRICT OF NORTH DAKOTA (AUGUST 8, 2022)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

LARISA DIRKZWAGER,

Plaintiff,

v.

ARCHER-DANIELS-MIDLAND COMPANY,

Defendant.

Case No. 1:20-cv-212

Before: Clare R. HOCHHALTER,
Magistrate Judge, United States District Court.

ORDER

Before the court is a Motion to Strike filed by Defendant Archer-Daniels-Midland Company ("ADM") on June 3, 2022. For the reasons that follow, the motion is denied.

I. Background

Plaintiff Larisa Dirkzwager ("Dirkzwager") initiated the above-captioned action pro se in state district court. (Doc. No. 1-1). She claimed that ADM, her former employer, had discriminated against her in

violation of the North Dakota Human Rights Act, Title VII of the Civil Rights Act, and the Age Discrimination in Employment Act. *Id.*

Defendant removed the case to this court on November 16, 2020, pursuant to 28 U.S.C. §§ 1331, 1441, and 1446. (Doc. No. 1). It filed an answer to Dirkzwager's complaint on November 18, 2020. (Doc. No. 2).

On March 2, 2021, Dirkzwager filed a motion seeking leave to file an amended complaint that: (1) comported with the requirements of Rules 8(a)(2) and 10(b) of the Federal Rules of Civil Procedure; (2) described the factual bases for her claims in greater detail; (3) struck references to and claims for gender and age discrimination in her original complaint, and (4) asserted additional claims pursuant to 42 U.S.C. § 1981, 42 U.S.C. § 1985, and the Civil Liberties Act of 1988. Specifically, she requested:

> Through the Amended Complaint, Plaintiff seeks to format complaint with the Rules 8(a)(2) and 10(b) of the Federal Rules of Civil Procedure after the removal from the North Dakota District Court which governs the formatting with different Rules.
>
> Further Plaintiff seeks to amplify, clarify, set forth in greater detail the claims and organize them in a away that it should aid the court and the defendants to see which allegation supports the certain cause of action.
>
> Moreover, Plaintiff seek to remove original claims and other references in the original Complaint pertaining to Gender and Age Discrimination. Indeed, Plaintiff remain focused

> on Nationality of Origin Discrimination claim and related hostile work environment, sexual harassment, and conspiracy charges.
>
> Next Plaintiff seek to employ other laws available in Federal Law that addresses the different sides of multi-faceted conduct of Racial and Nationality of Origin Discrimination:
>
> 1. the section 1981 of the Civil Rights Act of 1866, 42 U.S.C. § 1981 ("Section 1981")
> 2. 42 U.S Code Section 1985
> 3. Civil Liberties Act of 1988
>
> Moreover, Plaintiff respectfully requests to remain the charges of tort of intention infliction of emotion distress, hostile work environment, and sexual harassment covered by North Dakota Century Code Chapter 34 and 14 in the North Dakota State District Court.

(Doc. No. 14).

On May 7, 2021, the court issued an order granting Dirkzwager's motion in part and denying her motion in part. (Doc. No. 18). Specifically, the court denied her request for leave to amend her pleadings to include additional claims under § 1981, § 1985 and the Civil Liberties Act. However, it granted her request for leave to amend her pleadings to strike or omit the references to gender and age discrimination in her original complaint but to otherwise expanded upon the factual basis for her other claims.

On May 18, 2021, Dirzkwager filed an amended complaint. (Doc. No. 19). On June 14, 2021, ADM filed a motion to strike the following language and paragraphs from her amended complaint:

- Paragraph 1: Strike "declaratory, injunctive and" from first sentence. Strike "race, ancestry, ethnicity and" from first sentence.
- Paragraph 4: Strike "and sexual harassment" from first sentence.
- Paragraph 14: Strike "ethnicity, ancestry and" from first sentence.
- Paragraphs 22-27: Strike in their entirety.
- Paragraph 65: Strike in its entirety.
- Paragraph 68: Strike "race, ethnicity and" from paragraph.
- Paragraph 73: Strike in its entirety.
- Paragraph 75: Strike "race, ethnicity" from paragraph.
- Paragraph 79: Strike in its entirety.
- Prayer for Relief: Strike paragraphs B-D in their entirety. Strike paragraph I in its entirety.
- Caption and Headings Throughout: Strike all references to claims based upon sex harassment/discrimination, age, and race/ethnicity.
- Strike all other matters not specifically permitted by the Court's Order dated May 7, 2021. (Doc. 18).

(Doc. No. 24). It asserted that the aforementioned language and paragraphs were immaterial, and impertinent and that their inclusion in the amended complaint violated my May 7, 2022, order.

On July 20, 2021, Judge Hovland granted ADM's motion in part, directing that references to race, ethnicity, ancestry, and sexual harassment in the amended complaint be stricken but allowing the requests for punitive, injunctive, and declaratory relief to remain. (Doc. No. 28).

On July 26, 2021, Dirkzwager filed motions requesting me to reconsider my denial of her request for leave to amend her pleadings to assert a § 1981 claim. (Doc. Nos. 29, 30). On May 6, 2022, I granted her motions and authorized her to file a second amended complaint that included a § 1981 claim. (Doc. No. 43).

On May 23, 2022, Dirkzwager filed a second amended complaint. (Doc. No. 44). On June 3, 2022, ADM filed a motion to strike references in the second amended complaint to "sexual harassment" and "demeaning sexual conduct" pursuant to Fed. R. Civ. P. 12(f). Its motion has now been fully briefed and is ripe for consideration.

II. Discussion

ADM is requesting that the court strike the following language and/or paragraphs from Dirkzwager's second amended complaint:

- Caption (pg. 1): Strike "Sexual Harassment."
- Table of Contents (pg. 2): Strike "Demeaning Sexual Conduct" from First Cause of Action section.

- Table of Contents (pg. 2): Strike "Sexual Harassment, Demeaning Sexual Conduct" from Second Cause of Action section.
- Table of Contents (pg. 2): Strike "Sexual Harassment, Demeaning Sexual Conduct" from Third Cause of Action section.
- Paragraphs 23-26 (pgs. 11-12): Strike in their entirety.
- Paragraph 32 (pg. 14): Strike in its entirety.
- Paragraph 67 (pgs. 33-34): Strike it its entirety.
- First Cause of Action Caption (pg. 34): Strike "Demeaning Sexual Conduct."
- Second Cause of Action Caption (pg. 36): Strike "Sexual Harassment, Demeaning Sexual Conduct."

(Doc. No. 45). Invoking Rule 12(f) and the "law-of-the-case doctrine," it asserts that the aforementioned language and paragraphs are not only immaterial and impertinent, but that their inclusion in the second amended complaint directly violates previous orders. It further asserts that the inclusion of the aforementioned language and paragraphs is highly prejudice and that the "removal of the offending language is necessary to streamline the action and allow [it] the fair ability to know the allegations against it, conduct relevant discovery, weigh mediation of the matter, and defend the case generally." (Doc. No. 45).

In response, Dirkzwager asserts that the law of the case doctrine is inapplicable in this instance, that the court is not bound by its earlier rulings, that the

court did not explicitly prohibit her from asserting a claim for sexual harassment, and what the court has not explicitly prohibited must be allowed. In so doing, she endeavors to draw a distinction between gender discrimination, the references to which she previously sought leave to excise from her original complaint, and sexual harassment, which she has been asserting throughout this litigation. Additionally, she asserts that her pro se status entitles her to leniency. Finally, she emphasizes that motions to strike are generally disfavored.

Having reviewed the record in its entirety, it appears that ADM's first motion to strike as it pertained references to sexual harassment was improvidently granted due to a misinterpretation of my order addressing Dirkzwager's motion for leave to file an amended complaint. In any event, I am not inclined to require Dirkzwager to strike references to sexual harassment in her second amended complaint, the filing of which was authorized by my order granting her motions for reconsideration and allowing her to file a second amended complaint.

In her original complaint, Dirkzwager claimed that she had been subjected to sexual harassment during the course of her employment. She further claimed that she had been passed over for promotion in retaliation for complaining about the sexual harassment to which she had been subjected at the workplace and because of her national origin, age, and gender. In her motion to amend her complaint, she advised that she wanted to abandon her gender discrimination claim and would omit references to such discrimination in her amended pleadings. However, she

was adamant about her continued desire to pursue her claim of sexual harassment.

Sexual harassment is a form of gender discrimination as defined by Title VII. It is apparent that from the record that while sexual harassment is a form of gender discrimination, Dirkzwager has endeavored to draw a distinction between gender-based discrimination when it comes to employment decisions and gender discrimination that creates a hostile environment. It is also apparent from her filings to date that Dirkzwager sought to abandon her claims regarding the former and to focus instead on her claims regarding the latter. Dirkzwager, perhaps inartfully, advised the court in her motion to amend her pleadings of her intent to omit the former. Consequently, it is not surprising that when directed to file an amended complaint omitting claims of gender discrimination, she did not excise references to or claims of sexual harassment.

To afford Dirzkwager's pleadings the liberal construction to which they are entitled by virtue of Dirkzwager's pro se status, to remedy any ambiguity my earlier order may have created, and to ensure that all of Dirkzwager's claims are addressed, I am disinclined to acquiesce to ADM's request to strike any and all references in Dirkzwager's second amended complaint to sexual harassment. This should pose no appreciable prejudice to ADM as, while this case has now been pending for some time, it is still at the pleading stage. Moreover, as I have suspended all pretrial deadlines pending further order, there arguably is nothing that would preclude Dirzkwager from seeking leave to amend her pleadings to claims for sexual harassment and to otherwise reference alleged

sexual harassment should all references to such harassment be stricken from her second amended complaint. (Doc. No. 39).

III. Conclusion

ADM's motion to strike (Doc. No. 45) is denied.

IT IS SO ORDERED.

Dated this 8th day of August, 2022.

/s/ Clare R. Hochhalter
Magistrate Judge
United States District Court

ORDER, U.S. DISTRICT COURT FOR THE DISTRICT OF NORTH DAKOTA (MAY 6, 2022)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

LARISA DIRKZWAGER,

Plaintiff,

v.

ARCHER-DANIELS-MIDLAND COMPANY,

Defendant.

Case No. 1:20-cv-212

Before: Clare R. HOCHHALTER,
Magistrate Judge, United States District Court.

ORDER GRANTING MOTIONS FOR LEAVE TO FILE AMENDED COMPLAINT AND FOR RECONSIDERATION

Before the court are a Motion for Leave to File Amended Complaint and Motion for Reconsideration filed by Plaintiff Larisa Dirkzwager ("Dirkzwager") on July 26, 2021. For the reasons that follow, the motions are granted.

I. Background

Dirkzwager initiated the above-captioned action pro se in state district court, claiming that, while employed by Defendant Archer-Daniels-Midland Company ("ADM"), she had been discriminated against and otherwise harassed her because of her age, national origin, and/or sex in violation of the North Dakota Human Rights Act, Title VII of the Civil Rights Act of 1964, as amended, and the Age Discrimination in Employment Act of 1967, as amended. (Doc. No. 1-1).

ADM removed the case to this court on November 16, 2020, pursuant to 28 U.S.C. §§ 1331, 1441, and 1446. (Doc. No. 1). It filed an answer to Dirkzwager's complaint on November 18, 2020. (Doc. No. 2). The parties subsequently submitted a scheduling and discovery plan for the court's review.

On January 6, 2021, the court held a scheduling conference with the parties by telephone. (Doc. No. 7). That same day it issued an order adopting the parties' scheduling and discovery plan and in so doing it set March 1, 2021, as the deadline for filing motions to amend the pleadings. (Doc. No. 8).

On March 2, 2021, Dirkzwager filed a motion for leave to file an amended complaint that (1) comported with the requirements of Rules 8(a)(2) and 10(b) of the Federal Rules of Civil Procedure, (2) described the factual bases for her claims in greater detail, (3) struck references to and claims for gender and age discrimination in her original complaint, and (4) asserted additional claims pursuant to 42 U.S.C. § 1981, 42 U.S.C. § 1985, and the Civil Liberties Act of 1988. (Doc. No. 14).

On May 7, 2021, the court issued an order granting Dirkzwager leave to amend her pleadings to expand upon the factual basis for her existing claims but denying her leave to amend her pleadings to include claims under § 1981, § 1985, and the Civil Liberties Act of 1988. (Doc. No 18).

On May 18, 2021, Dirkzwager filed an Amended Complaint. (Doc. No. 19). On June 14, 2021, ADM filed its Answer. (Doc. No. 25). It also filed an motion to strike certain portions of Dirkzwager's Amended Complaint. (Doc. No. 24). On July 20, 2021, the court granted the motion in part and ordered that paragraphs in Dirkzwager's Amended Complaint pertaining the race, ethnic, gender, and age discrimination be stricken. (Doc. No. 28).

On July 26, 2021, Dirkzwager filed what the court construes as motions requesting the court to reconsider its order May 7, 2021, order and to permit her to further amend her pleadings to include a § 1981 claim. The motions have now been fully briefed and are ripe for the court's consideration.

II. Applicable Law

Fed. R. Civ. P. 15(a) provides in relevant part that leave to amend the pleadings "shall be freely given when justice so requires." Notwithstanding the liberality of this general rule, it is generally left to the Court's discretion whether to grant leave to amend the pleadings. *Gamma-10 Plastics, Inc. v. American President Lines, Ltd.*, 32 F.3d 1244, 1255 (8th Cir. 1994). Unless there is a good reason for denial, such as undue delay, bad faith, or dilatory motive, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the non-moving party,

or futility of the amendment, leave to amend is generally granted. *Becker v. Univ. of Nebraska at Omaha*, 191 F.3d 904, 908 (8th Cir. 1999) ("Likelihood of success on the new claim or defenses is not a consideration for denying leave to amend unless the claim is clearly frivolous.").

"With respect to the issue of futility, the test for purposes of Rule 15 is whether the proposed amendment can survive a motion to dismiss, not whether it can survive a motion for summary judgment. "[W]hen a court denies leave to amend on the ground of futility, it means that the court reached a legal conclusion that the amended complaint could not withstand a Rule 12 motion, Fed. R. Civ. P. 12 . . . ." *In re Senior Cottages of America, LLC*, 482 F.3d 997, 1001 (8th Cir. 2007); *see also Zutz v. Nelson*, 601 F.3d 842, 850-51 (8th Cir. 2010) ("Denial of a motion for leave to amend on the basis of futility means the district court has reached the legal conclusion that the amended complaint could not withstand a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure." (internal quotation marks omitted). The futility inquiry asks "whether the proposed amended complaint states a cause of action under the [*Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2009)] pleading standard . . . ." *Zutz v. Nelson*, 601 F.3d 842 (8th Cir. 2010). Under this standard, the court must assume all facts alleged in the complaint as true to determine whether those same facts state a plausible claim for relief. *Id.*

III. Discussion

A. § 1981

Section 1981 prohibits non-governmental discrimination in the making and enforcement of contracts. *See* 42 U.S.C. § 1981. Specifically, it 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 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.

Id. "Section 1981 has long been construed to 'forbid all 'racial' discrimination in the making of private as well as public contracts.'" *Garang v. Smithfield Farmland Corp.*, 439 F. Supp. 3d 1073, 1096-97 (N.D. Iowa 2020) (quoting *St. Francis Coll. v. Al-Khazraji*, 481 U.S. 604, 609 (1987)). "It also protects 'identifiable classes of persons who are subjected to intentional discrimination solely because of their ancestry or ethnic characteristics.'" *Id.* (quoting *St. Francis Coll. v. Al-Khazraji*, 481 U.S. 604, 609). It does not, however, protect against discrimination based on one's place of birth or national origin. *See Broom v. Saints John Neumann & Maria Goretti Catholic High Sch.*, 722 F. Supp. 2d 626, 631 (E.D. Pa. 2010) ("Because § 1981 was intended to protect against discrimination based on race, it does not provide a remedy to plaintiffs discriminated against 'solely on the place or nation of [their] origin.'" (alteration in original) (quoting

St. Francis Coll., 481 U.S. at 613), and citing *Bennun v. Rutgers State Univ.*, 941 F.2d 154, 172 (3d Cir. 1991)). Consequently, only if a plaintiff "can prove that he [or she] was subjected to intentional discrimination based on the fact that he [or she] was born [into a particular ethnic group], rather than solely on the place or nation of his origin, . . . [will she] have made out a case under § 1981." *St. Francis Coll.*, 481 U.S. at 613.

The court denied Dirkzwager's previous request to amend her pleadings to add a claim under § 1981, opining:

> Here, Dirkzwager does not allege to have been subjected to discrimination or harassment because of her ancestry or ethnic characteristics while employed by defendant. Rather, she alleges that she was subjected to harassment and or discrimination because of her nation of origin (Russia). *See e.g.*, Doc. No. 14-2, p. 7. As her proposed §1981 claim appears predicated solely upon her national origin as opposed to her national origin plus her ethnicity, ancestry, or race, it is unlikely to withstand a Rule 12(b) motion and may therefore be denied on the ground of futility. *See Torgerson v. City of Rochester*, 643 F.3d 1031 (8th Cir. 2011); *see also Soboyede v. KLDiscovery*, No. 20CV02196SRNTNL, 2021 WL 1111076, at *3 (D. Minn. Mar. 23, 2021); *Mulholland v. Classic Mgmt. Inc.*, No. CIV. A. 09-2525, 2010 WL 2470834, at *2 (E.D. Pa. June 14, 2010).

(Doc. No. 18).

In her current motions, Dirkzwager asserts that court erred by construing her proposed claim too narrowly, that § 1981 is not rendered inapplicable by virtue of fact that her ethnicity and nationality are in alignment, and that she was subjected to harassment and discrimination on the basis of her national origin plus her ancestry and ethnic characteristics in violation of § 1981 as evidenced by the xenophobic and stereotypical commentary of her co-workers. Attached to her motions is a copy of her proposed amended complaint in which alleges the following in relevant part:

> 15. Plaintiff began working for the above-named Defendant on July 7, 2011, as a lab tech. Beginning on or about February 2013, and continuing till the end of her employment in June 2019, she was subjected to repeated and persistent harassment based on her ethnicity, ancestry and nation of origin (Russia) by co-workers, who made repeated comments about her being Russian in relation to current events, such as the 2014 Russian conflict in the Crimea Peninsula, the foreign interference in the 2016 United States Presidential elections, and the 2017 Russian doping scandal at the Olympics. She constantly heard comments such as, "When will you Russians get out of Crimea?" and "Did you use doping?" and, whenever the lab computers were down, "Probably Russian hackers." In January 2019, she heard employee Jeff Nelson say to Robby Summers: "F***ing immigrants. You'd think they come to pick strawberries. Next thing you know, they get all the good jobs from us."

16. At the time of the Russian Olympic track team doping scandal, Jeff Nelson initiated a conversation about Plaintiffs experience coaching the junior rock-climbing team in Russia. He was at the time coaching a softball team at a local college. Plaintiff thought they had common interests, until he asked "So, how much doping have you had to take to become a champion?" Plaintiff asserted that she never used doping in her competitive career and didn't appreciate this innuendo. He laughed and said "What happened to your sense of humor?" Plaintiff insisted that she didn't like the joke. Nelson then asked, "Has it hurt your feelings?" Plaintiff replied, "Yes." Nelson then said, "Then you should fill out this "Hurt Feelings Report." Nelson gave Plaintiff a form that looked very official. Plaintiff even thought it was real, but it was a mocking form which was created to discourage complaints. It included clauses such as, "I am a cry baby;" "I am thin-skinned;" and "I need my mommy." (see Exhibit C)

17. Plaintiff "fixed" one apparatus by hitting it on the side. Robby Summers said, "Russian way." He referred to the movie Armageddon, where the Russian astronaut fixed the space rocket equipment by hitting it with the big wrench, implying that all Russians are morons without finesse.

18. Some co-workers at ADM asked Plaintiff if it was true that Russians drink a lot. Plaintiff's response was that many Russians

drink as a form of self-medication because they do not have psychiatrists, and there is so much stress living there. As a joke, she said:" I left Russia because I couldn't drink Vodka anymore." Making the joke was a mistake. Robby told Plaintiff," Maybe we should call you Drinkzwager." Plaintiff said, "No, you shouldn't." But the insulting nickname stuck with Plaintiff nonetheless.

* * *

19. In 2016, Plaintiff applied for American citizenship. She was both excited and worried that she wouldn't measure up. She studied American history and civics, and discussed them with anybody she could. One day at ADM, Robby Summers talked to her about being an American citizen, and seemed genuinely interested. However, his questions made Plaintiff more and more uncomfortable as he asked Plaintiffs thoughts about Putin and Russian politics. Finally, Summers said, "No wonder you want to be American. You should be ashamed to be Russian." Summers then looked over Plaintiffs shoulder. When she looked around, she realized that the door was open and that the entire maintenance crew was in the corridor listening to the conversation. It was a coffee break time, and the lunchroom was just across the corridor. Plaintiff now realizes that Summers' feigned interest was a performance to humiliate and shame her about her being Russian.

20. Each Friday at the ADM facility in Velva, ND, the top management of the plant

> (Plant Manager, Biodiesel plant Superintendent, Crash Plant Superintendent, Safety Manager, Quality control Lab Supervisor, Shift Supervisor, IT department staff, QC Lab staff, and all engineers) gather for the safety meeting. In one of these meetings, Bryan, the head of the IT department, asked Plaintiff to say "We must kill moose and squirrel." Plaintiff, though confused by the request, didn't expect an ambush in such respected company, so she complied. Everybody laughed, and she assumed it was simply a nice joke. Later, she also didn't suspect anything to be wrong when Bryan asked her to repeat the phrase in the lunch room on coffee break, in front of maintenance and production crew. Plaintiff was only happy to make everybody smile. Those present remarked that they liked her accent. Plaintiff felt betrayed when later she learned that the sentence was the signature phrase of notorious Russian female spy Natasha Fatale from the Rocky and Bullwinkle cartoon. Plaintiff was embarrassed and humiliated that she had been tricked into saying it for the entertainment and amusement of ADM management and staff.

(Doc. No. 31).

In its response to Dirkzwager's motion, ADM asserts that Dirkzwager's request for leave to amend the pleadings is untimely, that Dirkzwager's proposed claim has already been rejected by the court as futile, and that it will be unduly prejudiced should Dirkzwager

be permitted to amend her pleadings as it will unnecessarily increase costs and otherwise protract matters.

As the court previously noted, § 1981 does not apply to claims based on national origin. However, given the additional context provided by Dirkzwager in the instant motion, the court cannot conclude at this point that her proposed claim is not predicated at least in part her upon ancestry or ethnic characteristics as opposed to just her national origin. Yes, comments concerning current events that were allegedly directed at Dirkzwager concern her nationality and thus at first blush do not appear to be actionable under § 1981. The same cannot necessarily said about alleged comments or allusions to plaintiff's alcohol consumption or accent, however. *See e.g., Wesley v. Palace Rehabilitation & Care Center, L.L.C.*, 3 F. Supp.2d 221, 231 (D.N.J. 2014) ("Discrimination based upon a person's accent may constitute national origin discrimination and/or racial discrimination. To determine the nature of the discriminatory animus when a plaintiff's accent is at issue, a court must consider the context of the employment action or comments.").

Dirkzwager is endeavoring to assert a hostile work environment claim under § 1981. "[A] hostile work environment claim is sufficient plead[ed] where the complaint alleges that the plaintiff's workplace was permeated with discriminatory intimidation, ridicule, and insult that [was] sufficiently severe or pervasive to alter the conditions of [her] employment and create an abusive work environment." *Acosta v. City of N.Y.*, No. 11-CV-0856, 2012 WL 1506954, at * 7 (S.D.N.Y. April 276, 2012) (quoting *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993)); *Ellis v. Houston*, 742 F.3d 307, 319 (8th Cir. 2014). The hostility must

be borne of animus towards the plaintiff as a result of her membership in a protected class. *Ellis v. Houston*, 742 F.3d 307, 319. Race, which encompasses ancestry and ethnic characteristics, is a protected class under § 1981.

Accepting the facts as alleged by Dirkzwager as true for purposes of Rule 15, the court cannot conclude at this stage that Dirkzwager has not met the lenient pleading standards for a hostile work environment claim. Consequently, the court is inclined to reconsider its previous order and permit Dirkzwager to amend her pleadings to include a § 1981 claim. The court is not persuaded that ADM will unduly prejudiced. Although this case has been pending for some time, it is still in its preliminary stages and the pretrial deadlines have been stayed pending further order.

IV. Conclusion

Dirkzwager's Motion for Reconsideration and Motion to Amend (Doc. Nos. 29, 30) are GRANTED. Dirkzwager shall have until May 23, 2022, to file a Second Amended Complaint that includes a § 1981 hostile work environment claim.

IT IS SO ORDERED.

Dated this 6th day of May, 2022.

/s/ Clare R. Hochhalter
Magistrate Judge
United States District Court

ORDER, U.S. DISTRICT COURT FOR THE DISTRICT OF NORTH DAKOTA (MAY 7, 2021)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

LARISA DIRKZWAGER,

Plaintiff,

v.

ARCHER-DANIELS-MIDLAND COMPANY,

Defendant.

Case No. 1:20-cv-212

Before: Clare R. HOCHHALTER,
Magistrate Judge, United States District Court.

ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR LEAVE TO FILE AMENDED COMPLAINT

Before the court is a Motion for Leave to File Amended Complaint filed by Plaintiff Larisa Dirkzwager ("Dirkzwager") on March 2, 2021. For the reasons set forth below, the motion is granted in part and denied in part.

I. Background

Dirkzwager initiated the above-captioned action pro se in state district court, claiming that defendant, her former employer, had discriminated against her in violation of the North Dakota Human Rights Act, Title VII of the Civil Rights Act of 1964, as amended, and the Age Discrimination in Employment Act of 1967, as amended. Doc. No. 1-1.

Defendant removed the case to this court on November 16, 2020, pursuant to 28 U.S.C. §§ 1331, 1441, and 1446. (Doc. No. 1). It filed an answer to Dirkzwager's complaint on November 18, 2020. Doc. No. 2. The parties subsequently submitted a scheduling and discovery plan for the court's review.

On January 6, 2021, the court held a scheduling conference with the parties by telephone. (Doc. No. 7). That same day it issued an order adopting the parties' scheduling and discovery plan, which established March 1, 2021, as the deadline to amend the pleadings. Doc. No. 8.

On March 2, 2021, Dirkzwager filed a Motion to Amend Complaint. Doc. No. 14. The motion has now been fully briefed and is now ripe for the court's consideration.

II. Applicable Law

Fed. R. Civ. P. 15(a) provides in relevant part that leave to amend the pleadings "shall be freely given when justice so requires." Notwithstanding the liberality of this general rule, it is generally left to the Court's discretion whether to grant leave to amend the pleadings. *Gamma-10 Plastics, Inc. v. American President Lines, Ltd.*, 32 F.3d 1244, 1255 (8th Cir.

1994). Unless there is a good reason for denial, such as undue delay, bad faith, or dilatory motive, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the non-moving party, or futility of the amendment, leave to amend is generally granted. *Becker v. Univ. of Nebraska at Omaha*, 191 F.3d 904, 908 (8th Cir. 1999) ("Likelihood of success on the new claim or defenses is not a consideration for denying leave to amend unless the claim is clearly frivolous.").

"With respect to the issue of futility, the test for purposes of Rule 15 is whether the proposed amendment can survive a motion to dismiss, not whether it can survive a motion for summary judgment. "[W]hen a court denies leave to amend on the ground of futility, it means that the court reached a legal conclusion that the amended complaint could not withstand a Rule 12 motion, Fed. R. Civ. P. 12 . . . ." *In re Senior Cottages of America, LLC*, 482 F.3d 997, 1001 (8th Cir. 2007); *see also Zutz v. Nelson*, 601 F.3d 842, 850-51 (8th Cir. 2010) ("Denial of a motion for leave to amend on the basis of futility means the district court has reached the legal conclusion that the amended complaint could not withstand a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure." (internal quotation marks omitted). The futility inquiry asks "whether the proposed amended complaint states a cause of action under the *[Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2009)] pleading standard . . . ." *Zutz v. Nelson*, 601 F.3d 842 (8th Cir. 2010). Under this standard, the court must assume all facts alleged in the complaint as true to determine whether those same facts state a plausible claim for relief. *Id.*

III. Discussion

Dirkzwager seeks leave of court to amend her pleadings to: (1) to comport with the requirements of Rules 8(a)(2) and 10(b) of the Federal Rules of Civil Procedure; (2) describe the factual bases for her claims in greater detail; (3) strike references to and claims for gender and age discrimination in her original complaint, and (4) assert additional claims pursuant to 42 U.S.C. § 1981, 42 U.S.C. § 1985, and the Civil Liberties Act of 1988. (Doc. No. 14). Defendant opposes her motion insofar as she is seeking leave to assert additional claims on the grounds of futility, untimeliness, and prejudice. Doc. No. 16.

A. Futility

1. Dirkzwager's proposed claim under the Civil Liberties Act of 1988

Defendants asserts that Dirkzwager's proposed claim under the Civil Liberties Act of 1998 would not survive a motion to dismiss and therefore should be denied as futile. The court agrees.

Congress passed the Civil Liberties Act of 1998, 50 U.S.C. App. § 1989b et seq., "[i]n recognition of the human rights violations by the Federal Government as a result of the evacuation, relocation, and internment of its Japanese citizens and resident aliens during World War II." *Kaneko v. United States*, 36 Fed. Cl. 101, 104 (1996), aff'd, 122 F.3d 1048 (Fed. Cir. 1997). The Act provided an official apology for the internment and for the payment of $20,000 in restitution to each "eligible individual." *Id.*

"[T]here are five classes of 'eligible individuals' under the Civil Liberties Act: (1) those who were interned, (2) those who were relocated, (3) those who were evacuated, (4) those who were deprived of property, and (5) those who were deprived of liberty." *Kaneko v. United States*, 36 Fed. Cl. 101, 104. "[I]n order to be eligible for restitution these five injuries must have been the result of specified Government action; namely, Executive Order No. 9066, 53 Stat. 173, or other executive or military proclamations respecting the evacuation, relocation, or internment of individuals solely on the basis of Japanese ancestry . . . ." *Id.*

Dirkzwager has not articulated a facially plausible claim under the Civil Liberties Act of 1998; nowhere in her proposed amended complaint does she allege that she is of Japanese ancestry, that she was interned, relocated, evacuated, deprived of property, or deprived of liberty, and/or that such harm was due to a specific government action. To permit Dirkzwager to amend to her pleadings and proceed with such a claim would be an exercise in futility as it would not survive a Rule 12(b)(6) motion. The court shall next address Dirkzwager's proposed conspiracy claim under § 1985.

2. Dirkzwager's Proposed Claim Under 42 U.S.C. § 1985

Defendant asserts that Dirkzwager should not be permitted to amend her pleadings to include a conspiracy claim under § 1985 because (1) she has not alleged that defendant had entered into an agreement with another individual or entity to violate her rights, and (2) it take at least two to conspire. It further

asserts that plaintiff's conspiracy claim is otherwise barred by the intracorporate conspiracy doctrine, "which shields agents of a single corporation and employees of a single government department acting within the scope of their employment from constituting a conspiracy under §1985." Doc. No. 16 (quoting *Johnson v. Vilsack*, 833 F.3d 948, 958 (8th Cir. 2016)).

42 U.S.C. § 1985(3) provides a cause of action for damages sustained as a result of conspiracies to deprive individuals of equal privileges and immunities and equal protection under the law. 42 U.S.C. § 1985(3). A conspiracy under § 1985 is "an agreement between two or more individuals where one acts in further[ance] of the objective of the conspiracy and each member has knowledge of the nature and scope of the agreement." *Morpurgo v. Inc. Vill. of Sag Harbor*, 697 F.Supp.2d 309, 339 (E.D.N.Y.2010); *see also Rogers v. Bruntrager*, 841 F.2d 853, 856 (8th Cir. 1988) (conspiracy claim requires allegations of specific facts showing "meeting of minds" among alleged conspirators).

"In order to state a claim for conspiracy under § 1985, a plaintiff must allege with particularity and specifically demonstrate with material facts that the defendants reached an agreement." *Kelly v. City of Omaha, Neb.*, No. 14-3446, 2016 WL 660117 (8th Cir. Feb. 18, 2016); *see also Ernst v. Hinchliff*, 129 F. Supp. 3d 695, 707 (D. Minn. 2015) ("To establish a conspiracy under § 1985, a plaintiff must prove: 1) the existence of a conspiracy; 2) a purpose in the conspiracy to deprive him of his civil rights; 3) an act in furtherance of the conspiracy; and 4) injury.").

Here, Dirkzwager's proposed amended complaint alleges no particular or specific facts to show that defendant entered into an agreement to deprive plain-

tiff of any civil rights. *See Kelly v. City of Omaha, Neb.*, No. 14-3446, 2016 WL 660117 (8th Cir. Feb. 18, 2016); *Rogers v. Bruntrager*, 841 F.2d 853, 856 (8th Cir. 1988) (conspiracy claim requires allegations of specific facts showing "meeting of minds" among alleged conspirators). Rather, it makes the bald assertion that defendant conspired against her. Conclusory allegations like this are insufficient to state a claim and survive motion to dismiss. *See e.g, Sahu v. Minneapolis Cmty. & Tech. Coll.*, No. CV 14-5107 (PJS/FLN), 2015 WL 13731342, at *9 (D. Minn. Oct. 9, 2015), report and recommendation adopted, No. 14-CV-5107 (PJS/FLN), 2016 WL 310727 (D. Minn. Jan. 26, 2016), aff'd, 674 F. App'x 606 (8th Cir. 2017); *Liscomb v. Boyce*, No. 3:17-CV-00036 BSM, 2018 WL 342017, at *4 (E.D. Ark. Jan. 9, 2018) ("Though a complaint need not plead detailed facts, mere recitations of a cause of action coupled with conclusory statements are insufficient to survive a motion to dismiss.").

Further, although not cited by defendant, United States Supreme Court's holding in Great *Am. Fed. Sav. & Loan Ass'n v. Novotny*, 442 U.S. 366 (1979) ("*Novotny*"), arguably casts doubt on Dirkzwager's ability to presently assert a § 1985 claim. In *Novotny*, the Court held that Title VII precludes employment discrimination claims brought under 42 U.S.C. § 1985(3).

> Section 1985(3) provides no substantive rights itself; it merely provides a remedy for violation of the rights it designates. The primary question in the present case, therefore, is whether a person injured by a conspiracy to violate § 704(a) of Title VII of the Civil Rights

Act of 1964 is deprived of "the equal protection of the laws, or of equal privileges and immunities under the laws" within the meaning of § 1985(3).

Under Title VII, cases of alleged employment discrimination are subject to a detailed administrative and judicial process designed to provide an opportunity for nonjudicial and nonadversary resolution of claims.

* * *

If a violation of Title VII could be asserted through § 1985(3), a complainant could avoid most if not all of these detailed and specific provisions of the law. Section 1985(3) expressly authorizes compensatory damages; punitive damages might well follow. The plaintiff or defendant might demand a jury trial. The short and precise time limitations of Title VII would be grossly altered. Perhaps most importantly, the complaint could completely bypass the administrative process, which plays such a crucial role in the scheme established by Congress in Title VII.

* * *

[W]e conclude that § 1985(3) may not be invoked to redress violations of Title VII. It is true that a § 1985(3) remedy would not be coextensive with Title VII, since a plaintiff in an action under § 1985(3) must prove both a conspiracy and a group animus that Title VII does not require. While this incomplete congruity would limit the damage that would be done to Title VII, it would not

> eliminate it. Unimpaired effectiveness can be given to the plan put together by Congress in Title VII only by holding that deprivation of a right created by Title VII cannot be the basis for a cause of action under § 1985(3).

Novotny, 442 U.S. 366, 372-378.

Here, the alleged conduct forming the basis for Dirkzwager's proposed § 1985 claim is the same conduct forming the basis for her Title VII claims. *Novotny* suggests that such claims cannot be pursued concomitantly.

3. Dirkzwager's Proposed Claim Under 42 U.S.C. § 1981

Finally, defendant asserts that Dirkzwager's proposed § 1981 claim is not cognizable and would not withstand a Rule 12(b) because it is based on national origin, not race. *See Torgerson v. City of Rochester*, 643 F.3d 1031 (8th Cir. 2011) ("Section 1981 does not authorize discrimination claims based on national origin.").

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 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.

"Section 1981 has long been construed to 'forbid all 'racial' discrimination in the making of private as

well as public contracts.'" *Garang v. Smithfield Farmland Corp.*, 439 F. Supp. 3d 1073, 1096-97 (N.D. Iowa 2020) (quoting *St. Francis Coll. v. Al-Khazraji*, 481 U.S. 604, 609 (1987)). "It also protects 'identifiable classes of persons who are subjected to intentional discrimination solely because of their ancestry or ethnic characteristics.'" *Id.* (quoting *St. Francis Coll. v. Al-Khazraji*, 481 U.S. 604, 609). "Thus, if a plaintiff 'can prove that [she] was subjected to intentional discrimination based on the fact that [she] was born [into a particular ethnic group], rather than solely on the place or nation of [her] origin, or [her] religion, [she] will have made out a case under § 1981." *Mulholland v. Classic Mgmt. Inc.*, No. CIV. A. 09-2525, 2010 WL 2470834, at *2 (E.D. Pa. June 14, 2010) (alterations in original) (quoting *St. Francis Coll. v. Al-Khazraji*, 481 U.S. 604, 613); *see also Reyes v. Pharma Chemie, Inc.*, 890 F. Supp. 2d 1147, 1158 (D. Neb. 2012) ("The line dividing the concepts of 'race' and 'national origin' is fuzzy at best, and in some contexts, national origin discrimination is so closely related to racial discrimination as to be indistinguishable.").

Here, Dirkzwager does not allege to have been subjected to discrimination or harassment because of her ancestry or ethnic characteristics while employed by defendant. Rather, she alleges that she was subjected to harassment and or discrimination because of her nation of origin (Russia). *See e.g.*, Doc. No. 14-2, p. 7. As her proposed §1981 claim appears predicated solely upon her national origin as opposed to her national origin plus her ethnicity, ancestry, or race, it is unlikely to withstand a Rule 12(b) motion and may therefore be denied on the ground of futility. *See*

Torgerson v. City of Rochester, 643 F.3d 1031 (8th Cir. 2011); *see also Soboyede v. KLDiscovery*, No. 20CV02196SRNTNL, 2021 WL 1111076, at *3 (D. Minn. Mar. 23, 2021); *Mulholland v. Classic Mgmt. Inc.*, No. CIV. A. 09-2525, 2010 WL 2470834, at *2 (E.D. Pa. June 14, 2010). The court shall next address the timeliness of the instant motion and defendant's claim of prejudice.

B. Timeliness and Prejudice

The record reflects: (1) Dirkzwager mailed her motion on March 1, 2021; and (2) the Clerk's office received and filed the motion on March 2, 2021. (Doc. Nos. 14 and 14-7). As noted above, the deadline for filing such a motion lapsed on March 1, 2021. Seizing upon this, defendant asserts that Dirkzwager's motion is untimely. *See e.g., Zerilli-Edelglass v. New York Transit Auth.*, 333 F.3d. 74, 78 (2d 2003) ("Filings reaching the clerk's office after a deadline are untimely, even if mailed [at or] before the deadline."). It further asserts that Dirkzwager has failed to demonstrate good cause to deviate from the scheduling order. In so doing, it stresses that Dirkzwager was well aware of the March 1, 2021, deadline (as she had agreed to it in the proposed scheduling plan adopted by the court) and should have been able to appreciate that the Clerk's office would not have received her motion on the same day as it was mailed. Finally, it asserts that it will be prejudiced should Dirkzwager be permitted to amend her pleadings at this stage of the proceedings.

There is no question that, despite her status as a pro se litigant, Dirkzwager is required to comply with this court's orders and the rules of procedure.

See e.g., Tate v. Johnson Cty., Ark., No. 2:11-CV-02092, 2014 WL 5093983, at *1 (W.D. Ark. Oct. 10, 2014) ("[P]ro se parties are bound by the same litigation rules as lawyers admitted to the bar . . . ."). There is also no question that she filed her motion out-of-time. That being said, the court, in the exercise of discretion, is not inclined to reject her motion in its entirely because it was one day late. Frankly, if she had requested a modest extension of the deadline, the court may have well granted her one. In any event, the rigidity urged by the defendant in this instance is neither warranted nor necessary. Dirkzwager will not be permitted to amend her pleadings to include additional claims under § 1981, § 1985 and the Civil Liberties Act on the grounds of futility. This does not bring this matter to a close, however.

In addition to seeking leave to assert additional claims, Dirkzwager has also requested leave to strike any and all references in her pleadings to gender and age discrimination and to otherwise flesh out the factual basis for her existing claims. The court is inclined to permit these amendments as they pose no appreciable prejudice to defendant (and defendant did not explicitly object to such amendments in its response to Dirkzwager's motion).

IV. Conclusion

Dirkzwager's Motion for Leave to File Amended Complaint (Doc. No. 14) is GRANTED IN PART AND DENIED IN PART. Dirkzwager's request to amend her pleadings to include additional claims under § 1981, § 1985 and the Civil Liberties Act of 1988 is DENIED. Dirkzwager's request to amend her pleadings to expand upon the factual basis for her existing

claims and to strike references to gender and age discrimination are GRANTED. Dirkzwager shall file her amended complaint by May 18, 2021.

IT IS SO ORDERED.

Dated this 7th day of May, 2021.

/s/ Clare R. Hochhalter
Magistrate Judge
United States District Court

ORDER DENYING PETITION FOR REHEARING, U.S. COURT OF APPEALS FOR THE EIGHTH CIRCUIT (OCTOBER 20, 2023)

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

LARISA YURYEVNA DIRKZWAGER,

Appellant,

v.

ARCHER-DANIELS-MIDLAND COMPANY,

Appellee.

No. 22-3657

Appeal from U.S. District Court for the District of North Dakota – Western (1:20-cv-00212-DLH)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

Judge Erickson did not participate in the consideration or decision of this matter.

Order Entered at the Direction of the Court:

/s/ Michael E. Gans
Clerk, U.S. Court of Appeals, Eighth Circuit.

October 20, 2023

TRANSCRIPT OF TELEPHONIC CONFERENCE, U.S. DISTRICT COURT FOR THE DISTRICT OF NORTH DAKOTA (OCTOBER 4, 2022)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

LARISA DIRKZWAGER,

Plaintiff,

v.

ARCHER-DANIELS MIDLAND COMPANY,

Defendant.

File No. 1:20-cv-212

Taken at
United States Courthouse
Bismarck, North Dakota
October 4, 2022

Before: The Honorable Clare R. HOCHHALTER,
Magistrate Judge, United States District Court.

TRANSCRIPT OF DIGITAL RECORDING TELEPHONIC CONFERENCE

[October 4, 2022 Transcript, p. 3]

(The above-entitled matter came before the Court, The Honorable Clare R. Hochhalter, United States District Court Magistrate Judge, presiding, commencing Tuesday, October 4, 2022, in the United States Courthouse, Bismarck, North Dakota.)

(The following proceedings were had and made of record by digital recording with counsel and the parties present by telephone.)

(The transcriber was unable to understand most of what Ms. Dirkzwager was saying, so please refer to the digital recording for any indiscernible portions of the transcript.)

THE COURT: And we're—

MS. DIRKZWAGER: Good morning.

THE COURT: We're meeting this morning in *Dirkzwager v Archer Daniels Midland Company* in Civil Case 1:20-cv-212. This is Clare Hochhalter, U.S. magistrate judge in Bismarck. And I'll ask participants to note their appearance today. We can start with the plaintiff. Can you hear me okay?

(Long pause.)

THE COURT: Ms. Dirkzwager—

MS. DIRKZWAGER: I'm okay.

THE COURT: —can you hear me okay?

MS. DIRKZWAGER: Yes, I—I can hear you.

THE COURT: Okay. And I can hear you all right as well. And also, Ms. Sambor, you're on the line?

MS. SAMBOR: Yes, Your Honor.

THE COURT: All right. And you can hear me okay?

MS. SAMBOR: I can.

THE COURT: All right. And then for defendants, Archer-Daniels Midland?

MR. LINK: Yes, Your Honor, Mike Link for defendant.

THE COURT: All right. Anyone else whose participation we haven't yet noted this morning?

Okay. And we have this queued up. There had been a Court-hosted settlement conference, I believe, on August 11th of 2022, at which time the parties reached an agreement. And we were then planning that the concluding paperwork would be accomplished and submitted within a given period of time.

And since that time the Presiding Judge Hovland has extended the time to con—to get those concluding documents submitted to October 21, 2022. And this is an opportunity to just determine whether we're on pace to get that accomplished, or if there has been some developments that is slowing the process. And, Ms. Dirkzwager, maybe you can help enlighten us.

MS. DIRKZWAGER: Yes, I—I look at these papers, and this wasn't what was agreed for, and I decided don't sign.

THE COURT: I—I guess I'm not quite following. You decided the paperwork doesn't represent what was agreed to?

MS. DIRKZWAGER: It was exactly opposite what I—was agreed, and I decided I—I'm not going to sign it.

THE COURT: What was agreed to?

MS. DIRKZWAGER: I expected I would be able to share my story, but if it is (undiscernible) this document. There's no way I can do it. First of all, they put this nondisclosure agreement in it. Secondly, I agreed to take all my evidence and, of course, nobody was talking with me about anything if I don't have evidence.

THE COURT: Have you had—

MS. DIRKZWAGER: And—

THE COURT: Go ahead. Was there something in addition to you being able to talk about and have your evidence? Was there something else, Ms. Dirkzwager?

MS. DIRKZWAGER: And then I—this agreement doesn't reflect the—my complaint. The complaint was about sexual harassment and racial discrimination, and they—I want to put it in the paper that it's not just payroll. They give me payroll, but (indiscernible) payroll. They (indiscernible) on Christmas. They can pay me the Christmas pay, holiday pay on Christmas, but it's (indiscernible) doors. It's not what (indiscernible)—

THE COURT: Those are claims that you included in your Complaint, right?

MS. DIRKZWAGER: It was (indiscernible). If they give you 22 (indiscernible) it looks like money laundering and I—I (indiscernible) knock me down.

THE COURT: I guess I'm having trouble following what you're referencing as far as money laundering.

MS. DIRKZWAGER: The—I needed them to—I need that it was sexual harassment and racial discrimination and the pain here for my health problem and (indiscernible).

THE COURT: I don't recall those being the terms of the settlement agreement, Ms. Dirkzwager. You understand you can't change of terms after the fact, right?

MS. DIRKZWAGER: Yeah, which haven't happened yet. I didn't sign anything.

THE COURT: Well, do you—

MS. DIRKZWAGER: So if—I didn't sign it.

THE COURT: Ms. Dirkzwager, you recall us having met after the parties have reached agreement. We met in the courtroom, and we discussed the terms of the settlement agreement. Do you recall that?

MS. DIRKZWAGER: This would started—we never discussed. The settlement agreement paid right down. Not even close what I was—I agreed.

MS. SAMBOR: Your Honor, the only thing I can—I'm just trying to (indiscernible) here because I don't want to—

THE COURT: Ms. Sambor, I'm—I'll welcome your input. You were appointed by the Court to assist in the settlement process, and have you had an opportunity to discuss with Ms. Dirkzwager the concluding paperwork and determine whether it

is consistent with what the parties had agreed to at the time of the settlement conference?

MS. SAMBOR: Yes, Your Honor. So we received a draft from Mr. Link, and there was a—there was a provision in there that was confidentiality provision rather than a nondisparagement provision, so my reflections of the initial draft did not have a non—your typical nondisparagement clause, but it did have a confidentiality clause. Ms. Dirkzwager reviewed that. I relayed her concerns about the confidentiality clause to Mr. Link.

I also then e-mailed her back and provided her an assessment—my assessment of the language to address the other concerns she had raised. My understanding of her concern is that—give me one moment, Your Honor. I just want to make sure I have exactly what—what we—what I provided in terms of—her concerns—sorry. I'm having trouble finding the right summary here. Apologies, Your Honor. Just give me one moment.

THE COURT: Sure.

MS. SAMBOR: Okay.

THE COURT: While you're doing that, I found my notes from the settlement conference at the time that we made a record of the settlement, and the key terms at that time were $45,000 payment, no nondisparagement clause, 30 days, paperwork would be submitted to Ms. Sambor by Mr. Link. I don't recollect anything else.

MS. SAMBOR: And I would just state my recollection. I believe it was $48,000, was the end—or 45. Apologies, Mr. Link.

THE COURT: Mr. Link, do you recall?

MR. LINK: Yes, 45.

THE COURT: Yeah.

MR. LINK: Yes.

MS. SAMBOR: Okay. And so—so the concerns that Ms. Dirkzwager raised with me, and I—what I need—to be honest with everyone on the call, I think part of the problem here is maybe a lack of trust in my abilities to explain to her what the agreement says and doesn't say. I've attempted to provide her my opinion, which is that aside from removing the confidentiality clause, which had happened in a—in a new draft that was sent, I don't believe that there were any other provisions in the draft that were different than what was contemplated.

There, understandably, is some dense legal language that's typical in these releases, and so I think some of that may be confusing. I have attempted to provide my opinion that—so a couple—so several of the concerns that were raised is, one, that she believes that there was a noncompete clause in the—in the settlement papers. That's in paragraph 11.

So what I'm going to do here is just quickly highlight some of the—

THE COURT: Well, let me—let me just stop you momentarily, Ms. Sambor. You said that the confidentiality clause has been removed in the subsequent draft?

MS. SAMBOR: That's correct, Your Honor. I believe it was paragraph 10.

THE COURT: So not only is there no nondisparagement clause, but now even the confidentiality clause has been removed by Mr. Link's client?

MS. SAMBOR: That's correct, Your Honor.

THE COURT: Okay. And it provides for payment of the 45,000. There was that 30-day timeline, which I realize has passed, but been extended by Judge Hovland. And you did receive the paperwork and have an opportunity to make adjustments, it sounds like. And my further recollection is that the parties agreed at the time that this would be an enforceable agreement. Am I right, Mr. Link?

MR. LINK: That is definitely the position of ADM, Your Honor.

THE COURT: And, Ms. Sambor, you were there. My recollection is that we agreed it was completely enforceable agreement.

MS. SAMBOR: Your Honor, I—just as a side note, it looks like Ms. Dirkzwager dropped off.

THE COURT: Ms. Dirkzwager, can you hear me?

MS. DIRKZWAGER: Well, this is thing of (indiscernible) because I—(indiscernible) what I agreed. When this started (indiscernible) you asked me what I really want in my life, and I said I want—I want world peace. And it says that (indiscernible), but I (indiscernible) war. I know (indiscernible), and these people promote the war, and all I wanted, to stop the war, and I did it on this (indiscernible) $45,000 because I thought I would

be able to talk about my story, but I did everything, but I cannot do it.

THE COURT: Ms. Dirkzwager, it sounds like no one is prohibiting you from talking about your story.

MS. DIRKZWAGER: Oh, yes, they do. First of all, it was a nondisclosure agreement. Second of all, they—they took all my—

THE COURT: Hang on.

MS. DIRKZWAGER: —evidence.

THE COURT: Hang on, Ms. Dirkzwager. Hang on a minute. Hang on. Let me say something, okay? Ms. Sambor has just said that the most recent draft does not even include any confidential-any confidentiality agreement, so no one is prohibiting you from talking about your experiences. You understand that?

MS. DIRKZWAGER: They do. They put it in a different place. Second of all, if I—they took all my evidence. Nobody will talk to me without the evidence, so I cannot talk.

THE COURT: Well—

MS. DIRKZWAGER: And then they say—

MS. SAMBOR: Your Honor?

MS. DIRKZWAGER: —they can sue me.

THE COURT: Hang on, Ms. Dirkzwager. Ms. Sambor, you had something to add?

MS. SAMBOR: Yes, Your Honor. There is a provision in the proposed agreement that is a returning of any confidential information that remains in the possession of the plaintiff, so it—it basically

indicates that—I mean, it's kind of the standard separation language in an employment release that if you retain any confidential information, that that has to be returned back to the employer. That is my understanding of what she's interpreting as us trying to seize her evidence.

THE COURT: Is there confidential information that Ms. Dirkzwager has that isn't already public, Mr. Link? Do you know of any?

MR. LINK: I don't know, Your Honor. And I agree that's fairly standard trade secret type language, when somebody leaves employment you have to return it. We're not aware that she has any—any of that.

THE COURT: So as far as that clause in the most recent draft, that's not something that, it sounds like, even needs to be included.

MR. LINK: No. No, Your Honor. I mean, from the defense perspective, I mean, we provided this—this current draft having removed all of the confidentiality language on August 31st.

THE COURT: Yeah.

MR. LINK: And we haven't heard from Ms. Dirkzwager in five weeks now, so this complaint is new to me. We certainly could remove that language too, but it—my concern is that we're going to continue to run into this same issue. I think we have an enforceable agreement.

THE COURT: I tend to agree with you, Mr. Link, but I'm—Ms. Dirkzwager, the reference that you make to returning evidence, Mr. Link says that

doesn't need to be in there and can be removed. You understand that?

MS. DIRKZWAGER: He just—he just said, "I don't know what it is." He doesn't know himself what it is. That just can be anything. This (indiscernible) or maybe (indiscernible).

THE COURT: And I think the—

MS. DIRKZWAGER: That's the—

THE COURT: Ms. Dirkzwager, you need to give me a chance, okay? And I think the point is that language can be removed. Even though that wasn't discussed earlier, and even though no one believes you have any confidential evidence, it can be removed. Do you understand?

MS. DIRKZWAGER: I—I understand that (indiscernible.)

THE COURT: Okay.

MS. DIRKZWAGER: And no matter what I sign off, they will find way to take—to give me, so I—I don't think I should sign off anything. I think the jury should decide.

THE COURT: Well—

MS. DIRKZWAGER: I can't—I cannot (indiscernible).

THE COURT: Ms. Dirkzwager, the jury is not going to decide. We reached an agreement, and it seems to me that all of the terms that were discussed and agreed to as part of an agreed enforceable settlement resolution are available in this draft.

MS. DIRKZWAGER: Well, nothing—nothing is done (indiscernible) until everything is signed.

THE COURT: You know, respectfully, Ms. Dirkzwager, I understand your position, but the facts are that there was an agreement, and it was an agreement that was agreed to be enforceable, and so here we are. So I'm going to suggest that you visit with Ms. Sambor, finalize the paperwork, and we'll get it resolved before Judge Hovland's deadline of October 21st, okay?

MS. DIRKZWAGER: No, I not sign this.

THE COURT: All right. Anything else?

MS. DIRKZWAGER: You do what you want do, and I do what I want do, but I'm not signing this. This—this is fraud.

THE COURT: Well, I—you know, I'm sorry you're saying that now or feel that way now because I think we had made tremendous progress in reaching the agreement we did, which was, I believe, a very fair resolution, and I think everyone believed that at the time.

MS. DIRKZWAGER: Well, (indiscernible) enforce it. I need it in—I need it in writing so I could—so I could appeal it.

THE COURT: Ms. Dirkzwager, do you believe it would be helpful if you came here to the court and we had a discussion in person?

MS. DIRKZWAGER: What?

THE COURT: In Bismarck. Do you remember when you came to the court in Bismarck from Dickinson?

MS. DIRKZWAGER: Yes, I remember everything.

THE COURT: All right. And maybe before October 21st we could get together again, you and Ms. Sambor and me, and perhaps Mr. Link could either appear by video or in person.

MS. DIRKZWAGER: No. What I know for sure, you guys are good. You already make wars. You (indiscernible) experience, and you break me too all the time. You don't break me again. I'm not going, no. We are going to the court.

THE COURT: Ms. Dirkzwager, none of us want war, okay? We're all in favor of world peace, guaranteed, so this is not about continuing war or stopping it. We want—we want to resolve this case consistent with what was agreed, okay?

MS. DIRKZWAGER: I think it should resolve in a court of law. It should be resolved and be the jury.

MS. SAMBOR: Ms. Dirkzwager, I just want to make sure, since I'm appointed and just to represent your interests, that you understand what I'm hearing from the Judge, which is he believes that you have an enforceable agreement to receive the $45,000, and that you have waived your right to proceed to a trial at this point.

And so I would encourage you to stop believing that everyone is trying to trick you. Judge Hochhalter is not trying to trick you. I am not trying to trick you. We don't—so I'm not going to sit here and—I don't believe Mr. Link is trying to trick you either, but you can think what you want about opposing counsel.

However, I need you to understand, and we can talk about this later if you will be in contact with me, that the Judge is telling you that he believes there's an enforceable settlement here and that you are not entitled to a jury trial any longer because you agreed to the settlement terms.

MS. DIRKZWAGER: Well, I don't agree on settlement.

MS. SAMBOR: You don't have the ability to just back out of an agreement, is what the Judge is telling you, Larisa.

MS. DIRKZWAGER: Well, what—what I said or whatever happen, I didn't agree. I've never agreed to anything of it.

THE COURT: Well, Ms. Dirkzwager, I sat in the courtroom with you. We went through each participant's response to the terms of the settlement. And each participant, you and Mr. Link, Ms. Sambor, others present agreed that this was the settlement and that it was enforceable, so you can't just change your mind later because you believe someone is promoting war or not promoting world peace or whatever the case may be. A matter was resolved.

MS. DIRKZWAGER: Well, I guess (indiscernible). It's not. How you can enforceable until I sign the doc? I didn't sign the doc.

THE COURT: Well, I—I don't agree with you, Ms. Dirkzwager, but at this point I don't know what more we can do. I'm going to allow Ms. Sambor to be available to assist you in finalizing the concluding documents up until Judge Hovland's deadline on October 21st. And I'll encourage you

strongly to consult with Ms. Sambor, who's very experienced, who was present during the negotiations, who was present with you, representing you at the time of the settlement, and who can assist you in completing this and receiving your cash payment, okay? After that Ms. Sambor's duties will be ended or will likely be ended after the 21st, okay?

MS. DIRKZWAGER: Well, first, I grant you, Christina Sambor never represented me. She represented anybody but me.

THE COURT: Well, I, you know—

MS. DIRKZWAGER: I don't need her help, and I'm planning to file a Rule 6 motion to—for consideration, and—

THE COURT: I hope you're able to find your way clear to rethink this, Ms. Dirkzwager, in advance of a deadline—

MS. DIRKZWAGER: Yes—

THE COURT: —okay?

MS. DIRKZWAGER: —I will consider what we did, and (indiscernible).

THE COURT: Mr. Link's clients are not Nazis. They are not promoting war. They are not against world—

MS. DIRKZWAGER: They put everything.

THE COURT: Well—

MS. DIRKZWAGER: They put noncompete agreement on this. I (indiscernible). They put so much stuff unavailable, not even discuss. No, it's better not

to. It destroys my career (indiscernible) destroy my future. This won't control my future, what I do work, what I now do, who I now talk. No, we are going to jury.

MR. LINK: Your Honor?

THE COURT: Let me—let me stress again—hang on, Mr. Link. Let me stress again, Ms. Dirkzwager, Mr. Link's client is not requiring what you're suggesting, okay? Mr. Link, go ahead.

MR. LINK: Yeah, I was just going to say, just to clarify, there certainly is no noncompete agreement. I mean, like I said, we removed the confidentiality language, so although it would be atypical, we could even share a copy with the Court. I mean, you can see that it says exactly what was agreed to at the—at the conference back in August.

MS. DIRKZWAGER: Well, I know it's typical for—

MR. LINK: Nothing to hide here.

THE COURT: You know, it doesn't hurt, Mr. Link, if you want to provide the Court a copy and Ms. Sambor—

MR. LINK: Sure.

THE COURT: —of the latest version.

MS. SAMBOR: My—my understanding of the—of where the noncompete concern comes from is paragraph 11. My reading of that paragraph is that it says to the extent that she has previously made a noncompete agreement, that the claims under those agreements are not waived, but if she has not ever signed any noncompete agreements, then there are no restrictions.

THE COURT: Has she signed a noncompete agreement, Mr. Link, if you know?

MR. LINK: Not—not that I'm aware of, no.

THE COURT: So there is no noncompete requirement in this.

MS. SAMBOR: That is my reading of it, Your Honor.

THE COURT: All right. And there again, to the extent any of that language needs to be tweaked in a final version that you provide us with and Ms. Dirkzwager, it may be helpful. There is some time to go over some of these terms yet, but none of that was required at the time of the settlement either. It's generous, I think, of defendant to offer to include that now.

Anyway, I don't know what more we can do at this point. Ms. Dirkzwager, it's clear that, you know, you have an opportunity here to get this resolved consistent—completely consistent with what you agreed to, and I hope that you do.

MS. SAMBOR: Your Honor, would the Court be okay with me just making one more comment on the record? I just want to—

THE COURT: Sure.

MS. SAMBOR: —clarify. Ms. Dirkzwager has expressed a desire that I not represent her any longer since we've been talking here today, so I just want to clarify with the Court since I am court-appointed counsel. However, I am obviously representing her interests, that my intention will be that I will not make contact with Ms. Dirkzwager given what she's said here today. If she wants to avail

herself of my continuing services, I am available. She has may contact information and e-mail.

But I—I have some concerns with ethically that if—you know, if—I can certainly help Ms. Dirkzwager, which she stated on the record that she doesn't want my representation, that I don't think it wise for me to reach out to her and attempt to further participate. And if the Court feels differently, I understand, but that's just—I think probably just the best way to proceed, is that I will be available. She can contact me. I have provided my opinion on the agreement.

I am absolutely willing to continue communicating with Mr. Link, and to the extent that we can whittle it down and make it a more simple, clear-cut agreement, I'm happy to participate in that process.

However, if Ms. Dirkzwager does not want me to represent her, then I'm not going to make any proactive efforts at this point, between now and the 21st, but if she reaches out to me, I will absolutely respond immediately and continue my efforts to try to resolve the case.

THE COURT: Yeah, I don't see any problem with that, and I think—Ms. Dirkzwager, you heard me earlier say that Ms. Sambor would remain available to you to assist in concluding this until the 21st. You're—you have that opportunity available to you until the 21st, but beyond that, you won't. You understand that, right?

MS. DIRKZWAGER: Well, what I understand by—I would do better without Christina Sambor.

THE COURT: I'm sorry?

MS. DIRKZWAGER: I don't think she'll help at all.

MS. SAMBOR: I believe she said she would—

MS. DIRKZWAGER: I think I would do better without you.

MS. SAMBOR: —do better without—she would do better without my assistance, Your Honor, is what she's saying.

THE COURT: Well, and I hope that you reconsider that, Ms. Dirkzwager, okay? Because Ms. Sambor has been helpful and has been assisting you and was assisting you during the settlement and has experience in this sort of thing, and so you have that opportunity.

MS. DIRKZWAGER: Well—

THE COURT: Okay. And, you know, you don't have to decide right now. Give it some thought. This is an enforceable agreement. Ms. Sambor has helped you further since the time of the settlement conference, in fact, and is available to help you conclude this, okay? And you have her contact information, right?

MS. DIRKZWAGER: I have contact information, but I (indiscernible) before, I don't think I (indiscernible).

THE COURT: Have you had an opportunity to visit with Ms. Sambor face to face recently, Ms. Dirkzwager?

MS. DIRKZWAGER: (Indiscernible) experience is very good. (Indiscernible) changed, but (indiscernible) okay before, it's not okay anymore.

THE COURT: Well, you know, you've heard the discussion today. Nothing that you don't want is part of this agreement. Everything that you want is part of the agreement, and it's just a matter of concluding now and getting your money that you agreed to. And Ms. Sambor can help you with that process and is willing to do that, but you will have to reach out to her if you want that, okay?

MS. DIRKZWAGER: Well, I don't believe she—she would represent me right because so far she never represented me.

THE COURT: Well, I—

MS. DIRKZWAGER: Never interested in what I was feeling, never was interested what I was—

THE COURT: Well, Ms. Dirkzwager—

MS. DIRKZWAGER: —expected.

THE COURT: —I'll only remind you again that you sat in the courtroom with me and others when we acknowledged this agreement and the fact that it would be enforceable.

MS. DIRKZWAGER: No, I don't think they can force me, just like now with this stuff. It's just not right, and there's got to be a war because cannot force people sign on something they don't want to. It's got to be a war. I don't sign it. Obviously (indiscernible), but I don't sign it.

THE COURT: I don't—does—counsel, do you have any other suggestions of what we could do to bring the matter to a conclusion?

MS. DIRKZWAGER: The only (indiscernible) I only trust jury now.

THE COURT: Hang on, Ms. Dirkzwager. I'm asking the attorneys now if they have anything further to make a record of, okay? Go ahead, Mr. Link.

MR. LINK: Thank you, Your Honor. Yeah, I think it makes sense to allow her until the 21st to execute the agreement. I think after that date, if she fails to execute, that the Court should enforce the settlement as was stated on the record. I—I'm not sure what else—what else we can do. It's the defendant's position that the matter has been resolved, and it's just a matter of getting the check sent out at this point.

THE COURT: Ms. Sambor?

MS. SAMBOR: Your Honor, I think my sense of what's going on here is confusion over legalese in a release and—and some clearly distrust in myself and the Court, so—and I—at this point I am not sure what else I can do. If my opinion isn't valuable to Ms. Dirkzwager, I can't change that. I feel comfortable in the—in my reading of the release. So I guess I would suggest to Mr. Link, if what they want is a signed release, that perhaps if we worked towards making it as simple as possible. However—and I would be happy to facilitate that.

However, Ms. Dirkzwager has stated repeatedly on the record today that she does not believe that I represent—have ever represented her interest or provided her any valuable counsel. And so, unfortunately, I don't know that I can—unless she changes that opinion and communicates that to me, I don't know that I can help perhaps simplify. I understand where her concerns are coming

from. I have provided information on that. I would be happy to further discuss that. However, communication has to occur—

THE COURT: Well, that's—

MS. SAMBOR: —between me and Ms. Dirkzwager.

THE COURT: I can appreciate that as well. What I would suggest is that Mr. Link's latest version be resubmitted to Ms. Sambor, given the discussion we've had today, and that Ms. Sambor have an opportunity to meet with Ms. Dirkzwager, who could edit whatever version Mr. Link sends, initial it, sign it and return it before the 21st. And I would suggest that a face-to-face meeting, Ms. Sambor, even if you end up having to travel to Dickinson, would be worthwhile under the circumstances. That's my suggestion.

MS. DIRKZWAGER: What is that?

MS. SAMBOR: Larisa, did you hear what the Judge has suggested, that maybe you and I could sit down together, review the draft that—the latest draft that Mr. Link has provided, and you could indicate to me what edits you want? We can discuss that and then return an edited version that you're comfortable with to Mr. Link.

THE COURT: Ms. Dirkzwager, did you hear that?

MS. DIRKZWAGER: I hear that. I don't believe in it, but I suppose that's it.

MS. SAMBOR: Okay. So—so then what I need from you then is for you to return my e-mails or get in touch with me. We can set up a time. I can travel up closer to you or come to somewhere you want

me to come to, or you can come to Bismarck, but we need—but we'll sit down, and you and I will review Mr. Link's draft, the updated draft, go over your concerns, and we can provide an edited draft back to Mr. Link that you're comfortable with. Is that something you want to do?

MS. DIRKZWAGER: I can't make a decision now. I don't know. (Indiscernible). Let's talk about first.

THE COURT: Well, you understand Ms. Sambor is inviting you to meet with her to put together a version of the agreement—of the written agreement that you would prefer and be willing to sign? You understand that?

MS. DIRKZWAGER: No, I don't understand what—what is this about. I mean, if I—if I agree to—I don't have to sign up? I don't have choice?

THE COURT: Well, you have a choice of editing the language, okay? You have a choice of deleting some language that you may still disagree with even after our discussion today and then submitting that back to Mr. Link with your signature, okay?

MS. DIRKZWAGER: I won't work with this, and I—I cannot (indiscernible) because I know you are (indiscernible) it's real hard for me to agree before—I have to check (indiscernible).

THE COURT: Why don't I just do this, Ms. Dirkzwager? You agree to go visit with Ms. Sambor.

MS. DIRKZWAGER: I have to drive to Bismarck? (Indiscernible).

THE COURT: You don't have to go. She offered to come visit you at wherever you want to meet her, at your residence or somewhere else.

MS. DIRKZWAGER: I need to see what—what they writing because what is point to drive me to Bismarck if I—if I (indiscernible).

THE COURT: So you understand, you're—you're a very good horse trader, as I recall, Ms. Dirkzwager, so I know that you understand what we're talking about today. Ms. Sambor has offered to come and meet with you. It seems like you are moving the goalpost. Every time someone offers to concede some part of this with you, you don't want it, it's different or it's too much trouble.

MS. DIRKZWAGER: Exactly. They should brought before settlement conference, but I could never get you. I was calling and calling and calling (indiscernible) my calls. And now they come to the conference and should get more what I want. Now so they want me to come again. I'm supposed to drive three hours to Bismarck and (indiscernible) again.

THE COURT: Do you understand this part of what I'm saying, Ms. Dirkzwager? Ms. Sambor is willing to come to you. You don't have to drive anywhere. Do you understand that?

MS. DIRKZWAGER: Okay. If I don't have to drive, I can talk to her.

THE COURT: All right. And what you need to do is decide what day you want to do that. What day works for you, Ms. Dirkzwager?

MS. DIRKZWAGER: I (indiscernible) because after she don't bring it to me, I don't—I have to check it because every word in legalese. It's hard, and then some special meaning, and I have to check everything out.

THE COURT: And you understand—

MS. SAMBOR: Larisa?

THE COURT: You understand, Ms. Dirkzwager, Ms. Sambor can help you with the understanding?

MS. DIRKZWAGER: Oh, I can talk to her, yeah.

THE COURT: Ms. Sambor?

MS. SAMBOR: Your Honor, I—

THE COURT: Well, I don't know what more—

MS. SAMBOR: I don't know what to—what to say besides I think that the Court should make clear that it's not—no one is saying that I'm—the point is that I would meet with Ms. Dirkzwager to develop language, if necessary, that could be independent of the previous draft or could pull parts of the previous draft that make sense, execute it, send it to Mr. Link for a review.

However, I apologize, Your Honor. I'm getting frustrated, and I don't want to speak out of turn. I am trying to assist, but at the same time my patience is wearing thin a little bit with the insults, so I just—I am willing to help Ms. Dirkzwager, but she has to make an effort, I think, right now to understand what we're saying, which is I will drive to meet with her. You asked her for a particular day that works, and then her

response was that she has to look at the legalese in the contract.

And so, Larisa, the question is not will you sign the contract. The question that the Judge asked you simply was what day would you like me to drive to meet with you to review the contract so that we can draft something that you approve of? That's the question.

MS. DIRKZWAGER: (Indiscernible.)

MS. SAMBOR: What day would you like? Can you answer the question? Are there days that are available for you to meet with me?

MS. DIRKZWAGER: Just send me e-mail. I'll look at it.

THE COURT: I didn't understand what you said, Ms. Dirkzwager.

MS. DIRKZWAGER: (Indiscernible.)

MS. SAMBOR: My—my understanding is that she said, "Just send me an e-mail; I'll look at it," in response to my question.

THE COURT: You just want an e-mail from Ms. Sambor? Is that it, Ms. Dirkzwager?

MS. DIRKZWAGER: Yes, that's right, because I—I already wrote what I—what I want to change, and—

THE COURT: Do you have—let me ask you—

MS. DIRKZWAGER: (Indiscernible.)

THE COURT: Ms. Dirkzwager, do you have a copy of the proposed written language now? Do you have that?

MS. DIRKZWAGER: What do you mean?

THE COURT: Do you have a copy of it by e-mail or otherwise that you have electronically available to you?

MS. DIRKZWAGER: Just—

THE COURT: Have you received it in a letter form, for example, hard copy, or have you received an e-mail with the language, the proposed agreement?

MS. DIRKZWAGER: Yeah, I have—I have seen, I think.

THE COURT: Okay. Because it sounds like you've reviewed it, and you had some very specific objections to language. And what I'm going to suggest is that you take a pen and cross out those portions that you don't want. Send that back to Ms. Sambor. Can you do that?

MS. DIRKZWAGER: Okay.

THE COURT: Okay. And make sure that you cross out the portions you don't want, understanding that once those portions would be removed, if they would be, then you would sign the document, okay?

MS. DIRKZWAGER: I'm not sure.

THE COURT: Well, but you could try it, right?

MS. DIRKZWAGER: Can just (indiscernible) and just go straight to the court because go to court, I want jury because I know I change something, then I need something, and then I get myself in trouble because (indiscernible) they can sue me and I cannot sue them. Well, if they can sue me, I should be able to sue them too, and just so—so

much stuff in it. It's just so complicated. It just (indiscernible).

THE COURT: Well, that's why you have Ms. Sambor available to you, to assist. You could—you could talk those kind of things out with her. You can tell her the part you don't like and discuss it and probably come up with exactly what you do like in the end, okay?

MS. DIRKZWAGER: (Indiscernible) it's not like—that's it. If I say all right—all right to something and they're not going to change mind. It is so complicated. I can make something.

THE COURT: You can do something?

MS. DIRKZWAGER: I can make something. Like every time I read it, I find something new.

THE COURT: Well, read it through. Send it to Ms. Sambor. You have some time to do that. She's willing to meet with you. You have her contact information. There's some time to address this, that you have available to you, okay?

MS. DIRKZWAGER: (Indiscernible.)

THE COURT: All right.

MS. DIRKZWAGER: But I can (indiscernible) I don't say now.

THE COURT: All right.

MS. DIRKZWAGER: I can (indiscernible). I know (indiscernible) like you, you can beat me. I never beat you, and I—I don't want to get screwed. I only can trust jury of my peers, people like me who understand (indiscernible).

THE COURT: Well, you're—I understand we've probably gone as far as we can. I don't know what else we can do today. We've got some good ideas, opportunities anyway to get this final paperwork resolved before the 21st. I hope that you do. You've got contact information, you've got resources, and you've got an agreement, okay?

Is there anything else, Mr. Link?

MR. LINK: No, Your Honor. I just wanted to confirm that Ms. Sambor has the current draft. I can send it again, but I'm sure she has it.

MS. SAMBOR: I do have it.

MR. LINK: And does the Court want a copy or no?

THE COURT: Yeah, I wouldn't mind having a copy, frankly.

MR. LINK: Okay. I'll send you the—

MS. DIRKZWAGER: (Indiscernible) take a look.

THE COURT: I'm sorry, Ms. Dirkzwager. I missed what you said.

MS. DIRKZWAGER: I would like the paperwork too.

THE COURT: Yes, Ms. Sambor will make sure you have the latest version of the paperwork. You have an e-mail address that Ms. Sambor has, I suspect, and she'll make sure that you have that latest version so you can review it. You can look at it, determine which parts you don't understand, which parts you don't want, and go from there, okay?

MS. DIRKZWAGER: Yes, I will. I will be—(indiscernible).

THE COURT: All right.

MS. DIRKZWAGER: (Indiscernible.)

THE COURT: Well, Mr. Link, make sure Ms. Sambor has the very latest version. And it's okay to tweak it based on what you've heard today, and we'll go from there, with the understanding Ms. Sambor can be available until the 21st.

Anything else, Ms. Sambor?

MS. SAMBOR: No, Your Honor. Thank you.

THE COURT: Anything else, Mr. Link?

MR. LINK: No, Your Honor. Thank you.

THE COURT: All right. Thank you all very much, and we're adjourned.

(Proceedings concluded.)

TRANSCRIPT OF SETTLEMENT CONFERENCE, U.S. DISTRICT COURT FOR THE DISTRICT OF NORTH DAKOTA (AUGUST 11, 2022)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

LARISA DIRKZWAGER,

Plaintiff,

v.

ARCHER-DANIELS MIDLAND COMPANY,

Defendant.

File No. 1:20-cv-212

Taken at
United States Courthouse
Bismarck, North Dakota
August 11, 2022

Before: The Honorable Clare R. HOCHHALTER,
Magistrate Judge, United States District Court.

TRANSCRIPT OF DIGITAL RECORDING SETTLEMENT CONFERENCE

[August 11, 2022 Transcript, p. 3]

(The above-entitled matter came before the Court, The Honorable Clare R. Hochhalter, United States District Court Magistrate Judge, presiding, commencing Thursday, August 11, 2022, in the United States Courthouse, Bismarck, North Dakota.

The following proceedings were had and made of record by digital recording with counsel and the parties present.)

THE COURT: Settlement conference today, parties having reached an agreement which provides generally, Ms. Dirkzwager, for payment of $45,000 cash by defendant to plaintiff within 30 days of concluding paperwork and in exchange for which dismissal of all claims.

And also, defendant agrees to waive what is often termed a nondisparagement clause to be included.

Other than that, standard conditions of settlement.

And defendant will prepare the paperwork, provide it to Ms. Sambor, whose appointment will be extended for the purpose of concluding this case, the resolution.

And I believe generally that's the substance of the agreement. Do you agree, Ms. Dirkzwager? You'll have to speak audibly. Do you agree?

MS. DIRKZWAGER: Yes, that's the basics, agreement. I was just about details, but maybe don't know.

THE COURT: Well, the details are pretty much what I just described, $45,000 cash payment to you.

Approximately half of it is in the form of employee wages, W-2. The other half is 1099 compensation.

The paperwork, itself, will be provided to Ms. Sambor on your behalf. Her appointment will be extended. You will not have fees or costs. Defendant will bear their own fees and costs as well.

And that's the substance of it, Ms. Dirkzwager. That's what—

MS. DIRKZWAGER: I just want—

THE COURT: —we discussed.

MS. DIRKZWAGER: I just wanted to make sure that 1099 means that my medical expenses would be included in this.

THE COURT: It's—it comes in the form of a payment to you, a 1099, half of which—half of the 45,000 is characterized as W-2 employee wages. The other half is miscellaneous income.

MS. DIRKZWAGER: (Indiscernible) will show that it's for my medical expenses.

THE COURT: Oh, I think that's up to you and your accountant as far as writing off health expenses, but you can discuss that with your accountant, okay?

MS. DIRKZWAGER: Yes.

THE COURT: But otherwise that's the agreement, correct, Ms. Dirkzwager?

MS. DIRKZWAGER: Yes, that's correct.

THE COURT: All right. Do you understand this is going to be an enforceable agreement after today?

They can't back out, and you can't back out. Do you understand that?

MS. DIRKZWAGER: Yes.

THE COURT: All right. And, Ms. Sambor, that's your understanding as well?

MS. SAMBOR: It is, Your Honor.

THE COURT: All right. Mr. Link?

MR. LINK: Yes, Your Honor. Thank you.

THE COURT: All right. And also on behalf of Archer-Daniels Midland, Mr. Bordeau, that's the agreement of ADM?

MR. BORDEAU: Yes, sir—

THE COURT: All right.

MR. BORDEAU: —Your Honor.

THE COURT: Anything else that we could or should discuss today, counsel? Mr. Link, anything?

MR. LINK: No, Your Honor, just we thank the Court for your help today.

THE COURT: You're welcome. Ms. Sambor?

MS. SAMBOR: The same, Your Honor. Thank you for the efforts of the Court in resolving this matter.

THE COURT: Thank you, all, for your efforts in being here and the hard work that you put in today. And I think it's a good resolution, and I'm pleased to see the case resolved, and I know others will be as well.

Thank you very much, and we're adjourned.

(Proceedings concluded.)

SUPPORTING MEMORANDUM IN SUPPORT OF PLAINTIFF'S RESPOND TO DEFENDANT'S MOTION TO ENFORCE SETTLEMENT AGREEMENT RELEVANT EXCERPTS (DECEMBER 2, 2022)

UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA

LARISA DIRKZWAGER,

Plaintiff,

v.

ARCHER-DANIELS-MIDLAND COMPANY,

Defendant.

Court File No. 20-cv-00212 (DLH/CRH)

SUPPORTING MEMORANDUM IN SUPPORT OF PLAINTIFF'S RESPOND TO DEFENDANT'S MOTION TO ENFORCE SETTLEMENT AGREEMENT

[. . .]

I. LEGAL STANDARD

1. This Court Has Not the Jurisdiction and Power to Reinforce Contracts.

The Tenth Amendment Reserved the Power Over Contracts Records to the States.

II. ARGUMENT

1. This Court Has No Jurisdiction or Power to Reinforce Contracts.

a. The Tenth Amendment to the Constitution of the United States of America Reserved the Power Over Contract's Records to the States.

The relevant part provides: "The powers not delegated to the United States by Constitution, nor prohibited by it to the States, are reserved to the States respectfully, or to the people. Federal courts were created for important government issues litigation, not just for business records keeping. "Actions to enforce settlement agreement are in essence, contract actions which are governed by state law and which do not themselves raise a federal question unless the court which approved the settlement retained jurisdiction." *LaBarbera v. Dasgowd, Inc.*, No. 0 cv 1792, 2007 WL 153, 1895, at x2 (E.D.N.Y. May 22, 2007). It is beyond question that federal courts have a continuing obligation to inquire into the basis of subject matter jurisdiction to satisfy themselves that jurisdiction to entertain on action exists." *Campanella v. Commerce Exch. Bank*, 137 F 3d 885, 890 (6th Cir. 1998) (citations omitted). statement of equal rights. When appropriate, a federal court must raise, *sua*

sponte, issue of subject matter jurisdiction, and it can do so at any time. *See Norris v. Schotten,* 146 F 3d 314, 324 n.5 (6th Cir. 1998) (citations omitted). "This duty applies irrespective of the parties failure to raise a jurisdictional challenge on their own, and if jurisdiction is lacking, dismissal is mandatory." *Campanella,* 137 F.3d at 890 (citing Fed. R. Civ. P. 12(h)(3). Defendants have not made any showing that this court has jurisdiction to rule on the motions that have been filed. The parties never entered any stipulations on the case or the case is closed." Neither Rule 41(a)(1)(a)(ii) nor any provision of law provides for jurisdiction of the court over disputes arising out of an agreement that provides the stipulation." *Kokkonen v. Guardian Life Ins. Co. of Am.,* 511 U.S. 375, 378 (1994).

b. Federal Courts Do Not Have Jurisdiction Because the Settlement Amount in Question Does Not Exceed Seventy-Five Thousand Dollars.

[. . .]

. . . Period expires on a weekend or holiday, you will have until the end of the next business day to revoke. This agreement will become effective on the day after the end of the Revocation Period (Effective Date), provided you do not revoke this Agreement."

Therefore, in accordance with the above, this Agreement never was effective. Further, it can be revoked even if Plaintiff had signed it. Plaintiff, as is her right, changed her mind even before signing the agreement.

IV. CONCLUSION

For the reasons stated above, Plaintiff respectfully asks the Court deny the motion to enforce the settlement Agreement, and reinstall this case in the Court Calendar.

Respectfully Submitted

/s/ Larisa Dirkzwager
ld.quarterhorses@gondtc.com
5869 49th Avenue NE
York, ND 58386
Telephone: 763-307-0342

Plaintiff – Pro Se

Dated: December 2, 2022

DECLARATION OF LARISA Y. DIRKZWAGER (DECEMBER 2, 2022)

UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA

LARISA DIRKZWAGER,

Plaintiff,

v.

ARCHER-DANIELS-MIDLAND COMPANY,

Defendant.

Court File No. 20-cv-00212 (DLH/CRH)

DECLARATION OF LARISA Y. DIRKZWAGER

I, Larisa Y. Dirkzwager, hereby declare as follows:

I am Plaintiff in the above-referred action. I submit this Declaration in support of Plaintiff's response to Defendant's motion to Enforce Settlement Agreement.

1. Attached hereto as Exhibit Z is a true and correct copy of Settlement Agreement with suggestions to Plaintiff's counsel dated August 29, 2022.

2. Attached hereto as Exhibit Y is a true and correct copy of correspondence to Plaintiff's counsel dated August 30, 2022.

3. Attached hereto as Exhibit W is a true and correct copy of correspondence to Plaintiff's counsel dated September 5, 2022.

PURSUANT TO 28 U.S.C. SECTION 1746, I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

/s/ Larisa Dirkzwager
Signature

Date: December 2, 2022

/s/ Lucille Pierson
Notary Public
State of North Dakota
My Commission Expires Aug. 5, 2024

EXHIBIT Z TO DECLARATION OF LARISA Y. DIRKZWAGER

In Support of Plaintiff's response
To Defendant Motion to
Enforce Settlement Agreement

Re: Dirkzwager v. Archer-Daniels-Midland Company
Court File No. 20-cv-00212 (DLH-CRH)

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (Agreement) is entered into between Larisa Dirkzwager (you) and Archer-Daniels-Midland Company (Company). You and the Company (together, the Parties) agree as follows:

1. Termination of Employment Relationship: Your employment relationship with the Company ended on June 14, 2019 (Termination Date). You agree not to seek reinstatement, future employment, or other working relationship with the Company or any of its affiliates after the Termination Date.

LD: I agree. I don't want to work for this company ever again.

2. Acknowledgements: You acknowledge that the Company relied on the following representations by you in entering into this Agreement:

a. You have received all compensation due to you through the Termination Date as a result of

services performed for the Company with the receipt of your final paycheck.

LD: I haven't.

b. You have reported to the Company any and all work-related injuries or occupational illnesses incurred by you during employment with the Company.

LD: I haven't.

c. The Company properly provided any leave of absence because of your or your family member's health condition or military service and you have not been subjected to any improper treatment, conduct or actions due to a request for or taking such leave.

LD: I didn't.

d. You have had the opportunity to provide the Company with written notice of any and all concerns regarding suspected ethical and compliance issues or violations on part of the Company.

LD: I haven't.

3. Consideration: In return for your promises in this Agreement, and provided that you sign and return this Agreement and do not revoke it, the Company will pay you the gross amount of $45,000.00, inclusive of attorneys' fees and costs, within thirty (30) days after the Effective Date of this Agreement, or upon your fulfilment of obligations required in Paragraph 6, whichever is later, allocated and payable as follows:

(a) One check payable to you for alleged wage-based damages, in the gross amount of

$22,500.00, less applicable taxes and other authorized or required withholdings, for which an IRS Form W-2 will be issued to you; and

(b) One check payable to you, for alleged non-wage compensatory damages, in the amount of $22,500.00, for which an IRS Form 1099 will be issued to you. This Agreement is not intended nor does it purport to give you advice or counseling concerning federal, state, or local tax responsibilities or liabilities. You agree to complete IRS W-4 and W-9 forms as necessary and/or provide employer identification numbers along with this Agreement. You acknowledge this payment is in addition to anything you would have received had you not signed this Agreement. Amounts the Company is paying in consideration for the Agreement will be treated as taxable compensation but are not intended by either party to be treated, and will not be treated, as compensation for purposes of eligibility or benefits under any benefit plan of the company; and

LD: I requested the one check for compensatory damages for medical expenses for illness that resulted the hostile work environment.

4. Indemnification: You shall be solely responsible for the payment of any federal, state, or local taxes arising out of the payment of monies under the Agreement. You agree to hold the Company harmless from any and all claims, demands, rights, damages, costs or expenses resulting from any liability or claim

of liability for any amount assessed by or due any federal, state, or local government or agency thereof, including but not limited to federal, state, and local withholding and income taxes and social security taxes, with respect to payments made by the Company to you as set out in this Agreement.

LD: I agree.

5. Full and Final Release: In exchange for the benefits provided by the Company under this Agreement, you fully and forever release and discharge the Company, its parents, subsidiaries, affiliates, and related entities and all of their respective agents, attorneys, employees, officers, directors, shareholders, members, managers, employee benefit plans and fiduciaries, insurers, successors, and assigns, (Released Parties) from any and all claims and potential claims that may legally be waived by private agreement, whether known or unknown, which you have asserted or could assert against the Company arising out of or relating in any way to any acts, circumstances, facts, transactions, or omissions, occurring up to and including the date you sign this Agreement (Claims). You understand that you are releasing such Claims on behalf of yourself and all persons who could make Claims under, through or by you, such as your spouse, heirs, executors or assignees.

LD: I agree.

This release includes, but is not limited to, (i) any and all Claims arising under Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1866, the Civil Rights Act of 1991, the Age Discrimination in Employment Act of 1967 (ADEA), the Family and Medical Leave Act (FMLA), the Employee Retirement

Income Security Act (ERISA), the National Labor Relations Act (NLRA), the Pregnancy Discrimination Act, the Worker Adjustment and Retraining Notification Act, the Americans with Disabilities Act (ADA), any amendments to such laws, any other federal, state, or local constitution, charter, law, rule, ordinance, regulation, or order; (ii) Claims in equity or under common law including but not limited to claims for tort, breach of contract (express or implied, written or oral), wrongful discharge, defamation, emotional distress, and negligence; (iii) all Claims made or which could have been made in civil action number 1:20-cv-212 pending in the United States District Court for the District of North Dakota ("lawsuit"); and (iv) You expressly waive any and all rights that you may have under any state or local statute, executive order, regulation, common law and/or public policy relating to unknown claims, including but not limited to North Dakota Century Code Sections 9-13-02; 14-02.4-02 through 14-02.4-06; and 34-01-20.

6. Pending Claim: The Parties agree that when you sign and deliver this Agreement, the Parties will file an agreed joint motion to dismiss with prejudice and an agreed order, dismissing with prejudice all causes of action against the Company in the lawsuit.

LD: I agree.

7. Attorneys' Fees/Medicare and Medicaid Interest: This Agreement settles and releases any and all claims for attorneys' fees. This settlement is based upon a good faith determination of the Parties to resolve a disputed claim. The Parties have not shifted responsibility of medical treatment to Medicare or Medicaid in contravention of 42 U.S.C. § 1395y(b). The Parties resolved this matter in compliance with both federal,

state, and local law. The Parties made every effort to adequately protect the interests of Medicare and Medicaid.

LD: I agree.

8. Non-Admission: This Agreement shall not be construed as an admission by the Company of any liability or acts of wrongdoing or unlawful conduct, nor shall it be considered to be evidence of such liability, wrongdoing, or unlawful discrimination.

LD: I disagree. The company must admit the acts of discrimination, sexual harassment, intentional infliction of emotional distress and hostile work environment and provide the plan for addressing and solving this issues.

9. Proprietary Information: You understand that you are required to return all confidential and proprietary information, computer hardware or software, files, papers, memoranda, correspondence, customer lists, financial data, credit cards, keys, tape recordings, pictures, and security access cards, and any other items of any nature which are the property of the Company, regardless of whether you sign this Agreement. You further agree not to retain any tangible or electronic copies of any such property in your possession or under your control. To the fullest extent permitted by law, you also agree to retain in confidence any confidential information known to you concerning the Company until such information is publicly available.

LD: I disagree. I lot of information that Company deemed as

"Confidential" has nothing to do with trade secrets, but only cover up for unlawful conduct that needs to be disclosed in an order to be repaired.

10. Confidentiality of Agreement: You agree that you will maintain the confidentiality of this Agreement and will not disclose in any fashion the nature and terms of this Agreement, the amount of this settlement, and/or the substance or content of discussions involved in reaching this Agreement, except to your lawyer, accountant, or immediate family, or governmental agency without the prior written consent of an officer of the Company, except as necessary in any legal proceeding directly related your employment with the Company or the provisions and terms of this Agreement, to prepare and file income tax forms, or as required by court order after reasonable notice to the Company; and provided that you instruct the recipient(s) of the information (with the exception of a governmental agency), and such individuals agree not to disclose the terms of this Agreement.

LD: I disagree. The Judge mitigator Clare Hochhalter assured me that I can talk about this case freely, without any restrictions. I don't sign any confidentiality agreement in any form and/or shape. It was the main condition of this lowball settlement.

11. Applicable Law: This Agreement shall be interpreted under the law of the state in which you

worked for the Company, without regard to conflicts of laws principles.

LD: I agree.

Complete Release: This Release constitutes the complete and total agreement between you and the Company with respect to issues addressed in this Agreement, except your obligations you may have under any other Agreements with the Company regarding the non-disclosure of trade secrets and confidential or proprietary information, prohibiting solicitation of customers, suppliers, or employees, prohibiting competition with the employer, assigning intellectual property, or providing for a dispute resolution mechanism, contained in any agreements you have entered into with the Company or under applicable law. You represent that you are not relying on any other written or oral representations not fully expressed in this document. You agree that this Agreement shall not be modified, altered, or discharged except by written instrument signed by you and an authorized Company representative. The headings in this document are for reference only, and shall not in any way affect the meaning or interpretation of this Agreement.

LD: I disagree. First: This agreement clearly needs to be modified. Second: The non-compete agreement never was in discussion. It's bad enough that this company destroyed my carrier inside the company, now they try to prohibit me from work in biodiesel industry forever, for perpetuality. Third; This paragraph construed in wage and ambiguate way so that Company can actually

prevent Plaintiff to work in any chemical lab. Fourth: Plaintiff possessed more intellectual property that most managers and supervisors in this plant before she even started working for Defendant, since she was employed as a Quality Control Manager In the different Biodiesel Plant prior the Employment on the ADM Processing Velva plant and built her own QC lab from scratch. Plaintiff haven't learned much in tis plant especially considering the it was 40-year-old technology, franchised from Germany. (Franchise always means proven technology, tried and true for a long time.)

12. Severability: You agree that should any part of this Agreement except the release of claims be found to be void or unenforceable by a court of competent jurisdiction, that determination will not affect the remainder of this Agreement.

13. Use As Evidence: The Parties agree that this Agreement may be used as evidence in a subsequent proceeding in which any of the Parties allege a breach of this Agreement or as a complete defense to any lawsuit brought by any party. Other than this exception, the Parties agree that this Agreement will not be introduced as evidence in any proceeding or in any lawsuit.

LD: I agree.

14. Binding Agreement and Covenant Not to Sue: You understand that following the Revocation Period

(as defined below), this Agreement will be final and binding. You promise not to file a lawsuit or arbitration proceeding based on any claim that is settled by this Agreement. If you break this promise or fail to comply with your obligations under the Agreement, you agree to pay all of the Company's costs and expenses (including reasonable attorneys' fees) related to the defense of any claims covered by this Agreement or any Released Party's efforts to enforce the terms of this Agreement, except this covenant not to sue does not apply to claims under the Older Worker Benefit Protection Act (OWBPA) and the ADEA. Although you are releasing claims that you may have under the ADEA, you may challenge the knowing and voluntary nature of this release before a court, the Equal Employment Opportunity Commission (EEOC) or any other federal, state, or local agency charged with the enforcement of any employment laws. *You understand, however, that if you pursue a claim against the Company under the OWBPA and/or the ADEA to challenge the validity of this Agreement and the Company prevails on the merits of an ADEA claim, or a Released Party files a lawsuit or arbitration to enforce any part of this Agreement, a court has the discretion to determine whether the Company is entitled to restitution, recoupment, or set off (hereinafter "reduction") against a monetary award obtained by you in the court proceeding. A reduction never can exceed the amount you recover, or the consideration you received for signing this Agreement, whichever is less.* This provision is not intended to preclude otherwise available recovery of attorneys' fees or cost specifically authorized under applicable law.

15. Advice of Counsel: You acknowledge that you have read and fully understand the terms of this Agreement. The Company advises you, in writing, to consult with an attorney of your choice regarding the terms of this Agreement prior to signing this Agreement. You have been represented by your legal counsel for purposes of settlement, who has read and explained to you the entire contents of this Agreement, as well as explained the legal consequences of the release.

16. Consideration Period: You understand that you have at least 21 days from the date you receive this Agreement and any attached information to consider the terms of this Agreement, including whether to sign this Agreement (Consideration Period). If you choose to sign this Agreement before the Consideration Period ends, you represent that it is because you freely chose to do so after carefully considering its terms. You agree with the Company that changes, whether material or immaterial, do not toll or restart the running of the Consideration Period. You agree the Company has made no threats or promises to induce you to sign earlier.

LD: What will happen if I don't sign after the consideration period is over?

17. Revocation Period: You shall have seven calendar days from the date you sign this Agreement to revoke this Agreement by delivering a written notice of revocation to the same person as you returned this Agreement (Revocation Period). If the Revocation Period expires on a weekend or holiday, you will have until the end of the next business day to revoke. This Agreement will become effective on the day after the

end of the Revocation Period (Effective Date), provided you do not revoke this Agreement.

18. Return of Signed Agreement: You are required to return your signed Agreement and any written revocation notice to Michael R. Link, 1300 IDS CENTER, 80 South 8th Street, Minneapolis, MN 55402-2136; mlink@littler.com.

19. No Interference with Rights: You understand this Agreement does not apply to (i) claims for unemployment or workers' compensation benefits, (ii) claims or rights that may arise after the date that you sign this Agreement, (iii) claims for reimbursement of expenses under the Company's expense reimbursement policies, (iv) any vested rights under the Company's ERISA-covered employee benefit plans as applicable on the date you sign this Agreement, and (v) any claims that controlling law clearly states may not be released by private agreement. Moreover, nothing in this Agreement (including but not limited to the acknowledgements, release of claims, the promise not to sue, the confidentiality obligations, and the return of property provision) (i) limits or affects your right to challenge the validity of this Agreement under the ADEA or the OWBPA, (ii) prevents you from communicating with, filing a charge or complaint with; providing documents or information voluntarily or in response to a subpoena or other information request to; or from participating in an investigation or proceeding conducted by the Equal Employment Opportunity Commission, National Labor Relations Board, the Securities and Exchange Commission, the Occupational Safety and Health Administration, law enforcement, or any other any federal, state or local agency charged with the enforcement of any laws, or from responding

to a subpoena or discovery request in court litigation or arbitration (iii) precludes you from exercising your rights, if any, under Section 7 of the NLRA or under similar state law to engage in protected, concerted activity with other employees, including discussing your compensation or terms and conditions of employment.

By signing this Agreement you are waiving your right to recover any individual relief (including any backpay, frontpay, reinstatement or other legal or equitable relief) in any charge, complaint, or lawsuit or other proceeding brought by you or on your behalf by any third party, except for any right you may have to receive a payment or award from a government agency (and not the Company) for information provided to the government agency or where otherwise prohibited.

Notwithstanding your confidentiality obligations in this Agreement and otherwise, you understand that as provided by the Federal Defend Trade Secrets Act, you will not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret made: (1) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, and solely for the purpose of reporting or investigating a suspected violation of law; or (2) in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

In exchange for the promises contained in this Agreement, the Company promises to provide the benefits set forth in this Agreement.

Date: _____

_____ _____
Name Printed (From Company) Signature

You have read this Agreement and understand its legal and binding effect. You are acting voluntarily, deliberately, and of your own free will in signing this Agreement.

Date: _____

_____ _____
Larisa Dirkzwager Signature

OPENING BRIEF OF PLAINTIFF-APPELLANT
RELEVANT EXCERPTS
(APRIL 26, 2023)

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

LARISA DIRKZWAGER,

Plaintiff-Appellant,

v.

ARCHER-DANIELS-MIDLAND COMPANY,

Defendant-Appellee.

Case No. 22-3657

Appeal from the United States District Court
for the District of North Dakota
Honorable Daniel L. Hovland,
U.S. District Court Judge
Case No. 1:20-CV-00212-DLH-CRH

BRIEF OF PLAINTIFF-APPELLANT

Larisa Dirkzwager
Appellant Pro Se
5869 49th Avenue North East
York, ND 58386
TELEPHONE: (763) 307-0342
E-MAIL: ld.quarterhorses@gondtc.com

[. . .]

1. Settlement Conference

The assurance of answering service that Ms. Sambor would return the call was not realized until approximately fourteen hours before the scheduled conference time. Instead of providing to Appellant advice about the procedure, strategy, and negotiation tactics, Ms. Sambor spent one and a half hours coercing Appellant, her client, to lower her expectations. Nor was Ms. Sambor interested in hearing the demands and ideas of her client. So, Mrs. Dirkzwager and attorney Ms. Sambor went into the conference unprepared, without a written statement/proposal.

Ms. Sambor told Mrs. Dirkzwager to arrive a half hour earlier that the start time of the conference. Mrs. Dirkzwager assumed that it would give her and Ms. Sambor time to discuss the procedure. Appellant had to rise at 5 am and drive over three hours to the court on order to arrive early, but Ms. Sambor was not there. She came at the last minute before conference. Sambor never advised her new client that the court procedure would be binding.[1] Mrs. Dirkzwager had heard about it for the first time at the end of conference.

In the conference room, Sambor was working against her client; cajoling, then coercing and threatening, and escalating to calling her client offensive names. Ms. Sambor said that Mrs. Dirkzwager was a stubborn child, out of touch with reality. Ms. Sambor further stated that Appellant was delusional if she

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[1] TRANSCRIPT OF DIGITAL RECORDING SETTLEMENT CONFERENCE (TDRSettlC) at p. 5, line 1-3

still believed in the American dream. Ms. Sambor targeted the core values of her client to force her to agree on a lowball offer from the powerful corporation. Sambor further said that the Federal Judge on her case was appointed by a Republican president, and would do anything to protect the corporation and to punish Mrs. Dirkzwager if she did not concede.

According to Ms. Sambor, Dirkzwager's case would never make it to the trial, and nobody would ever hear her message, because the Judge would find a way to dismiss her case. Moreover, if Dirkzwager was "stubborn" and "inconsiderate," the Judge would "slam" her with big penalties and destroy her financially; he would order her to pay attorney fee to ADM, which will be very high because the ADM attorneys are the best that *120* Billions dollars can buy and would get at least 3-4 times more than a regular attorney. Ms. Sambor continued her "counsel" by saying that if by some miracle Mrs. Dirkzwager made it to the trial, the North Dakota people will always side with the good man who was born in America, and never with old immigrant woman, because rural North Dakota is a "twilight zone." After about six hours, the settlement amount being discussed increased to over thirty thousand dollars. At this point, the magistrate judge assumed control of the negotiation, and brought the settlement amount down from $48,000 to $45,000. However, Sambor did not notice this development. Her e-mail from September 5, 2022 confirms this. Sambor repeated the same mistake during the status conference.[2] When Mrs. Dirkzwager

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[2] TRANSCRIPT OF DIGITAL RECORDING TELEPHONIC CONFERENCE (StatusCTDR) at p. 8, line 2-4

initially conceded on the settlement offer, she hopped to negotiate her demands. However, the Magistrate Judge who led the settlement conference said he would not talk to her anymore, and quickly excused himself. Ms. Sambor denied Mrs. Dirkzwager's request to use the bathroom, saying everything needed to put in the record first. Mrs. Dirkzwager is not a young woman, and physical situation was uncomfortable for her after hours in the negotiating room (and two cans of 'Monster' energy drink). Again, there was no counsel or explanation that once the discussion was committed to record, the agreement was binding. During the proceedings, Defendants entered into the records terms that had not been discussed – at least with Mrs. Dirkzwager – including that the settlement check would be for wages and for some unclear and unexplained "standard" terms. Ms. Sambor never voiced demands on behalf of her client. Mrs. Dirkzwager repeatedly urged, at some points with physical nudging, her counsel to speak up, but Ms. Sambor was an inattentive non-participant.[3]

The only thing worse for a litigant than not being represented by an attorney is being represented by an attorney who works against their own client. By her silence, Ms. Sambor was delinquent in her duty, remiss in her responsibilities, and betraying to her client. Mrs. Dirkzwager decided to speak up, but when she reached for the microphone, Sambor would not let her speak. After Mrs. Dirkzwager finally wrestled the microphone and voiced some of her demands that she believed had been agreed upon during the conference, the Magistrate Judge looked at her with dismay.

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[3] TDRSettlC at p. 3, 4

Mrs. Dirkzwager was left with the unshakeable feeling that the appointment of her attorney meant that Appellant was expected to lose all voice in the proceedings, and that Ms. Sambor's role was to keep Appellant quiet and to coerce her into signing any agreement, however low, that Defendant offered.

Ms. Sambor did not do much better after the settlement conference. Mrs. Dirkzwager tried to reach her both by e-mail and phone, but to no avail until Ms. Sambor delivered to Appellant the Settlement Agreement that the Defendant had written. Said agreement was absolutely different from what had been agreed upon during the conference and entered into the record by the District Court. Under the guise of the nebulous "standard terms," Defendant entered eighteen paragraphs that essentially turned this agreement into contract of servitude.

When Mrs. Dirkzwager pointed these out to her attorney, Ms. Sambor said, "It's fine." In reply, Mrs. Dirkzwager sent her a full analysis of the agreement, of what needed to be corrected, and explained why. This is usually the job of the attorney, but by this time Mrs. Dirkzwager had no expectations that her court-appointed attorney would fulfill her responsibilities. Ms. Sambor had related to Appellant that she had a nine-month-old baby at home who did not sleep well, and so was herself suffering from sleep deprivation. When Appellant did the analysis of the proposed Agreement, she expected that the attorney would send it to Defendant. However, when Ms. Sambor forwarded the amended draft from Defendants on September 5th, 2022, only one term out of ten that been contested by Mrs. Dirkzwager was changed. She never suspected that Ms. Sambor would not

forward her full analysis and requested changes to Defendants. Appellant only learned of this nonperformance of duty from exhibits in the Motion to Enforce[4], which Defendants filed in November. As a substantiated by documentation, Ms. Sambor never even discussed the changes or negotiated with Defendants on the rest of them. Ms. Sambor may believe that her client is a delusional old lady who is out of touch of reality, but she still had an official obligation to act on behalf of Mrs. Dirkzwager's best interests. In the meantime, Defendant was under the impression that all demands had been met, and that Mrs. Dirkzwager was being unreasonable. For her part, Plaintiff/Appellant was led to believe that Defendant was being intentionally stubborn and adversarial. Mrs. Dirkzwager was therefore compelled to file the Motion for Reconsideration in order to correct the record and to fight for her own interests. Mrs. Dirkzwager came to justifiable conclusion that much of the legal turmoil could be avoided, except for the distorting influence of Mrs. Sambor.

2. So Little Time, So Much to Do

In the meantime, Mrs. Dirkzwager had to actually pay her bills. She was helping her husband run a full-scale industrial cattle ranch. Her husband had suffered a stroke and lost majority of vision on one eye, and had a hard time working more than two consecutive hours. Therefore, the bulk of the work fell to Mrs. Dirkzwager. It was for Mrs. Dirkzwager to make enough hay for almost one hundred ever-hungry, big, and rumbustious animals. It was a life

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[4] R.Doc. 74-2,3,4

and death situation for her horses; if she did not make enough hay to feed them through the winter, she would have to sell them, which would mean that her beautiful, intelligent, well-trained horses would become dog food. The ranch had not recovered from the epic 2021 drought. The Dirkzwagers did not have money to fix the well, which had been damaged by angered, thirsty cows when the well dried out after five months without rain. Mrs. Dirkzwager had to get up at 4:30 am to fill the water tanks, stringing the hoses from the house, well before the cows became active. Then she had to perform daily maintenance on the tractors, take the stallions from the barn to the pasture, and after the dew dried out she jumped onto the tractor to make hay till dark. The old equipment kept breaking and the Dirkzwagers could not afford help and did the repairs themselves. The Federal lawsuit was important, and Appellant spent every spare second working on it, but sometimes she was just too exhausted. At this time, Mrs. Dirkzwager considered herself represented by an attorney who had her best interests at heart, and trusted that she would receive good counsel; she gave her benefit of the doubt to Ms. Sambor since she was busy with a baby. The Tobacco companies had run negotiations for decades, so Mrs. Dirkzwager assumed she could spare a couple of months to make hay. She was wrong.

3. It was an Excellent Idea, and Probably would've Work if It Was Not for Rain

It was raining the night before November 3rd, 2022. After Mrs. Dirkzwager was done with the morning chores, she realized that it was too wet to make hay. So, she decided to check her e-mails. She discovered that Ms. Sambor was organizing a clan-

destine Status Conference, unknown and undisclosed to Mrs. Dirkzwager. To Appellant knowledge, a status conference usually takes months to arrange, considering the procedures that includes official court orders and letters sent via United States Postal Service. However, this conference was arranged in less than two hours. Another improbability in this hasty development was that the Magistrate Judge was available on such short notice. Of course, the attorneys had to include Mrs. Dirkzwager in the e-mail delivery; to do otherwise would be blatant violation of Rules of Federal Civil Procedure. However, it must be noted that Ms. Sambor knew through previous interactions that her client sometimes did not have time to check e-mails for days at a time. There was no call or text to notify Appellant of the message or to give the details of the conference. If it hadn't rained that night, Appellant would have been on the field and not seen the e-mail. There was a similar occurrence the next day, when the conference was scheduled in less than 24 hours. If Mrs. Dirkzwager had missed this status conference, a judge would have declared that she had abandoned the lawsuit, and dismissed the case for the failure to prosecute or some other legality, however untrue. The official proceedings recording was even arranged; according to the court reporter, this only happens for final orders. However, this contrived sequence was not meant to be. Mrs. Dirkzwager sent an e-mail to Ms. Sambor to tell her that the secret ploy was uncovered. Ms. Sambor answered that it was normal procedure, and she would notify Mrs. Dirkzwager about the time of proceedings. Understandably, by this time Mrs. Dirkzwager no longer trusted Ms. Sambor as her attorney, and sent an e-mail to the court clerk requesting

that Ms. Sambor not represent Appellant anymore. Appellant also requested the time of the meeting and the link to the long-distance hearing website. The Court Clerk complied. Ms. Sambor displayed a look of surprise face when she saw Mrs. Dirkzwager logged in to the meeting next day, fifteen minutes before the meeting started. However, about five minutes before the meeting started, Mrs. Dirkzwager's laptop screen went black. Fortunately, Appellant had another laptop booted up so that her files would be handy and she could talk intelligently about the case. In an almost unbelievable coincidence, the second laptop also froze. Appellant then received a text message from Ms. Sambor, notifying her that the meeting was starting in 2 minutes, as she promised the day before. Mrs. Dirkzwager utilized her smart-phone's access to the internet and logged in to her e-mail account for the meeting hyperlink. Appellant managed to connect to the status conference and was only a couple of minutes late.

The status conference went very much the way the settlement conference had gone. Mrs. Dirkzwager continued to say that she wanted to go to trial, while the other participants, including Ms. Sambor, continued to coerce Appellant to submit. The only difference between the two meetings was that during the settlement conference, the participants told Mrs. Dirkzwager, "Agree or else," and during the status conference the words were, "Sign or else." Mrs. Dirkzwager uttered clearly and unequivocally that Mr. Sambor no longer represented her, and she was not signing the Settlement Agreement and wanted to go to trial. That was the moment that Mrs. Dirkzwager voiced her concerns about the provisions. Now that

Ms. Sambor was out of the way, Mrs. Dirkzwager regained her own voice. The Magistrate Judge asked what was meant by a particular provision and Mr. Link honestly confessed that he didn't know[5]. The Magistrate Judge then recommended that the Defendant tweak the agreement, saying " . . . if you don't know, you probably didn't need it."[6] Apparently, neither Mr. Link nor Ms. Sambor had read the Agreement closely enough, which in Appellant's mind begged the question of who had actually written it. It also suggested that Mr. Link had sent a standard-form contract, which meant all that the almost eight hours of negotiations during which Mrs. Dirkzwager shared her ideas to how improve the discrimination and sexual harassment problem at ADM, was just a sham. The intent all along was to force a low money settlement, which is extremely disappointing. Appellant believes that her proposal to make standard fillable forms for misconduct complaints and keeping them available to everybody who needs to report harassment, would stop abuse on its tracks. The Magistrate Judge then told Mrs. Dirkzwager that he would force her to sign. Appellant replied that he would have to do so in writing, so she could appeal his order. Appellant never received the written order. However, Defendants filed a Motion to enforce the settlement Agreement and release the case. Attached to the Motion was the third version of the Settlement Agreement[7], revised as the Magistrate Judge had recommended to Defendant. It was closer to the terms

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[5] StatusCTDR at 11, 12

[6] StatusCTDR at 11, 12

[7] R.Doc. 74-6

discussed in conference, but not completely so. Appellant thought this version of the proposed Agreement could be a good starting point for further negotiations. Unfortunately, Mrs. Dirkzwager never saw a revision before Defendants filed the dispositive motion. The Federal Judge apparently did. Defendants mailed it to Appellant slow motion, by USPS. Before Plaintiff/Appellant had a chance to answer it, Federal Judge Hoven, without any notification, issued an ambiguous order to obey the terms of the August 11th, 2022 settlement conference, and dismissed the case[8]. An Appeal ensued.

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[8] R.Doc. 76

[. . .]

II. The Corporate Personhood Doctrine Does Not Expands to Civil Rights Violations

Standard of review

This issue presents issues of law that are subject to *de novo* review *Doyle v. Hasbro*, 103 F. 2d 186, 190 (1st Cir. 1996).

Merits

The Court ordered Plaintiff to exclude the Cause of Action based on Section 1985 under the dubious pretext of the "Corporate Personhood" Doctrine.

"Corporate Persona" was created for accounting simplification purposes. The framers of the Constitution never intended to use this doctrine to give immunity to racists. People cannot get away with civil rights violations just because they took a trouble to incorporate. Three exceptions to the "intracorporate conspiracy" doctrine under Section 1985 have been recognized, where (1) corporate agents act outside the scope of their employment; (2) there are numerous acts constituting a broad pattern of discrimination; or (3) the corporate entity is formed for the express purpose of violating the civil rights of members of a protected class. Here, Robby Summers harassed Mrs. Dirkzwager based on personal biases; however, when she complained about it, and company decided to retaliate, Summers conspired with other ADM departments to instill a hostile work environment and compel Plaintiff to quit her job, constituting a corporate act. If corporations are treated as legal

persons, they hold personal accountability too, especially for human rights[1].

1 *Rebel Van Lines v. City of Compton*, 663 F. Supp. 786, 792 (C.D. Cal. 1987)

[. . .]

1. Consideration[1]

Sambor assured her client that IRS form 1099 would cover Plaintiff's expenses for medical conditions that resulted from Defendant's hostile work environment, and would not be subject to taxation since client had paid for her treatment from her payroll compensation, which was already taxed. As client found out, the F-1099 is a taxable income form, and it is impossible to deduct medical expenses from it.

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[1] Consideration: In return for your promises in this Agreement, and provided that you sign and return this Agreement and do not revoke it, the Company will pay you the gross amount of $45,000.00, inclusive of attorneys' fees and costs, within thirty (30) days after the Effective Date of this Agreement, or upon your fulfilment of obligations required in Paragraph 6, whichever is later, allocated and payable as follows:

(a) One check payable to you for alleged wage-based damages, in the gross amount of $22,500.00, less applicable taxes and other authorized or required withholdings, for which an IRS Form W-2 will be issued to you; and

(b) One check payable to you, for alleged non-wage compensatory damages, in the amount of $22,500.00, for which an IRS Form 1099 will be issued to you. This Agreement is not intended nor does it purport to give you advice or counseling concerning federal, state, or local tax responsibilities or liabilities. You agree to complete IRS W-4 and W-9 forms as necessary and/or provide employer identification numbers along with this Agreement. You acknowledge this payment is in addition to anything you would have received had you not signed this Agreement. Amounts the Company is paying in consideration for the Agreement will be treated as taxable compensation but are not intended by either party to be treated, and will not be treated, as compensation for purposes of eligibility or benefits under any benefit plan of the company; and

Of course, it could have been an "honest" mistake again, based on Ms. Sambor's uninformed opinion. Her incompetence is objectively measurable. For instance, attorney Sambor actually asked Mrs. Dirkzwager to spell for her the legal term for authentication of documents.

Ms. Sambor should've warned her client that Defendants will grab 40% from check by representing it as a one-week wages. IRS algorithm will calculate it as $1,300,000.00 yearly income and tax it in the highest bracket. If she does her own taxes and enter it as an annual income, she would be below a poverty line and wouldn't have to pay taxes at all. She would qualify for subsidies.

Unfortunately, Ms. Sambor was not one of those competent and diligent attorneys. She is more like Alex Murdaugh. She did none of those things. She displayed no integrity. She did not care about this client's demands. When she was presented with them, she simply ignored them and failed to communicate them to Defendant. She was so inattentive during the settlement conference that she did not notice a change in the essential - by her own opinion - "key" element of negotiations: the final payoff amount. She also did not bother to participate in the creation of the written version of the Agreement, and when Defendant piled up every term designed to destroy this client's livelihood and future, Ms. Sambor aggressively urged Mrs. Dirkzwager to sign a fraudulent Agreement. When Mrs. Dirkzwager resisted, Ms. Sambor concocted a plan to override her client's will, making it easy for the Defendant culprits to get away with their despicable conduct and enabling them to continue the civil rights violations in their enterprises all over the world. In the

end, Ms. Sambor had the audacity to take taxpayer money as if she had done a good job protecting their rights. Mrs. Dirkzwager was not represented by attorney in this settlement conference and while she would love to be nice to Ms. Sambor, since she knows firsthand how it feels to be on a receiving side of coercion by giant corporation who says "Take money or else!", still, when mass shootings become a norm and children commit suicides because they don't want to live in a country without justice, we just cannot afford to be nice to traitors who destroy our justice system, no matter what their reasons are.

III. The District Court Erred in Disposing of the Lawsuit Before the Settlement Agreement Was Fully Executed

Standard of review

This issue presents issues of law that are subject to *de novo* review *Doyle v. Hasbro*, 103 F. 2d 186, 190 (1st Cir. 1996).

Merits

1. A Lawsuit Can Not be Disposed Until the Revocation Period Is Over, to Ensure that the Case Automatically Reinstates to the Court Calendar When/If a Party Reneges the Contract

This is further reason why Federal Judges should not rule on contract laws. State court judges who are versed on contract law know that all legitimate contracts contain a revocation clause that allows a party to renege on an agreement within a designated timeframe. The statutory provision allowing recission

of a written agreement is rendered a nullity of the agreement entered before the written agreement is executed can supersede the statutory language. This particular contract had seven days revocation provision, which means that Mrs. Dirkzwager could cancel the agreement even if she signed it. Plaintiff, as is her right, changed her mind even before signing the agreement. Therefore, this Agreement never was effective. There is no basis to order this matter dismissed as having been settled. That would automatically restore the case in the Court Calendar, unless this court has already dismissed.

This order is therefore illegal by law. Dismissal of the lawsuit with prejudice before it was even signed is a clear violation of contract law.

2. The Contract that is Not Signed is Not Binding

Uniform Commercial Code Rules[2]: 28:2-201 Formal requirements; Statute of fraud (1) Except as otherwise provided in this Section, a contract for the sale of goods for the price of $500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon, but the contract is not enforceable under this paragraph beyond quantity of goods shown in such writing. 28:3-401 Signature. (1) No person is liable on an instrument unless his signature reappears

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2 28:2-201 Formal requirements

thereon. 28:3-404 Unauthorized signatures (2) Any unauthorized signature is wholly inoperative.

[. . .]

CONCLUSION

For all these enumerated reasons, Appellant respectfully requests this Court to reverse the decision of the District Court and remand the matter to the District Court for further litigation of the civil rights violations perpetrated by Archer-Daniels-Midland Company.

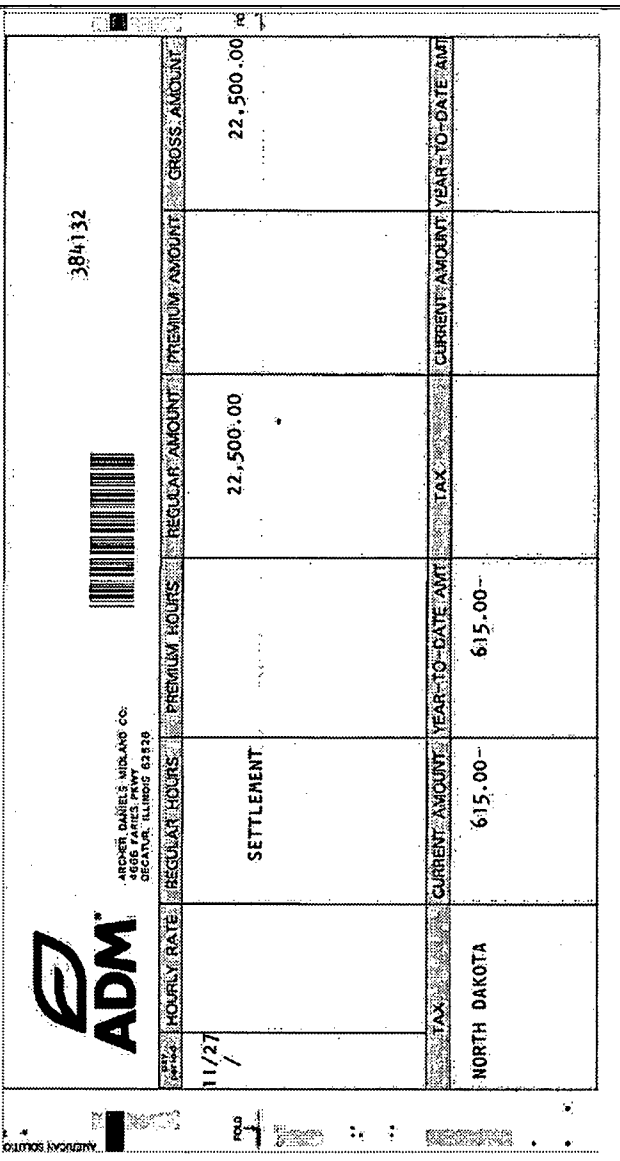
Since so many persons and entities, both private and federal, were involved in the efforts to prevent Plaintiff/Appellant from proceeding to trial and due the public urgency to end the "era of mass-shootings and child suicide" it would be justified to add 42 U.S.C. §§ 1983, 1985, 1986 at these proceedings to speed up the trial and provide a judicial economy. This single case can hold accountable the perpetrators who promote behavior that ignites mass shootings, suicides, and uprisings, and can put a stop to the havoc.

/s/ Larisa Dirkzwager
ld.quarterhorses@gondtc.com
5869 49th Avenue NE
York, ND 58386
Telephone: 763-307-0342

PLAINTIFF/APPELLANT – PRO SE

Dated: April 26, 2023

ADM PAYSTUB TO DIRKZWAGER DEMONSTRATING UNAUTHORIZED TAX WITHHOLDINGS (NOVEMBER 29, 2022)



ADM

ARCHER DANIELS MIDLAND CO.
4666 FARIES PKWY
DECATUR, ILLINOIS 62526

384132

PAY PERIOD	HOURLY RATE	REGULAR HOURS	PREMIUM HOURS	REGULAR AMOUNT	PREMIUM AMOUNT	GROSS AMOUNT
11/27 /		SETTLEMENT		22,500.00		22,500.00

TAX	CURRENT AMOUNT	YEAR-TO-DATE AMT	TAX	CURRENT AMOUNT	YEAR-TO-DATE AMT
NORTH DAKOTA	615.00-	615.00-			

DEDUCTION NAME	CURRENT AMOUNT	YEAR-TO-DATE AMT	DEDUCTION NAME	CURRENT AMOUNT	YEAR-TO-DATE AMT

FOLD

ADM ARCHER DANIELS MIDLAND COMPANY 4666 FARIES PKWY DECATUR, ILLINOIS 62526

CHECK NO. 3841132

DATE NOV 29 2022

AMOUNT ***13,195.89

GRP LOC EMPLOYEE NO
10 752 217756

PAY TO THE ORDER OF

LARISA Y DIRKZWAGER

CITIBANK, N.A.
ONE PENN'S WAY
NEW CASTLE, DE 19720

Ray Young

Form 1859 THE BACK OF CHECK HAS AN ARTIFICIAL WATERMARK. HOLD AT AN ANGLE TO VIEW.

⑈3841132⑈ ⑆031100209⑆ 38880357⑈

DEFENDANT'S REPLY BRIEF
(JULY 20, 2022)

UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA

LARISA DIRKZWAGER,

Plaintiff,

v.

ARCHER-DANIELS-MIDLAND COMPANY,

Defendant.

Court File No. 20-cv-00212 (DLH/CRH)

DEFENDANT'S REPLY BRIEF
IN SUPPORT OF MOTION TO STRIKE

Pursuant to Rule 12(f) of the Federal Rules of Civil Procedure, Defendant Archer-Daniel-Midland Company ("ADM" or "Defendant") respectfully submits this reply brief in support of its Motion (Doc. 45) for an order striking the following language and/or paragraphs from Plaintiff's Second Amended Complaint (Doc. 44).

- Caption (pg. 1): Strike "Sexual Harassment."
- Table of Contents (pg. 2): Strike "Demeaning Sexual Conduct" from First Cause of Action section.

- Table of Contents (pg. 2): Strike "Sexual Harassment, Demeaning Sexual Conduct" from Second Cause of Action section.
- Table of Contents (pg. 2): Strike "Sexual Harassment, Demeaning Sexual Conduct" from Third Cause of Action section.
- Paragraphs 23-26 (pgs. 11-12): Strike in their entirety.
- Paragraph 32 (pg. 14): Strike in its entirety.
- Paragraph 67 (pgs. 33-34): Strike it its entirety.
- First Cause of Action Caption (pg. 34): Strike "Demeaning Sexual Conduct."
- Second Cause of Action Caption (pg. 36): Strike "Sexual Harassment, Demeaning Sexual Conduct."
- Third Cause of Action Caption (pg. 37): Strike "Sexual Harassment, Demeaning Sexual Conduct."

Plaintiff's response brief in opposition to the Motion should be rejected or set aside because it is both untimely as well as factually and legally inaccurate.

I. PLAINTIFF'S RESPONSE IS UNTIMELY

"Rules of practice adopted by United States District Courts have the force and effect of law." *Braxton v. Bi-State Dev. Agency*, 728 F.2d 1105, 1107 (8th Cir. 1984); *see also* 28 U.S.C. § 2071. The "application of local rules is a matter peculiarly within the district court's province." *Reyher v. Champion Int'l Corp.*, 975 F.2d 483, 489 (8th Cir. 1992). In particular, "Dis-

trict courts have broad discretion to set filing deadlines and enforce local rules." *Reasonover v. St. Louis Cnty., Mo.*, 447 F.3d 569, 579 (8th Cir. 2006). Courts routinely enforce their local rules by striking untimely documents. *See, e.g., Mayo v. Bd. of Educ. of Prince George's Cnty.*, 713 F.3d 735, 745 (4th Cir. 2013) (upholding a district court striking an untimely motion for reconsideration); *McElroy v. Sands Casino*, 593 F. App'x 113, 116 (3d Cir. 2014) (upholding a district court striking a brief in opposition); *U.S. v. Kramer*, No. CIV 3:05-CV-97, 2007 WL 642940, at *2 (D.N.D. Feb. 26, 2007) (noting that the court rejected an untimely brief in opposition to a motion).

Here, the Court should reject or set aside Plaintiff's response brief in opposition to ADM's Motion because it is untimely. Specifically, ADM timely filed its Motion on June 3, 2022. (Doc. 45). Pursuant to Local Rule 7.1(A)(1), Plaintiff was allowed 21 days to file a response. Her response, however, was not filed until July 6, 2022—33 days after ADM's Motion. (Doc. 46). As such, Plaintiff's response was at least 12 days late and should be struck or set aside. Plaintiff has a history of untimely filings and delay in this matter which continues to prejudice ADM and should not be allowed to continue.

II. PLAINTIFF'S RESPONSE IS WITHOUT MERIT

In addition to being untimely, Plaintiff's response should be rejected because it is without factual or legal merit. The crux of Plaintiff's argument is that because the Court's May 5 Order (Doc. 43) did not address her repeatedly failed request to add claims of sex harassment/discrimination, it necessarily must

have granted the request. The Court should reject this argument.

As outlined in ADM's opening brief, Plaintiff filed a motion for leave to amend the Complaint on March 2, 2021. (Doc. 14). On May 7, 2021, the Court issued an Order Granting in Part and Denying in Part Motion for Leave to File an Amended Complaint. (Doc. 18). The Court's Order allowed Plaintiff to amend the Complaint for the limited purpose of "expand[ing] upon the factual basis for her existing claims and to strike references to gender and age discrimination . . . " (*Id.* at. 10) (emphasis added). The Court denied the motion in all other respects, including Plaintiff's proposed additional claims under 42 U.S.C. § 1981. (*Id.*)

On May 18, 2021, Plaintiff filed a First Amended Complaint, which failed to comply with the Court's Order Granting in Part and Denying in Part Motion for Leave to File an Amended Complaint. (Doc. 19). Specifically, Plaintiff failed to remove references to sex discrimination and sexual harassment and added new claims under 42 U.S.C. § 1981. (*Id.*)

On June 14, 2021, ADM filed a Motion to Strike portions of Plaintiff's First Amended Complaint, including Plaintiff's references to sex discrimination and sexual harassment, as well as Plaintiff's new claims under 42 U.S.C. § 1981. (Doc. 24). On July 20, 2021, the Court granted ADM's motion in part. (Doc. 28). In particular, the Court ordered Plaintiff to strike references to gender discrimination and sexual harassment because they were "in violation of Judge Hochhalter's May 7, 2021, Order." (*Id.* at 5.) The Court specifically held that claims of sexual harassment and sex-based hostile work environment were subsumed

within the sex discrimination claims that must be struck. (*Id.*) The Court also ordered Plaintiff to strike her claims under 42 U.S.C. § 1981. (*Id.* at 4.)

On July 26, 2021, Plaintiff filed a Motion for Reconsideration and Motion for Leave to File Amended Complaint (Docs. 29-30). On May 5, 2022, the Court granted Plaintiff's motion and directed her to file a Second Amended Complaint stating a § 1981 hostile work environment claim based upon her race, ancestry, and/or ethnicity. (Doc. 43). The Court's memorandum and Order addressed only Plaintiff's Section 1981 claim—it did not discuss, analyze, or grant Plaintiff the ability to allege claims of sex discrimination and/or sexual harassment—which it had already twice previously ordered to be struck from this litigation. (*Id.*)

On May 23, 2022, Plaintiff filed a 43-page Second Amended Complaint that—despite at least two clear Court orders to the contrary—includes references and allegations regarding sex discrimination and sexual harassment. (Doc. 44 at ¶¶ Caption, Table of Contents, 23-26, 32, 67, Cause of Action Captions). This language is in direct contravention of the Court's prior orders and should be struck from the Second Amended Complaint.

The core of Plaintiff's argument in favor of including the disputed language is that because the Court's May 5 Order (Doc. 43) is silent as to her repeatedly failed request to add claims of sex harassment/discrimination, it necessarily must have granted the request. This argument is without merit. Indeed, there is nothing in the Court's May 5 Order to suggest that it overturned the multiple prior Orders compelling removal of sex harassment/discrimination claims and

language. In fact, the May 5 Order is limited solely to Plaintiff's Section 1981 claims. If the Court had intended to overturn its prior Orders and allow new claims of sex harassment/discrimination—it surely would have said so explicitly. Instead, and consistent with courts around this Circuit—the Court's silence was a denial. *See e.g. Johnson v. Leidholt*, 2021 WL 2688803, at *4 (D.S.D. June 30, 2021) ("All of the other requests not specifically granted in this order are denied."); *Patterson Dental Supply, Inc. v. Pace*, 2020 WL 10223625, at *32 (D. Minn. June 17, 2020) ("To the extent relief is not expressly provided for herein, the request for that relief is denied.").

III. CONCLUSION

For the foregoing reasons, ADM respectfully requests entry of an order striking the following language and/or paragraphs from Plaintiff's Second Amended Complaint and for such other and further relief as the Court deems just and equitable.

- Caption (pg. 1): Strike "Sexual Harassment."
- Table of Contents (pg. 2): Strike "Demeaning Sexual Conduct" from First Cause of Action section.
- Table of Contents (pg. 2): Strike "Sexual Harassment, Demeaning Sexual Conduct" from Second Cause of Action section.
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/s/ Michael R. Link
John H. Lassetter, Bar No. 08584
jlassetter@littler.com
Michael R. Link, Bar No. 06734
mlink@littler.com
LITTLER MENDELSON, P.C.
1300 IDS Center
80 South 8th Street
Minneapolis, MN 55402.2136
Telephone: 612.630.1000

ATTORNEYS FOR DEFENDANT

Dated: July 20, 2022

REPLY BRIEF OF PLAINTIFF-APPELLANT, RELEVANT EXCERPT (JULY 18, 2023)

A. President Biden's Executive Order H.R. 4445 outlaws secret backroom closed door quasi-court procedures, especially in lawsuits involving sexual abuse.

The evidences in this case show that this type of alternative dispute resolution gives the perpetrators yet another chance to abuse their victims. That is the reason that President Biden signed Bill H.R. 4445, the "Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021".

I. "Local" Federal Rules That Have a Disparate Impact on Members of a Protected Class are Essence of this Case and Properly Pleaded in This Court

While Defendants argue that "local" Federal Rules and "Corporate Personhood" issues are "far afield" Appellant believes that they are right in the core of this law suit.

A. Abandoning the Mailbox Rule Violates the Fourteenths Amendment to Constitution by Disparate Treatment the Civil Rights Protectors

Under the" Timely mailed, timely filed" rule (sometimes referred to as the "Mailbox Rule"), an item's postmark date is deemed to be its delivery date. A document delivered by U.S. mail is considered timely if (1) the envelope is properly addressed to the

recipient with sufficient postage, (2) the postmark date falls on or before the deadline, and (3) the document is mailed on or before that date.[1] United State Supreme Court in *Houston v. Lack*,[2] indicated that an official United States Postal Service mark dated before the deadline will be conclusive evidence that a petition was timely filed. The framers created this rule to protect litigants from extraordinary circumstances beyond one's control that warrants equitable tolling. While we all want to live in a magical world where everything works perfect, the life happens. Evidence in this case show that due North Dakota weather or other circumstances mail service not always deliver in legally defined for the court rules three days. For instance, being tired of accusations of untimeliness, Appellant mailed the notice of this appeal eight days before the deadline.[3] The USPS stamp on envelope[4] postmarked 12/21/2022. The "Notice of Appeal" was filed on 12/28/2022. One more day and this case would be over with no fault of Mrs. Dirkzwager. But It wouldn't matter.

B. "Local" Federal Rules of Civil Procedure Have Shorter Deadlines

Mrs. Dirkzwager discussed this length in the (AOB p.77-78) and only would like to repeat that in combination with abandoned mail box rule, the "local"

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[1] *Thomas v. Comm'r.*, T.C. Memo, 2020-33

[2] *Houston v. Lack*, 108 S. Ct. 2379 (1988)

[3] R.Doc. 78

[4] R.Doc. 78-1

Federal deadlines is a powerful weapon against democracy.

C. I will believe that the Corporation is a Person when the state of Texas will execute one for its crimes

The Court ordered Plaintiff to exclude the Cause of Action based on Section 1985 under the dubious pretext of the "Corporate Personhood" Doctrine.

"Corporate Persona" properly pleaded in this court because it was the argument in court order (R.Doc. 18), that granted in part and denied in part motion to amend complaint, and which the court used to reject the Section 1985 cause of action.[5] .The importance of this cause of action was thoroughly discussed in (AOB p.p.77-78) and Mrs. Dirkzwager only would like to clarify how the history of creating of "Corporate Persona". For instance, ten thousand of town citizens put together $10 each to build the bridge in their town. It made sense to treat this corporation as one person to save accountant's time. After the bridge was built, everybody who made donations got a tax break in one action and corporation was dissolved.

It's not until later the corporations were allowed to exist after its purpose was fulfilled and continue accumulate wealth in perpetuality, creating immortal monster, with the only purpose to make money by any means necessary. Slavery is the most efficient money-making system. That why civil rights movement is essential for corporations, which they accomplish

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[5] R.Doc. 18 p.p.4-7

by promoting psychopaths to be a slave driver and suppress resistance by employing Nazi procedures.

That why *Washington v. Duty Free Shoppers*[6] hold "The intracorporate conspiracy doctrine should not be extended to §§ 1985(3) and 1986 because its rationale does not apply in the civil rights context. In the area of civil rights, a real danger exists from the collaboration among agents of a single business to discriminate. There is no reason to believe that discrimination by a single business is less harmful than discrimination by multiple businesses, or that discrimination by a single business deserves to be protected because it confers any benefit on society."

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6 *Washington v. Duty Free Shoppers*, 696 F. Supp. 1323,1326 (N.D. Cal. 1988)

MOTION FOR STAY OF MANDATE, RELEVANT EXCERPTS

1. The Supreme Court Ruling on This Case will Invalidate the Bill H.R. 4445

Unconstitutional local Rules and procedures of court that disparately impact the defenders of civil liberties are at the core of this case. The most outrageous of these rules and procedures are the different forms of Alternative Dispute Resolution masquerading as Mandatory Arbitration, Mandatory Settlement conferences, Mandatory Mediation, and other quasi-court procedures, which have devolved to destroy the protections of the Seventh Amendment to the United States Constitution, the guarantee of the right for trial by a jury of peers. Acutely aware of this danger, President Biden addressed this issue in his Bill H.R. 4445. Invalidation of Congressional enactment obviously reflects a question of "exceptional importance". See Fed. R. of App. P. 35(b) (2).

[. . .]

4. Absent a Stay, Defendant Would Suffer Irreparable Harm and the Balance of Equities Favors Granting a Stay

If the mandate is issued, Mrs. Dirkzwager would have to sign the fraudulent and unconscionable Settlement Agreement that contains trap provisions, which make her accomplice in a federal crime, and she would face imminent prosecution. Archer-Daniels-Midland Company (ADM) would force Plaintiff to cash the check that they served her, despite the fact that she never signed the Settlement Agreement, which

would in turn 'seal the deal' under the "Contract by Conduct" doctrine.

This action would expose Plaintiff to criminal charges under three circumstances: (1) Cashing the fraudulent check would make her an accomplice in the tax evasion and money laundering scheme perpetrated by ADM Company. (2) Signing the Settlement Agreement that includes a non-admission clause will render Defendant innocent in all allegations in Mrs. Dirkzwager's complaint, implying that Plaintiff filed false charges in federal documents. Such filing is a federal crime and could lead to either criminal charges or a civil lawsuit by Defendant against Mrs. Dirkzwager. (3) Since Defendant confessed to the Magistrate Judge that the results of their internal investigations confirmed that all of Mrs. Dirkzwager allegations in sexual harassment, racial discrimination, and retaliation are true (Defendant even had an official, corporate-directed discussion with offender Mr. Roby Summers about his unlawful conduct), signing an Agreement with the non-admission of guilt clause is clear and proven perjury, which is punishable by ten years of incarceration in federal penitentiary for each act of perjury. Mrs. Dirkzwager has several allegations in her complaint. (4) The "Covenant not to sue" provision, which forfeits the right to sue ADM for any reason, not only for Plaintiff but for all her relatives and friends, would place Plaintiff and all relatives and friends in perpetual and binding jeopardy. ADM could and probably would take any actions against Plaintiff and any person she cares about, all done with impunity. (5) At the same time, the Agreement contains a clause that ADM can sue Plaintiff any time and make her not only return

all the money but pay the exorbitant attorney fees. Such action is entirely plausible, given their documented acts of corporate retaliation. All ADM would have to do is prove by a "preponderance of evidence" that Plaintiff talked about the case. This is a very low standard, considering that Velva is a very small town, and rumors spread like wildfire. Everyone in town knows about this lawsuit. A mundane action such as a large local purchase or the deposit of the check in the local community credit union would lead to the collective inference of the settlement; ADM could and would point to Plaintiff as the source, and a jury could be persuaded to find legal damage.

Even if none of this happens, the possibility hangs over Plaintiff and her relatives and friends as a Damocles sword. Mrs. Dirkzwager will walk on eggshells and look over her shoulder for the rest of her life, and neither she nor her comrades will ever dare to participate in any circumstance that would require her to defend the exercise of her civil rights in this matter. This is exactly the purpose of these draconian provisions in the Settlement Agreement. The extrapolated implications of an adverse decision for Plaintiff would be damage to not only Mrs. Dirkzwager, but to our democracy at large, for instance in practices such as chilling civil rights activism, union busting and supplying slave-like labor to giant "Corporate Personas."

The record does not indicate that Defendant would be prejudiced by further delay. See *Araneta,* 478 U.S. at 1304-05 (noting that denial of stay resulting in potential prosecution constituted harm to movant, but delay was not harmful to non-movants). The requested stay is for a maximum of 90 days

(unless good cause to extend it is shown or a petition for certiorari is filed). Fed. R. App. P. 41(d)(2)(B). The potential irreparable harm to Appellant thus outweighs any potential harm to ADM or the public, and the balance of equities favors the granting of the stay.