23A468

To Honorable Clarence Thomas:

On Monday, the United States court of appeals ("USCA-11") denied a motion for stay of mandate after it *procedurally* denied Appellant's petition(s) for panel rehearing and rehearing en banc due to expiration of the specified time for requesting a poll pursuant to FRAP 35 – *I.O.P. – 4. No Poll Request*. See Appendix ("**App.**") **F**. The same day, she timely[1] filed a motion for relief pursuant to 11th Cir. R. 27-2 via a motion for reconsideration of her petitions on the **merits** – wherein no action was taken by the court. See screenshot of the circuit docket below:

11/13/2023	☐ 44 2 pg, 22.3 KB	ORDER: The motion of Deirdre Baker to stay the issuance of the mandate pending a petition for writ of certiorari is DENIED. [42] ENTERED FOR THE COURT - BY DIRECTION. (See attached order for complete text) [Entered: 11/13/2023 03:05 PM]
11/13/2023	☐ 45 101 pg, 5.96 MB	*MOTION for reconsideration of a panel order entered on 10/23/2023 filed by Deirdre Baker. Opposition to Motion is Unknown. [45]* [22-11335] (ECF: Deirdre Baker) [Entered: 11/13/2023 05:16 PM]
11/14/2023	☐ 46 1 pg, 89.13 KB	No action will be taken on filing submitted by Appellant Deirdre Baker. Motion for reconsideration of panel order entered on 10/23/2023 [45]. No successive reconsiderations are permitted. (See 11th Cir.R.27-3). [Entered: 11/14/2023 09:49 AM]

Deirdre Baker – proceeding as *pro se* plaintiff ("Applicant"), thus respectfully makes application for stay of mandate to USCA-11 as her relief sought is not available from any other court or judge. S. Ct. R. 23.3, 10(a) and (c). Herein, Applicant demonstrates USCA-11 "has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;" [and] "has decided an important federal question in a way that conflicts with relevant decisions of this Court": *Vance v. Ball State University,* 570 U.S. 421, 133 S. Ct. 2434, 186 L. Ed. 2d 565 (2013) and *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986).

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[1] Per 11th Cir. R. 27-2 Motion for Reconsideration. A motion to reconsider, vacate, or modify an order must be filed within 21 days of the entry of such order. 10/23-11/13 = 21 days.

The jurisdiction of this Court is invoked under 28 U. S. C. § 2101(f).

Compelling Issues and Substantial Questions

1. Is it a **violation of substantial rights** under procedural due process of law when a district judge *at the pretrial stage* and subsequent circuit judges on a motion for summary judgment act as triers of fact, contravene Rule 56(e), ignore motions for relief and this Court's established precedent, displaying conscious bias to a *pro se* party's entitlement[2] to summary judgment?
2. Whether a judge's impartiality is questioned when he/she fails to **investigate fraud on the court**, when the plaintiff is the movant on an **undisputed** motion for summary judgment[3], then defendant files a subsequent motion for summary judgment 34 days later and supports it with fabricated evidence *that was not in the record at the close of discovery* – to which the judge relied on to make its ruling in favor of liable employer.

Constitutional and Statutory Provisions Involved

Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-2(a) and 3(a)

Florida Statute 768.73(c) states:

> (c) Where the fact finder determines that at the time of injury the defendant had a specific intent to harm the claimant and determines that the defendant's conduct did in fact harm the claimant, there shall be no cap on punitive damages.

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[2] Title VII of the Civil Rights Act of 1964 ("Title VII") of the Constitution

[3] Followed by defendant procuring an extension of time to respond via fraud, plaintiff's Rule 60(b)(3) motion for relief – denied by magistrate judge in violation of Rule 72a (see **App. E** p. 8), who retired to recall 10 days later, district judge and 2nd magistrate recusals, both attorneys' withdrawal in USCA-11 (substitute counsel at oral argument is prior clerk to the judge's decision being challenged (who sits by designation USCA-11 – see **App. F** p. 10).

28 U.S. Code § 2111 states:

> On the hearing of any appeal or writ of certiorari in any case, the court shall give judgment after an examination of the record without regard to errors or defects which do not affect the substantial rights of the parties.

28 U.S. Code § 455 states:

> **(a)** Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

Potential Violation of Procedural Due Process of Law

Movant: During discovery on September 28, 2021, Applicant – for a just, speedy, and inexpensive resolution to liable employer's frivolous defense, moved for a summary judgment supported by **174+ pages** of evidence against defendant, ("JEA-Respondent") for her race - retaliation claim making prima facie showing – thereby meeting her initial burden of production imposed by Rule 56. See D.C. Doc. No. 65 **App. H**, and screenshot clipping(s) of the district court docket below:

09/28/2021	65	MOTION for Summary Judgment by Deirdre Baker. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J, # 11 Exhibit K, # 12 Exhibit L)(RH) (Entered: 09/29/2021)

Discovery ended two days later on September 30, 2021.

09/30/2021	66	**SUMMARY JUDGMENT NOTICE re 65 MOTION for Summary Judgment filed by Deirdre Baker Signed by Deputy Clerk on 9/30/2021. (RH)** (Entered: 09/30/2021)

Non-movant: In response 34 days later, JEA-Respondent admitted all material facts asserted **true** and stated, "Plaintiff's own record evidence shows that there

are, in fact, no issues of fact" and then gave judge instruction to **deny**[4] its own motion for summary judgment D.C. Doc. No. 74 contemporaneously filed the same day. Per Rule 56(e), the only way to defeat plaintiff's motion for summary judgment was to "set forth specific facts showing that there is a genuine issue for trial" and in failing to do so summary judgment, shall be entered against JEA-Respondent. Thus, D.C. Doc. No. 74 was simply filed as a "tool for harassment". *Celotex Corp.*, at 332.

11/01/2021	75	RESPONSE in Opposition re 65 MOTION for Summary Judgment filed by JEA. (Cook, Ariel) (Entered: 11/01/2021)

Judge defies this Court's precedent(s). In the 2013 decision of this Court (Docket no. 11-556) in *Vance v. Ball State University*[5] the majority (Associate Justice Hon. Alito, joined by Hon. Roberts, Scalia, Kennedy, Thomas, with concurrence by Hon. Thomas) made clear that "[i]f the supervisor's harassment culminates in a tangible employment action, the employer is strictly liable." In defiance of this Court's established precedent on employer liability, the district judge adopts the unsupported false allegations verbatim – provided by defendant in D.C. Doc. No. 74, to rule in their favor. See **Apps. B-C**. Thus, the **record** shows the judgment of the lower court is incorrect. Appeal to the district court via her Rule 60(b) motion for relief was denied by the district court stating, "she is simply

[4] Because of plaintiff's evidence, it is impossible for defendant to meet its initial burden of production imposed by Rule 56 which was **not** addressed by panel in its opinion.
[5] This Court's binding precedent was cited in; response on district court docket 80 pp. 5-6, her opening brief on appeal p. 21, during oral argument (time stamp 8:12-8:58), her petition(s) for rehearing circuit court dockets 37 pp. 2, 8, & 39 p. 7 – denied because no judge (*including the district judge sitting by designation whose ruling is being challenged*) requested that a poll be taken, and her motion for stay 42 pp. 3, 6. See **Apps. D-E**.

dissatisfied with this Court's determination against her." (D.C. Doc. No. 101 p. 2)

Judges defy 28 U.S. Code § 2111. In its Opinion, the panel openly ignored the FRAP 10 **record on appeal** ("**ROA**"), failed to perform *de novo* review from the beginning – as it simply made deference to the lower court and then falsely[6] stated that Applicant failed to appeal to the district court, and thereby claimed it lacked jurisdiction to review the district court's challenged rulings. In defiance of this Court's precedent(s), USCA-11 affirmed the lower court's *incorrect* judgment – rendering employer *not* liable for its supervisor's harassment culminating into multiple tangible employment actions causing plaintiff to suffer irreparable economic harm. See **App. E** – p. 10 of petition for panel rehearing.

Reasons for Granting the Stay

The standards an applicant must show to obtain a stay pursuant to are readily satisfied in this case. Absent emergency relief from this Court, the mandate will issue – adversely affecting the substantial rights of all members of protected class subject to equal protection under the Fourteenth Amendment pursuant to Title VII. Applicant respectfully prays this motion for stay is granted to prevent injustice.

DATED this 17th day of November, 2023.

Respectfully submitted,

s/ Deirdre Baker
Deirdre Baker

[6] USCA-11 adopted false report by attorney Ms. Boeckman – *prior clerk to the same judge's decision being challenged,* during oral argument (time stamp 20:28-22:00) via writing judge per curiam.

Index of Appendices Judgment, Opinion, and Orders Sought to be Reviewed		# of pages
Appendix A	USCA-11 Doc. No. 35-1: Opinion[7] blatantly contradicts required *de novo* review – see D.C. Doc. No. 65 in **App. H, ROA - Apps. G-I**	20
Appendix B	United States D.C. Doc. No. 99: Judgment Contrary to Law: 42 U.S.C. §§ 2000e-2(a), 3(a)., Rule 56, this Court's established precedents	2
Appendix C	United States D.C. Doc. No. 98: Sr. District Judge Findings – **no magistrate report** (rubber-stamp of unsupported false allegations and fabricated evidence provided by defendant)	24
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Appendix E	USCA-11 Doc. Nos. 37 & 39: Petition for Rehearing En Banc and **p. 10** of Petition for Panel Rehearing	12
Appendix F	USCA-11 Doc. Nos. 42 **p.10** & 44: Order (denied timely filed motion for stay of mandate)	3
Appendix G	**ROA** - Doc. No. 9 p. 27: Causation Table	1
Appendix H	**ROA - D.C. Doc. No. 65**: Plaintiff's Motion for Summary Judgment (openly ignored **undisputed facts** required by Rule 56(e) to determine legal consequences)	24
Appendix I	**ROA** – D.C. Doc. No. 70: Motion for Relief (Rule 60(b)(3) fraud, misconduct by opposing party - relief sought is not available from any other court)	6

[7] Conscious bias is too high to be constitutional tolerable. Bias or prejudice of an appellate judge can also deprive a litigant of due process. https://www.law.cornell.edu/constitution-conan/amendment-5/unbiased-judge#

[DO NOT PUBLISH]

In the United States Court of Appeals

For the Eleventh Circuit

No. 22-11335

DEIRDRE BAKER,

Plaintiff-Appellant,

versus

JEA,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 3:20-cv-00889-HES-PDB

Appendix A

Before BRANCH and LUCK, Circuit Judges, and SMITH,* District Judge.

PER CURIAM:

Deirdre Baker, proceeding *pro se*, initiated this lawsuit alleging that her former employer, JEA (the Jacksonville Electric Authority), discriminated against her on the basis of her race. Baker, who is black, claimed that she was wrongfully terminated on account of her race and was retaliated against because of her complaints of racial discrimination in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. §§ 2000e-2(a), 3(a). Following cross-motions for summary judgment, the district court entered judgment in favor of JEA. Baker—still proceeding *pro se*—appealed. After careful review, and with the benefit of oral argument, we affirm.

I. Background[1]

JEA, a water, and sewer utility company located in Jacksonville, Florida, employs both appointed and civil service employees.[2] Civil service employees are subject to the City of

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* Honorable Rodney Smith, United States District Judge for the Southern District of Florida, sitting by designation.

[1] We review *de novo* a district court's rulings on cross-motions for summary judgment, and we view the facts in the light most favorable to the nonmoving party on each motion. *James River Ins. Co. v. Ultratec Special Effects Inc.*, 22 F.4th 1246, 1251 (11th Cir. 2022).

[2] The City of Jacksonville Charter defines JEA as an "independent agenc[y]" of the City. Jacksonville, Fla., Charter § 18.07(d). The Florida legislature

Jacksonville's Civil Service Rules and Regulations and are entitled to certain employment protections, while appointed employees are essentially at-will employees who do not enjoy the same protections as civil service employees. Those appointed employees who previously served in civil service positions are permitted to revert to their civil service positions in lieu of termination in the event of performance issues. Baker held various civil service positions at JEA until she filled the appointed position of Financial Analyst Water/Wastewater ("W/WW") Operations in August 2015. In this new position, Baker was supervised by Melinda Ruiz-Adams, the Manager of Business Operations, who was in turn supervised by Carole Smith, the director of W/WW Asset Management and Performance.

In October 2018, JEA began its annual process of goal setting, requiring all employees, including Baker, to submit personal goals and objectives (also called "job factors") for the upcoming year. Those goals and objectives were used to set criteria by which the employees would be evaluated by their supervisors. Ruiz-Adams reviewed Baker's initial submission of her job factors

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"created and established" the JEA by statute as a "body politic and corporate" to exercise "all powers with respect to electric, water, sewer, natural gas and such other utilities which are now, in future could be, or could have been but for this Article, exercised by the City of Jacksonville." *Id.* § 21.01 (citing statutes creating the JEA). Thus, JEA is a governmental entity created by the Florida legislature, and it acts primarily as the City's agent in providing utility services. We take judicial notice of the Charter and ordinances of the City of Jacksonville as they are "not subject to reasonable dispute." Fed. R. Evid. 201(b).

and determined that the goals Baker submitted were so easily achievable that they amounted to the bare minimum required under Baker's job description. Accordingly, Ruiz-Adams rejected Baker's job factors and initiated a series of discussions regarding what acceptable goals and objectives would look like. Ruiz-Adams also sent Baker a draft of acceptable job factors for Baker to use as a guide. Baker, however, did not adjust her job factors properly and failed to comply with Ruiz-Adams's directions.

Baker then met with Robert Mack, the Director of Organizational Effectiveness and Payroll, to discuss the goal-setting process, but she still refused to input appropriate job factors following that meeting. Eventually, Ruiz-Adams sent an email to Baker instructing her to submit the job factors provided by management and informing her that any refusal to do so would be considered insubordination. Baker responded two days later and informed Ruiz-Adams that she refused to follow the instructions.

Throughout the goal-setting process and consultation with Ruiz-Adams, Baker made two complaints to JEA management. First, during her initial meeting with Ruiz-Adams, Baker complained about an alleged pay disparity between herself and Ruth Remsen (a white employee who was paid more than Baker). In response, JEA Human Resources conducted a formal job audit to determine whether Baker and Remsen were performing the same tasks and whether Baker was compensated according to the correct pay grade. The results of the audit showed that, while Baker's assigned duties "overlap[ped]" with Remsen's, Remsen's

role had a "broader scope of duties" and "higher experience requirements."[3] Ultimately, the audit results demonstrated that Baker did not perform the same tasks as Remsen and that Baker was properly compensated.

Meanwhile, Baker was placed on a Manager Support Program ("MSP"), which was a performance improvement plan giving her notice of unacceptable performance. Under the MSP, if Baker did not "make the required changes, termination from employment [would] follow due to the serious nature and consequences of [her] non-compliance."

Second, approximately 11 days after lodging her first complaint, Baker filed a complaint with JEA's Labor Relations Department, alleging that Ruiz-Adams and Smith were discriminating against her and harassing her by not accepting her goals and objectives. Baker presented information purportedly showing "ongoing attacks, threats[,] and bullying tactics" stemming from the goal-setting process. After interviewing Baker, Ruiz-Adams, Smith, and another individual supervised by Ruiz-Adams, Labor Relations's "investigation revealed . . . no evidence to support a claim of bullying or discrimination," and offered Baker feedback that she "need[ed] to be more open to constructive criticism and work to establish effective and productive working relationships with peers and upper level management."

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[3] At the time of the audit, Baker had 17 years' experience at JEA compared to Remsen's 30 years' experience.

Baker eventually entered her job factors as required by the MSP but, according to Smith, "the issues of [Baker's] insubordination and [her] challenging interactions with others continued." These issues culminated in Baker's dismissal in June 2019. A new vice president of W/WW had requested certain information (unrelated to Baker's job factors) be provided to him in a specifically formatted spreadsheet, and Baker was responsible for collecting and entering this information. However, according to Smith, Baker "refused to comply with the new directions from management," having been asked multiple times to ensure compliance with the spreadsheet and failing to do so "despite . . . counseling and direct instruction."

On June 7, 2019, several minutes before a meeting with the vice president, Smith approached Baker about the spreadsheet. According to Smith, Baker had been told "several times" that the spreadsheet she prepared was not properly formatted and that Baker was "continually challenging and difficult when asked to change how things were done or [how to] perform certain tasks." Baker, for her part, recounted her exchange with Smith somewhat differently. Baker testified that Smith was "close to [Baker's] face," told Baker that she wanted the specific spreadsheet, "flung the paper in [Baker's] face[,] . . . turned around, . . . slung her hair and . . . walked out." Following that meeting, Baker sent an email on June 18, 2019, to Smith, copying Human Resources and Labor Relations. She stated that she wished to address Smith's "abrupt and very abrasive visit to [Baker's] office," and expressed that she would not "be threatened, intimidated or harassed." She also

questioned why Smith acted with "hostility" despite Baker's work product "serv[ing] the purpose/person in which it was intended."

On June 27, 2019, Ruiz-Adams met with Baker and, because Baker's conduct and performance had not improved following the implementation of the MSP, Ruiz-Adams offered Baker the option of "revert[ing] back to her previous civil service position." She also informed Baker that if she chose not to revert, she would be terminated. The following day, Baker sent an email to the director of JEA's Labor Relations Department and Human Resources informing them that she chose not to revert and claiming that she had been harassed and retaliated against by Smith and Ruiz-Adams, alleging that they had "conspired and consulted against [her] with conflicting/contradicting directives to threaten [her] with insubordination." Baker was terminated several hours later.

Baker sued JEA on August 7, 2020, asserting causes of action for employment discrimination, retaliation, and hostile work environment under Title VII. She amended her complaint twice, filing the operative complaint on February 5, 2021. During discovery, on September 28, 2021, Baker filed a motion for summary judgment. In response, JEA then moved for summary judgment and responded to Baker's motion for summary judgment.[4] Following full briefing, the district court granted JEA's motion and denied Baker's.

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[4] Before filing its motion for summary judgment, the magistrate judge granted JEA's motion for an extension of time to file a response to Baker's motion,

The district court first addressed Baker's race discrimination claim, which centered on her allegation that Remsen, a white employee, was paid more than Baker despite performing identical work. Using the framework set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973), the district court determined that Baker could not make a *prima facie* case of discrimination because Remsen was not an adequate comparator: Pursuant to the job audit conducted following Baker's claim of pay disparity, Remsen and Baker did not perform identical work and thus they were not similarly situated for purposes of Title VII. The district court noted that even if Baker had made out a *prima facie* case, she had not pointed to any record evidence that JEA's reasons for terminating her were pretextual.

With respect to Baker's retaliation claim, the district court concluded that it failed as a matter of law because the purportedly protected activities—Baker's two complaints of pay disparity and hostile work environment made in December 2018—were not temporally proximate to Baker's termination in June 2019. But "[e]ven if there were a connection between" those complaints and Baker's termination, the district court concluded that Baker's "intervening misconduct" "severed" that connection. The district court in a footnote also discussed Baker's complaint sent via email on June 28, 2019, (the same day as her termination), noting that by that point it was already determined Baker would be fired if she

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over Baker's objection. Baker filed a motion for relief from the magistrate judge's order granting JEA an extension, which the magistrate judge denied.

chose not to revert and thus her termination "could not have [been] in retaliation for the complaint." But the district court did not discuss Baker's other complaints made in February 2019 or on June 18, 2019.

Lastly, regarding Baker's hostile work environment claim, the district court determined that the actions taken by JEA over a period of six months were not sufficiently severe or pervasive to constitute a hostile work environment.

Baker filed a motion for relief from the district court's summary judgment order, which the district court denied. Baker timely appealed.

II. Discussion

Baker raises three issues on appeal. First, she argues that the district court misapplied the burden-shifting standard set forth in *McDonnell Douglas*. Second, she argues that she established a *prima facie* case of a racially hostile work environment. Third, she argues that she established a *prima facie* case of retaliation.[5] We address each in turn.

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[5] Baker also challenges several rulings granting JEA extensions of time by the magistrate judge during summary judgment briefing. However, we lack jurisdiction to review these rulings because Baker did not appeal them to the district court. *United States v. Renfro*, 620 F.2d 497, 500 (5th Cir. 1980) (stating that "[a]ppeals from the magistrate's ruling must be to the district court," and that we lack jurisdiction to hear appeals "directly from federal magistrates"); *United States v. Schultz*, 565 F.3d 1353, 1359-62 (11th Cir. 2009) (applying *Renfro* where a magistrate judge issued an order on a non-dispositive issue, a party failed to object to the order, and the same party subsequently appealed from

A. Race discrimination

First, Baker takes issue with the district court's application of the *McDonnell Douglas* framework in assessing her Title VII race discrimination claim. She contends that she was not required to satisfy that framework, but that, in any event, she did so by putting forth sufficient evidence to prove a Title VII violation. However, Baker has waived her challenge on this issue because she failed to raise it below in response to JEA's motion for summary judgment and, on appeal, she has failed to challenge the district court's determination that JEA put forth a non-pretextual reason for Baker's termination.

This Court reviews *de novo* a district court's grant of summary judgment. *Alvarez v. Royal Atl. Devs., Inc.*, 610 F.3d 1253, 1263 (11th Cir. 2010). Under Federal Rule of Civil Procedure 56(a), a district court shall grant summary judgment "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." In determining whether the movant has met this burden, courts must view all the evidence and make all reasonable inferences in favor of the nonmoving party. *Chapman v. AI Transp.*, 229 F.3d 1012, 1023 (11th Cir. 2000) (en banc).

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the final judgment). As for Baker's challenges to the district court's discovery extensions, a broad grant of authority is given to district courts in managing their dockets, especially with respect to pre-trial activities. *See, e.g., Smith v. Psychiatric Sols., Inc.*, 750 F.3d 1253, 1262 (11th Cir. 2014). We see nothing that suggests the district court abused its discretion with these extensions.

Moreover, to obtain reversal of a district court judgment that is based on multiple, independent grounds, an appellant must convince this Court that every stated ground for the judgment against her is incorrect. *Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 680 (11th Cir. 2014). An appellant's failure to challenge one of the grounds on which the district court based its judgment deems the challenge abandoned on appeal, "and it follows that the judgment is due to be affirmed." *Id.* We may also decline to consider challenges that were not raised by an appellant in opposition to a motion for summary judgment to the district court below. *See, e.g., Bailey v. Metro Ambulance Servs., Inc.*, 992 F.3d 1265, 1274 (11th Cir. 2021) (declining to consider an appellant's Title VII disparate treatment claim because he did not raise it in his summary judgment briefing in the district court).

Title VII prohibits employers from discriminating against an employee "because of" her race. 42 U.S.C. § 2000e-2(a). Where a plaintiff relies upon circumstantial evidence to make out a Title VII discrimination claim, we utilize the burden-shifting framework established by the Supreme Court in *McDonnell Douglas*. *Chapter 7 Trustee v. Gate Gourmet, Inc.*, 683 F.3d 1249, 1255 (11th Cir. 2012). Under that framework, the plaintiff bears the initial burden to establish a *prima facie* case of discrimination. *McDonnell Douglas*, 411 U.S. at 802. To do so, "a plaintiff must show (1) she belongs to a protected class; (2) she was qualified to do the job; (3) she was subjected to adverse employment action; and (4) her employer treated similarly situated employees outside her class more favorably." *Crawford v. Carroll*, 529 F.3d 961, 970 (11th Cir. 2008).

"[A] plaintiff must show that she and her comparator[] are similarly situated in all material respects" for purposes of the fourth *McDonnell Douglas* step. *Lewis v. City of Union City*, 918 F.3d 1213, 1224 (11th Cir. 2019) (quotation omitted).

If a plaintiff establishes a *prima facie* case of discrimination, and the employer articulates a legitimate, nondiscriminatory reason for its action, the employee then bears the burden to show that the employer's reason is pretextual. *McDonnell Douglas*, 411 U.S. at 802–04.

In opposition to JEA's motion for summary judgment, Baker did not challenge the application of the *McDonnell Douglas* burden-shifting framework, despite JEA's reliance upon it. Additionally, on appeal, Baker does not challenge another independent ground for the district court's summary judgment ruling: that she failed to put forth any evidence that JEA's justification for her termination was pretextual. Therefore, we conclude that Baker has waived her challenge to the district court's grant of summary judgment in favor of JEA on Baker's Title VII race discrimination claim and we thus affirm.

However, even if she did not waive her challenge, her claim for race discrimination would fail on the merits because Baker has not identified a valid comparator. Remsen, to whom Baker points as a possible comparator, worked at JEA for thirteen more years than Baker and had different duties than Baker (despite sharing some work responsibilities with Baker). Remsen is therefore not a

comparator for purposes of Baker's *prima facie* case of race discrimination.

B. Hostile work environment

Baker argues that, contrary to the district court's conclusion, she established a *prima facie* case of a hostile work environment. She contends that she was subject to harassment and a hostile work environment from October 2018 through June 2019, that Ruiz-Adams provided her with "discriminatory job factors" during the goal-setting process, and that she experienced work interferences and "[w]ork related threat[s]." However, she does not make any specific argument that the district court erred in concluding that Baker failed to show that the purported harassment was sufficiently severe or pervasive or interfered with Baker's ability to perform her job.

Title VII prohibits employers from subjecting employees to harassment, or a hostile work environment. "When the workplace is permeated with discriminatory intimidation, ridicule, and insult, that is sufficiently severe or pervasive to alter the conditions of the [plaintiff's] employment and create an abusive working environment, Title VII is violated." *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993) (quotations and citations omitted).

To make out a *prima facie* case of a hostile work environment based on racial harassment, the plaintiff must establish that: (1) she belonged to a protected group; (2) she was subjected to unwelcome harassment; (3) the harassment was based on a protected characteristic; (4) the harassment was sufficiently

"severe or pervasive" to alter the terms and conditions of her employment and create an abusive working environment; and (5) a basis exists for holding the employer liable. *Furcron v. Mail Ctrs. Plus, LLC*, 843 F.3d 1295, 1304–05 (11th Cir. 2016).

The "severe or pervasive" requirement "contains both an objective and a subjective component." *Miller v. Kenworth of Dothan, Inc.*, 277 F.3d 1269, 1276 (11th Cir. 2002). In evaluating the objective severity of the harassment, a court considers, among other things, the severity of the conduct and whether it unreasonably interfered with the employee's job performance. *Id.* Isolated incidents that are not extremely serious are not sufficiently severe or pervasive. *See Faragher v. City of Boca Raton*, 524 U.S. 775, 788 (1998); *Jones v. UPS Ground Freight*, 683 F.3d 1283, 1303–04 (11th Cir. 2012) (finding that seven racist acts over the course of one year was sufficient to preclude summary judgment); *but see McCann v. Tillman*, 526 F.3d 1370, 1378–79 (11th Cir. 2008) (finding that instances of racially derogatory language over a period of more than two years were too isolated to be "severe or pervasive").

Pro se filings are held to a less stringent standard than those drafted by attorneys and are liberally construed. *Stephens v. DeGiovanni*, 852 F.3d 1298, 1319 n.16 (11th Cir. 2017). However, where a *pro se* litigant fails to raise a legal claim on appeal, she abandons that claim, and we will not review it. *Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008). Where an appellant makes only passing reference to an issue or raises it in a perfunctory manner, without providing supporting arguments or authority, that claim

is considered abandoned and need not be addressed on appeal. *Sapuppo*, 739 F.3d at 681.

Here, the district court held that Baker had not demonstrated that the purported hostile actions—"which occurred over [the course of] more than six months"—were severe or pervasive, nor did she demonstrate that the actions interfered with her ability to do her job. Baker, however, makes no argument addressing the specific holding below and has thus abandoned any challenge thereof on appeal. *Id.* And even if she had not abandoned this challenge, it would fail on the merits. JEA's conduct by and through its employees occurred over a period of six months and consisted largely of supervisors' and management's attempts to urge Baker to fulfill her employment obligations. Baker has not pointed to any instance of harassment or hostile action—much less a cumulation of instances to create a hostile work environment—by any individual at JEA that unreasonably interfered with Baker's ability to do her job; much less any action that was motivated by her race in any way whatsoever. We therefore affirm the district court's grant of summary judgment to JEA on Baker's hostile work environment claim.

C. Retaliation

Lastly, Baker argues that she has established a *prima facie* case of retaliation, faulting the district court for acknowledging only two of eight instances in which Baker claims she engaged in a protected activity that was followed by purported adverse action. Specifically, Baker lists the following instances of protected

expression: (1) she made a complaint of racial pay disparity in October 2018; (2) she discussed her job factors and her compensation complaint with an unspecified individual in December 2018; (3) she made a complaint to the Director of Organizational Effectiveness and Payroll regarding her goals and objectives in December 2018; (4) she made a harassment complaint in December 2018; (5) she made a formal complaint in December 2018 to the Equal Employment Opportunity Commission; (6) she made a compensation complaint and a complaint regarding her MSP in February 2019; (7) she made a hostile work environment complaint to human resources and management in June 2019; and (8) she made a workplace retaliation complaint to senior management in June 2019, hours before her termination.

The district court focused on the purportedly protected activities in which Baker engaged in December 2018, but Baker argues that the district court should have also considered the activities from June 2019. Specifically, Baker argues that her complaint on June 18, 2019, via email to an allegedly harassing supervisor constituted protected expression and her demotion ten days later constituted retaliation.

Title VII prohibits an employer from retaliating against an employee for, *inter alia*, opposing "any practice" made unlawful by Title VII. 42 U.S.C. § 2000e-3(a). To establish a *prima facie* case of retaliation, a plaintiff may show that: (1) she engaged in a statutorily protected activity; (2) she suffered a materially adverse action; and (3) she established a causal link between the protected

activity and the adverse action. *Howard v. Walgreen Co.*, 605 F.3d 1239, 1244 (11th Cir. 2010).

To establish statutorily protected conduct, a plaintiff must show that she had a reasonable, good-faith belief that her employer was engaged in unlawful employment practices. *Id.* The plaintiff must prove that she subjectively held such a belief and that the belief was objectively reasonable in light of the circumstances. *Id.* A grievance alleging unfair treatment, absent any indication of discrimination based on the plaintiff's protected status, is not protected under Title VII. *Coutu v. Martin Cnty. Bd. of Cnty. Comm'rs*, 47 F.3d 1068, 1074 (11th Cir. 1995).

As for the materially adverse action prong, warnings that a plaintiff's job is in jeopardy do not constitute materially adverse actions. *Howard*, 605 F.3d at 1245.

With respect to causation, a plaintiff must show that the protected activity and the adverse employment action are not completely unrelated. *Pennington v. City of Huntsville*, 261 F.3d 1262, 1266 (11th Cir. 2001). "Close temporal proximity between protected conduct and an adverse employment action is generally sufficient circumstantial evidence to create a genuine issue of material fact of a causal connection," so long as the proximity is very close. *Hurlbert v. St. Mary's Health Care Sys., Inc.*, 439 F.3d 1286, 1298 (11th Cir. 2006) (quotation omitted); *Thomas v. Cooper Lighting, Inc.*, 506 F.3d 1361, 1364 (11th Cir. 2007). For instance, a three-to-four-month "disparity between the statutorily protected [action] and the adverse employment action is not enough."

Thomas, 506 F.3d at 1364. Absent "other evidence tending to show causation, if there is a substantial delay between the protected expression and the adverse action, the complaint of retaliation fails as a matter of law." *Id.*

In a retaliation case, when an employer contemplates taking a materially adverse action before an employee engages in protected activity, "temporal proximity between the protected activity and the subsequent adverse . . . action does not suffice to show causation." *Drago v. Jenne*, 453 F.3d 1301, 1308 (11th Cir. 2006). Moreover, superseding, intervening acts may be sufficient to break a causal chain. *See, e.g.*, *Whatley v. Metro. Atlanta Rapid Transit Auth.*, 632 F.2d 1325, 1329 (5th Cir. 1980) (noting that "a culmination of problems growing out of appellant's manner of handling his job, his lack of cooperation within his office, his mismanagement of his staff, his refusal to comply with the terms of his job description, and his refusal to follow instructions from his supervisor" were sufficient to break the causal chain between protected activity and adverse action).[6] Finally, the employee must ultimately prove that "the desire to retaliate" was the "but-for" cause of a challenged action. *Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 570 U.S. 338, 352 (2013).

The district court did not err in granting summary judgment to JEA on Baker's retaliation claim because Baker has not

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[6] All published cases of the former Fifth Circuit decided before the close of business on September 30, 1981, are precedent in this Circuit. *See Bonner v. City of Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981) (en banc).

established a *prima facie* case of retaliation. First, assuming that her complaints in December 2018 are protected activity, they are not temporally proximate to her termination in June 2019. As for her complaint in February 2019, the time between February and termination in June 2019 is likewise not temporally proximate to her termination. *Thomas*, 506 F.3d at 1364 (explaining that our caselaw requires a "very close" temporal relationship between protected activity and adverse action and that a three-to-four-month "disparity between the statutorily protected [action] and the adverse employment action is not enough").

With respect to her complaint made on June 18, 2019, in which Baker expressed that she felt "threatened, intimidated, and harassed" following her encounter with Smith, even assuming that this email constitutes protected conduct, there is nothing in the email that ties Baker's complaints of harassment or intimidation to her race. Rather, JEA has provided a legitimate, nondiscriminatory reason for terminating Baker and Baker has done nothing to demonstrate pretext. Lastly, as to Baker's complaint made on June 28, 2019 (the same day as her termination), we agree with the district court that because JEA had already determined that Baker would be terminated if she chose not to revert, Baker's termination could not have been in retaliation for that email. *See e.g.*, *Alvarez*, 610 F.3d at 1270 ("Title VII's anti-retaliation provisions do not allow employees who are already on thin ice to insulate themselves against termination or discipline by preemptively making a discrimination complaint."). We therefore affirm the district

court's grant of summary judgment to JEA on Baker's retaliation claim.

III. Conclusion

Because Baker has waived her challenge to the application of the *McDonnell Douglas* framework and to the district court's conclusions regarding pretext, JEA is entitled to summary judgment on Baker's race discrimination claim. Even if Baker did not abandon her challenge to the district court's grant of summary judgment to JEA on her hostile work environment claim—which we conclude that she did—her hostile work environment claim would still fail on the merits. Lastly, because Baker cannot establish a *prima facie* case of retaliation, JEA is entitled to summary judgment on that claim as well.

AFFIRMED.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

DEIRDRE BAKER,

Plaintiff,

v. Case No. 3:20-cv-889-HES-PDB

JEA,

Defendant.

JUDGMENT IN A CIVIL CASE

Decision by Court. This action came before the Court and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

That pursuant to the court's order entered on March 28, 2022, claims against JEA are dismissed.

Date: March 28, 2022

ELIZABETH M. WARREN,
CLERK

s/TPL, Deputy Clerk

Copies to:

Deirdre Baker, Pro Se
Ariel Cook, Esq.
Ashley Benson Rutherford, Esq.

Appendix B

CIVIL APPEALS JURISDICTION CHECKLIST

1. **Appealable Orders**: Courts of Appeals have jurisdiction conferred and strictly limited by statute:

(a) **Appeals from final orders pursuant to 28 U.S.C. § 1291**: Final orders and judgments of district courts, or final orders of bankruptcy courts which have been appealed to and fully resolved by a district court under 28 U.S.C. § 158, generally are appealable. A final decision is one that "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." Pitney Bowes, Inc. v. Mestre, 701 F.2d 1365, 1368 (11th Cir. 1983) (citing Catlin v. United States, 324 U.S. 229, 233, 65 S.Ct. 631, 633, 89 L.Ed. 911 (1945)). A magistrate judge's report and recommendation is not final and appealable until judgment thereon is entered by a district court judge. 28 U.S.C. § 636(b); Perez-Priego v. Alachua County Clerk of Court, 148 F.3d 1272 (11th Cir. 1998). However, under 28 U.S.C. § 636(c)(3), the Courts of Appeals have jurisdiction over an appeal from a final judgment entered by a magistrate judge, but only if the parties consented to the magistrate's jurisdiction. McNab v. J & J Marine, Inc., 240 F.3d 1326, 1327-28 (11th Cir. 2001).

(b) **In cases involving multiple parties or multiple claims**, a judgment as to fewer than all parties or all claims is not a final, appealable decision unless the district court has certified the judgment for immediate review under Fed.R.Civ.P. 54(b). Williams v. Bishop, 732 F.2d 885, 885-86 (11th Cir. 1984). A judgment which resolves all issues except matters, such as attorneys' fees and costs, that are collateral to the merits, is immediately appealable. Budinich v. Becton Dickinson & Co., 486 U.S. 196, 201, 108 S.Ct. 1717, 1721-22, 100 L.Ed.2d 178 (1988); LaChance v. Duffy's Draft House, Inc., 146 F.3d 832, 837 (11th Cir. 1998).

(c) **Appeals pursuant to 28 U.S.C. § 1292(a)**: Under this section, appeals are permitted from the following types of orders:
   i. Orders granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions; However, interlocutory appeals from orders denying temporary restraining orders are not permitted.
   ii. Orders appointing receivers or refusing to wind up receiverships; and
   iii. Orders determining the rights and liabilities of parties in admiralty cases.

(d) **Appeals pursuant to 28 U.S.C. § 1292(b) and Fed.R.App.P.5:** The certification specified in 28 U.S.C. § 1292(b) must be obtained before a petition for permission to appeal is filed in the Court of Appeals. The district court's denial of a motion for certification is not itself appealable.

(e) **Appeals pursuant to judicially created exceptions to the finality rule:** Limited exceptions are discussed in cases including, but not limited to: Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541, 546, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949); Atlantic Fed. Sav. & Loan Ass'n v. Blythe Eastman Paine Webber, Inc., 890 F.2d 371, 376 (11th Cir. 1989); Gillespie v. United States Steel Corp., 379 U.S. 148, 157, 85 S.Ct. 308, 312, 13 L.Ed.2d 199 (1964).

2. **Time for Filing:** The timely filing of a notice of appeal is mandatory and jurisdictional. Rinaldo v. Corbett, 256 F.3d 1276, 1278 (11th Cir. 2001). In civil cases, Fed.R.App.P. 4(a) and (c) set the following time limits:

(a) **Fed.R.App.P. 4(a)(1)**: A notice of appeal in compliance with the requirements set forth in Fed.R.App.P. 3 must be filed in the district court within 30 days after the order or judgment appealed from is entered. However, if the United States or an officer or agency thereof is a party, the notice of appeal must be filed in the district court within 60 days after such entry. **THE NOTICE MUST BE RECEIVED AND FILED IN THE DISTRICT COURT NO LATER THAN THE LAST DAY OF THE APPEAL PERIOD - no additional days are provided for mailing.** Special filing provisions for inmates are discussed below.

(b) **Fed.R.App.P. 4(a)(3)**: "If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later."

(c) **Fed.R.App.P.4(a)(4)**: If any party makes a timely motion in the district court under the Federal Rules of Civil Procedure of a type specified in this rule, the time for appeal for all parties runs from the date of entry of the order disposing of the last such timely filed motion.

(d) **Fed.R.App.P.4(a)(5) and 4(a)(6)**: Under certain limited circumstances, the district court may extend or reopen the time to file a notice of appeal. Under Rule 4(a)(5), the time may be extended if a motion for an extension is filed within 30 days after expiration of the time otherwise provided to file a notice of appeal, upon a showing of excusable neglect or good cause. Under Rule 4(a)(6), the time to file an appeal may be reopened if the district court finds, upon motion, that the following conditions are satisfied: the moving party did not receive notice of the entry of the judgment or order within 21 days after entry; the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice, whichever is earlier; and no party would be prejudiced by the reopening.

(e) **Fed.R.App.P.4(c)**: If an inmate confined to an institution files a notice of appeal in either a civil case or a criminal case, the notice of appeal is timely if it is deposited in the institution's internal mail system on or before the last day for filing. Timely filing may be shown by a declaration in compliance with 28 U.S.C. § 1746 or a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.

3. **Format of the notice of appeal**: Form 1, Appendix of Forms to the Federal Rules of Appellate Procedure, is a suitable format. See also Fed.R.App.P. 3(c). A pro se notice of appeal must be signed by the appellant.

4. **Effect of a notice of appeal**: A district court lacks jurisdiction, i.e., authority, to act after the filing of a timely notice of appeal, except for actions in aid of appellate jurisdiction or to rule on a timely motion of the type specified in Fed.R.App.P. 4(a)(4).

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

DEIRDRE BAKER,

Plaintiff,

v. **CASE NO. 3:20-cv-889-HES-PDB**

JEA,

Defendant.
_____/

ORDER

This matter is before this Court on Plaintiff's Motion for Summary Judgment (Dkt. 65), JEA's Motion for Summary Judgment (Dkt. 74) and the responses to these motions (Dkts. 75, 76, 80, 81, and 85).

Factual Background

JEA has two classifications of employees: appointed and civil service. (Dkt. 74, Ex. 5 ¶2). Civil Service employees have certain rights and protections under the City of Jacksonville's Civil Service Rules. Appointed employees are at-will and serve at the pleasure of JEA's CEO. (*Id.*)

Plaintiff held several positions at JEA but moved to her final appointed position of Financial Analyst Water/Wastewater ("W/WW") Operations in August 2015. This position was created as part of the reorganization of JEA's

Appendix C

W/WW department and anticipated retirement of W/WW Specialist, Ruth Remsen. Following Remsen's 2018 retirement, her duties were divided among Plaintiff and several other employees. (Dkt. 74, Ex. 5 pg. 7).

In late 2017, Plaintiff relocated from an office on Pearl St. to the main JEA tower downtown and placed under Melinda Ruiz-Adams, the Manager of Business Operations ("MBO"). Plaintiff had applied for the MBO position, but Ruiz-Adams was selected. Ruiz-Adams reported to Carole Smith, the Director of W/WW Asset Management and Performance, and supervised another appointed employee, Thalia Smith, a Contract Specialist.

Each year, Plaintiff, like all appointed employees, had to submit goals and objectives (sometimes called job factors), which encouraged employees to continually grow and to reach beyond the status quo. (Dkt. 74, Ex. 7 ¶5). This process was overseen by each employee's supervisor, and the goals and objectives became part of the rubric by which job performance is evaluated. (*Id.*)

In 2018, the goals and objectives process began in October. (*Id.* at ¶3). JEA senior leadership had changed, and they were looking for slightly different goals and objectives. (*Id.*) Ruiz-Adams guided Plaintiff through what senior leadership was expecting, but it became clear Plaintiff was unwilling

to submit appropriate goals and objectives. (*Id.*) The goals and objectives Plaintiff first submitted were so easily achievable they were essentially the bare minimum. (*Id. at* ¶4). Ruiz-Adams rejected them. On November 29, 2018, she guided Plaintiff on the proper content of her goals and objectives. (*Id.* at ¶6). Yet, Plaintiff refused to submit them. (*Id.* at ¶7).

Given Plaintiff's non-compliance, on December 3, 2018, Ruiz-Adams provided Plaintiff with sample goals and objectives based on the needs and expectations of the company and department. Ruiz-Adams instructed Plaintiff to use those samples as a guide. (*Id.* at ¶8). Yet, as of December 6, 2018, Plaintiff still had not satisfactorily submitted her goals and objectives. (*Id.* at ¶9).

Four days later, on December 10, 2018, Plaintiff met with Robert Mack, the Director of Organizational Effectiveness and Payroll, to discuss the goals and objectives process. (Dkt. 74, Ex. 8 ¶2). In her deposition, Plaintiff explained it was a "privilege of her employment" to set her own goals and objectives, and she thought JEA policy was violated when her manager gave input on the process. (Dkt. 74, Ex. 2. pgs. 26-29, Ex. 3 pgs. 111-112). Yet Plaintiff offered no evidence to support her contention.

The evidence in the record, conversely, reveals there is no such policy

and managers routinely give input and approve goals and objectives. (Dkt. 74, Ex. 8, ¶6-7). According to Mack, finalizing an employee's goals and objective is a collaborative process. Managers have "input on" and ultimate "approval over" their employee's goals and objectives. The goals and objectives are important because they allow the manager to evaluate employee performance. It is also "common for managers to draft versions of the goals and objectives or provide other guidance to their employees on the content of their goals and objectives." JEA also "does not have a policy which states that the appointed employees are entitled to draft their own goals and objectives independent of input and approval of their manager." (Dkt 74, Ex. 8, ¶¶3-6). Plaintiff also candidly admitted Ruiz-Adams guided Thalia Smith, the other employee under her control, in drafting Smith's goals and objectives. (Dkt 74, Ex. 3 pg. 116).

Despite prompting and guidance from Ruiz-Adams, Plaintiff refused to enter acceptable goals and objectives. (Dkt. 74, Ex. 7 ¶11). Ruiz-Adams eventually sent Plaintiff an email, on December 12, 2018, instructing Plaintiff to submit the goals and objectives provided by management; refusal would be considered insubordination. (*Id.*, Dkt 74, Ex. 3 pgs. 97-102). Two days later, on December 14, Plaintiff refused, in writing, the instructions of

her manager. (Dkt 74, Ex. 3 pgs. 100-102, Ex. 7 ¶13).

During the process of receiving guidance and instruction from Ruiz-Adams on her goals and objectives, Plaintiff made two complaints to Defendant's management. First, on December 3, 2018, during the first meeting where Ruiz-Adams counseled Plaintiff about her unsatisfactory goals and objectives, Plaintiff complained of an alleged pay disparity between herself and Ruth Remsen. (Dkt. 74, Ex. 1 pgs. 227-228). Plaintiff insisted she was performing the same job as Remsen, who is white, but Remsen was compensated at a higher rate; Remsen was in pay grade G while Plaintiff was in the lower pay grade F. (Dkt. 74, Ex. 3 pgs. 84-85). JEA, in response, performed a full job audit which concluded Plaintiff was in the correct pay grade and that the two positions, while having some overlap, ultimately had substantially different duties. (Dkt. 74, Ex. 5 ¶3). For example, Remsen had to investigate property damage to JEA's assets and coordinate the subrogation process, lead internal process improvements for her group, conduct process support work, including process mapping and analysis, and control mechanisms and operational efficiency initiatives. (Dkt. 74, Ex. 5 Ex. A). Plaintiff's position included none of these duties. (*Id.*) These other duties correlated to Remsen's added experience at JEA. At the time of the audit,

Remsen had about 30 years at JEA compared to Plaintiff's 17 years. (*Id.*; Dkt. 74, Ex. 3 pg. 90).

Second, on December 14, 2018, Plaintiff filed a complaint with JEA's Labor Relations claiming Ruiz-Adams and Carole Smith were discriminating against her and harassing her, in part by not accepting her drafted goals and objectives. (Dkt. 74, Ex. 5, Ex. C). The complaint was formally investigated by Labor Relations, who interviewed Plaintiff, Ruiz-Adams, Carole Smith, and Thalia Smith. (*Id.*) Following the investigation, Labor Relations found no evidence to support claims of discrimination or harassment. (*Id.*) The report explained, "Baker was asked on several occasions, on what basis she is making the claim of bullying/threats, and none was provided." (*Id.*) The report also recommended, "Baker needs to understand that in her role [*sic*] requires her to remain flexible to the dynamics of the business. In addition, Baker needs to be more open to constructive criticism and work to establish effective and productive working relationships with peers and upper level management." (*Id.* at 4).

Plaintiff was still responsible for completing her goals and objectives, but she continually refused. Because of this refusal, on January 23, 2019, Plaintiff was placed on a Manager Support Program ("MSP"). (Dkt. 74, Ex. 3

pg. 120; Ex. 5, Ex. B). An MSP resembles a performance improvement plan and is notice to an employee of unacceptable performance. (Dkt. 74, Ex. 5 ¶4). Plaintiff's MSP stated,

> This memorandum serves to document our conversation regarding your unacceptable behaviors and improvements required for continued employment. As we discussed, it is your responsibility to make the necessary changes to accomplish this goal. Should you choose not to make the required changes, termination from employment will follow due to the serious nature and consequences of your continued non-compliance.

(Dkt. 74, Ex. 5, Ex. B, pg 1).

The MSP listed two "action plan" items: 1) Plaintiff was to "complete all necessary actions to enter and acknowledge the job factors provided to you on December 3, 2018 . . ." and 2) Plaintiff was to "refrain from making excuses, justifications and eliciting debate regarding your job duties and assignments. This includes written and verbal communications." *Id.* These action plan items were to be completed immediately. *Id.* After being placed on the MSP, Plaintiff finally entered the goals and objectives as directed, yet her "insubordination and challenging interactions with others continued." (Dkt. 74, Ex. 6 ¶6).

Turning now to the issue that culminated in Plaintiff's dismissal. In July 2018, Deryle Calhoun become the Vice President of W/WW. (Dkt. 74, Ex.

6 ¶7). With this change in leadership, Calhoun requested information be provided to him in a detailed way in a specific spreadsheet. (*Id.* at ¶¶7, 10). Plaintiff collected and entered this information into the spreadsheet, but, according to Carole Smith, Plaintiff "was the only employee under my supervision who refused to comply with the new directions from management." (*Id.* at ¶¶ 9, 10). Plaintiff was asked on several occasions to ensure her spreadsheet complied with Calhoun's requests (*id.* at ¶11), but she failed "despite the counseling and direct instruction." (*Id.* at ¶12).

On June 7, 2019, a few minutes before a meeting with Calhoun, Carole Smith asked Plaintiff for the spreadsheet. (Dkt. 74, Ex. 6 ¶14). Carole Smith explained,

> At the time, [Plaintiff] attempted to give me a document which she had been told, several times, was not the correct format. This was frustrating to me due to the amount of counseling we had given [Plaintiff] regarding this issue and [Plaintiff] being continually challenging and difficult when asked to change how things were done or perform certain tasks.

(*Id.*)

Plaintiff remembered the exchange this way. Carole Smith "said, I want this one, and so -- she was close to my face, she said, I want this one, get it to me. I said -- so when she said it, she flung the paper in my face and she turned around, she slung her hair and she walked out. So as she's walking

away, I said, I will ask Melinda to get that to you. I'm like, I don't know what else to tell you. I can't produce that document." (Dkt. 74, Ex. 2, pg. 11).

Carole Smith recognized Plaintiff "claims she was unable to give me the spreadsheet I wanted because she did not have the ability to access the program where the document was stored." (Dkt. 74 Ex. 6, ¶15). If this were accurate, according to Carole Smith, Plaintiff "should have notified me of this prior to this conversation, which occurred only minutes before the spreadsheet was to be presented to senior management, including Mr. Calhoun. If she had been unable to access the spreadsheet, that was an issue that could have easily been addressed weeks earlier." (*Id.*) Smith was frustrated with Plaintiff due to Plaintiff's failure to adequately perform her job functions and for her refusal to adjust her work to comply with management's direction. (Dkt. 74 Ex. 6, ¶¶14-15).

JEA has two classifications of employees: appointed and civil service. (Dkt. 74, Ex. 5 ¶2). If an appointed employee is not adequately performing their duties and that employee was previously in a civil service position, that employee can be given the option between a demotion/reversion to their previous position, or termination. *Id.*

According to Maryanne Evans, JEA's Director of Labor Relations,

Plaintiff's "conduct and performance did not improve following the implementation of the MSP." (Dkt. 74, Ex. 5, ¶6). On June 27, 2019, Ruiz-Adams called Plaintiff to a meeting and informed Plaintiff if she decided not to revert to her previous position, Plaintiff's employment would be terminated the next day. (Dkt. 74, Ex. 3 pg. 126, Dkt. 74 Ex. 5 ¶6). The next morning, Plaintiff emailed several recipients, claiming she was being treated unfairly. Ultimately, Plaintiff refused the reversion and was terminated. (Dkt. 74, Ex. 7 ¶19).

Standard of Review

Summary judgment is proper when "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "Where the nonmoving party bears the burden of proof at trial, the moving party may discharge this 'initial responsibility' by showing that there is an absence of evidence to support the nonmoving party's case or by showing that the nonmoving party will be unable to prove its case at trial." *Hickson Corp. v. N. Crossarm Co.*, 357 F.3d 1256, 1260 (11th Cir. 2004). If the moving party does so, the nonmoving party "must come forward with evidence sufficient to withstand a directed verdict motion." *Id.*

The entry of summary judgment is appropriate "after adequate time for

discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). In making this determination, a court "'must draw all reasonable inferences in favor of the nonmoving party, and it may not make credibility determinations or weigh the evidence.'" *Hinson v. Clinch Cty. Bd. of Educ.*, 231 F.3d 821, 826-27 (11th Cir. 2000) (quoting *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000)). "'[T]he court should give credence to the evidence favoring the nonmovant as well as that evidence supporting the moving party that is uncontradicted and unimpeached, at least to the extent that that evidence comes from disinterested witnesses.'" *Id.* at 827 (quoting *Reeves*, 530 U.S. at 151). "In other words, [the court] must consider the entire record, but 'disregard all evidence favorable to the moving party that the jury is not required to believe.'" *Id.* (quoting *Reeves*, 530 U.S. at 151).

But the nonmoving party "may not rest upon the mere allegations or denials in its pleadings. Rather, its responses . . . must set forth specific facts showing there is a genuine issue for trial. A mere 'scintilla' of evidence supporting the opposing party's position will not suffice." *Walker v. Darby*,

911 F.2d 1573, 1576-77 (11th Cir. 1990). In addition, "[a plaintiff's] conclusory allegations of discrimination, without more, are not sufficient to raise an inference of pretext or intentional discrimination where [a defendant] has offered such extensive evidence of legitimate, nondiscriminatory reasons for its actions." *Grigsby v. Reynolds Metals Co.*, 821 F.2d 590, 597 (11th Cir. 1987).

Discussion

Plaintiff's Second Amended Complaint alleges violations of her rights under Title VII of the Civil Rights Act of 1964 ("Title VII"). Plaintiff, who is black, alleges JEA discriminated against her based-on race, retaliated against her, and subjected her to a hostile work environment. These claims are based on conjecture and assumption—not proof or evidence. But this Court will address each claim.

Race Discrimination

The heart of Plaintiff's race discrimination claim is Remsen, a white employee, was paid more than Plaintiff—despite performing identical work. If true, this would be unlawful. Title VII explains "it is unlawful for an employer 'to discharge any individual, or otherwise to discriminate against any individual . . . because of such individual's race . . . .'" *Fuller v. Edwin B.*

Stimpson Co. Inc., 598 F. App'x 652, 653 (11th Cir. 2015) (quoting 42 U.S.C. § 2000e–2(a)(1)).

Now that motions for summary judgment have been filed, Plaintiff's mere accusations of discrimination are insufficient. She "must make a sufficient factual showing to permit a reasonable jury to rule in her favor." *Lewis v. City of Union City*, 918 F.3d 1213, 1217 (11th Cir. 2019) (en banc).

The Eleventh Circuit has observed a plaintiff may prove a Title VII intentional discrimination claim three ways. First, by "navigating the now-familiar three-part burden-shifting framework established by the Supreme Court in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973)." *Lewis*, 918 F.3d at 1217. The *McDonnell Douglas* framework requires a plaintiff to first "establish a prima facie case of discrimination. By establishing a prima facie case, the plaintiff creates a rebuttable presumption that the employer unlawfully discriminated against her." *E.E.O.C. v. Joe's Stone Crabs, Inc.*, 296 F.3d 1265, 1272 (11th Cir. 2002) (internal citations omitted). If a plaintiff satisfies this initial burden, then the burden "shifts to the employer to rebut this presumption by producing evidence that its action was taken for some legitimate, non-discriminatory reason." *Id.* Should the employer meet "its burden of production, the

presumption of discrimination is rebutted, and the inquiry 'proceeds to a new level of specificity,' in which the plaintiff must show that the proffered reason really is a pretext for unlawful discrimination." *Id.* at 1273 (internal citations omitted).

Alternatively, a plaintiff may "present direct evidence of discriminatory intent." *Lewis*, 918 F.3d at 1221 n.6. Or a plaintiff could "demonstrate a 'convincing mosaic' of circumstantial evidence that warrants an inference of intentional discrimination." *Id.*

Plaintiff presented no direct evidence of discrimination, nor does she present a convincing mosaic of an inference of intentional discrimination. Therefore, she must prove her case by circumstantial evidence using the *McDonnell Douglas* burden shifting analysis. With this framework, Plaintiff must establish both a prima facie case and evidence sufficient for a jury to find the employer's proffered explanation is false.

A case for race discrimination requires Plaintiff to show: "(1) she belongs to a protected class; (2) she was qualified to do the job; (3) she was subjected to adverse employment action; and (4) her employer treated similarly situated employees outside of her class more favorably." *Crawford v. Carroll*, 529 F.3d 961, 970 (11th Cir. 2008).

As for what qualifies for a similarly situated employee, the Eleventh Circuit determined, "that a plaintiff asserting an intentional-discrimination claim under *McDonnell Douglas* must demonstrate that she and her proffered comparators were 'similarly situated in all material respects.'" *Id.* at 1218. In other words, "discrimination is a comparative concept—it requires an assessment of whether 'like' (or instead different) people or things are being treated 'differently.'" *Id.* at 1223.

Plaintiff has not demonstrated a prima facie case because she has offered no evidence a similarly situated employee was treated more favorably than her based on race.[1] Plaintiff claims Remsen is her comparator.[2] She maintains, "on November 29, 2017, Plaintiff began performing the same work duties as her white comparator – Ruth Remsen." (Dkt. 65, pg. 4). As for how

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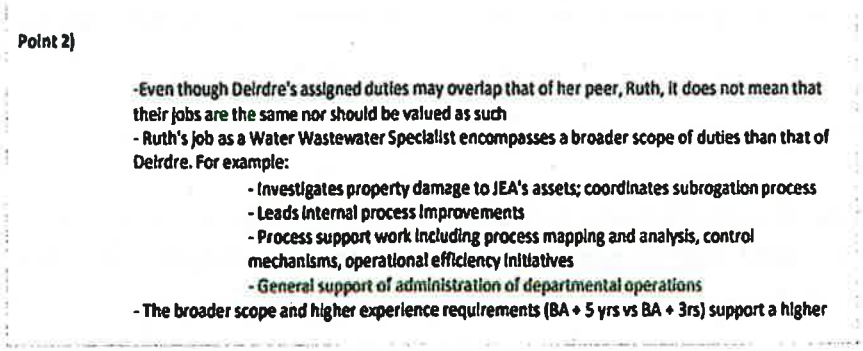
[1] This Court need not discuss whether Plaintiff was subject to an adverse employment action. But if such a finding were necessary, this Court would conclude Plaintiff has not demonstrated this prong of the prima facie case either.

[2] Plaintiff appears to claim her manager, Ruiz-Adams, was also a comparator. Plaintiff seems to maintain Smith, who was a supervisor over Ruiz-Adams, treated Ruiz-Adams better than Plaintiff based on race—even though both Plaintiff and Ruiz-Adams are black. Such a claim is contrary to Title VII. *See Wilson v. Wilkie*, No. 2:18-cv-01135-JHE, 2020 WL 1548396, at *8 (N.D. Ala. Apr. 1, 2020) (observing "[Plaintiff] cannot make out a prima facie case of race discrimination using a comparator of the same race, since that comparator is definitionally not outside the class.").

Remsen was treated more favorably; Remsen allegedly did not have to move to the main office, she was not scrutinized to the same level, and she was paid more.

Yet Remsen is not a valid comparator; Remsen was not similarly situated to Plaintiff in all material respects. *See Lewis*, 918 F.3d at 1218. JEA's job audit, completed following Plaintiff's complaint in late 2018, identified differences between the two positions and recognized Remsen was not similarly situated to Plaintiff. The job audit's "Summary Findings" opined Plaintiff's comparison to Remsen was "unfair" because "the scope and requirements of each of their jobs [was] significantly different." (Dkt. 74, Ex. 5, pg. 13). The audit specifically found:



Point 2)

-Even though Deirdre's assigned duties may overlap that of her peer, Ruth, it does not mean that their jobs are the same nor should be valued as such
- Ruth's job as a Water Wastewater Specialist encompasses a broader scope of duties than that of Deirdre. For example:
  - Investigates property damage to JEA's assets; coordinates subrogation process
  - Leads internal process improvements
  - Process support work including process mapping and analysis, control mechanisms, operational efficiency initiatives
  - General support of administration of departmental operations
- The broader scope and higher experience requirements (BA + 5 yrs vs BA + 3rs) support a higher

Id. Evans, JEA's Director of Labor Relations, summed up the audit this way, "The Job Audit found that Ms. Baker did not perform the same duties as Ms. Remsen and that Ms. Baker was properly compensated." (Dkt. 74, Ex. 5, pg.

2). In short, Remsen is not a similarly situated employee for Plaintiff to compare herself with.[3]

Even if Plaintiff had demonstrated a prima facie case, JEA satisfied its burden of production with the job audit. Plaintiff disagrees with the audit's results, but her disagreement cannot show JEA's proffered reason is a pretext for discrimination nor can it prevent summary judgment. Plaintiff must point to evidence, and she has not done so. Therefore, summary judgment is appropriate on Plaintiff's race discrimination claim.

Retaliation

Plaintiff suggests JEA unlawfully retaliated against her following allegations of pay disparity and a hostile work environment. An employer is prohibited by Title VII "from retaliating against an employee who has 'opposed any practice made an unlawful employment practice by [Title VII]' or who has 'made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under [Title VII].'" *Henderson v. FedEx Express*, 442 F. App'x 502, 506 (11th Cir. 2011) (quoting 42 U.S.C. §

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[3] In addition to the audit's conclusions, Plaintiff did not know who determined Remsen's pay rate or who supervised Remsen. (Dkt. 74, Ex. 3, pg. 88). Plaintiff also agreed Remsen's work may not have been as scrutinized as her own because management was satisfied with Remsen's work. (Dkt. 74, Ex. 3, pg. 89).

2000e–3(a)).

To prove a Title VII retaliation claim, Plaintiff, again, must rely on circumstantial evidence.[4] This means, Plaintiff must establish a prima facie case of retaliation by showing: "'(1) that she engaged in statutorily protected expression; (2) that she suffered an adverse employment action; and (3) that there is some causal relation between the two events.'" *Thomas v. Cooper Lighting, Inc.*, 506 F.3d 1361, 1363 (11th Cir. 2007) (quoting *Meeks v. Comput. Assocs. Int'l*, 15 F.3d 1013, 1021 (11th Cir.1994)). "If the plaintiff is able to make out a prima facie case, the burden shifts to the defendant to offer a legitimate reason for the challenged employment action. The burden then shifts back to the plaintiff to prove that the proffered legitimate reason is pretextual." *Henderson*, 442 F. App'x at 506 (internal citations omitted).

The question presented here is one of causation. "The burden of causation can be met by showing close temporal proximity between the statutorily protected activity and the adverse employment action." *Thomas*, 506 F.3d at 1364. But the Eleventh Circuit has cautioned, "mere temporal proximity, without more, must be 'very close.'" *Id.*

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[4] Plaintiff has not shown direct evidence nor a convincing mosaic of retaliation.

The length of time between the statutorily protected activity and the alleged adverse employment action is not an insignificant; an extended delay can doom a claim. "If there is a substantial delay between the protected expression and the adverse action in the absence of other evidence tending to show causation, the complaint of retaliation fails as a matter of law." *Higdon v. Jackson*, 393 F.3d 1211, 1220 (11th Cir. 2004). The Eleventh Circuit has advised "[a] three to four month disparity between the statutorily protected expression and the adverse employment action is not enough." *Thomas*, 506 F.3d at 1364. Absent "other evidence tending to show causation, if there is a substantial delay between the protected expression and the adverse action, the complaint of retaliation fails as a matter of law." *Id. See also Higdon*, 393 F.3d 1220 (explaining the Supreme Court "cited with approval decisions in which a three to four month disparity was found to be insufficient to show causal connection."); *Henderson*, 442 F. App'x at 506 (observing, "[i]f there is a delay of more than three months between the two events, then the temporal proximity is not close enough, and the plaintiff must offer some other evidence tending to show causation.").

Plaintiff's retaliation claim fails as a matter of law. *Thomas*, 506 F.3d at 1364. Plaintiff's protected activities occurred on December 3 and December

14 of 2018. Plaintiff's employment with JEA ended on June 28, 2019. Over six months elapsed between the protected activity and the termination. Plaintiff has no other evidence of retaliation and cannot show temporal proximity; her claim fails as matter of law.[5]

In addition, Title VII's anti-retaliation provisions are not both a sword and shield that can defeat all an employer's attempts at discipline. The Eleventh Circuit teaches, "Title VII's anti-retaliation provisions do not allow employees who are already on thin ice to insulate themselves against termination or discipline by preemptively making a discrimination complaint." *Alvarez v. Royal Atl. Devs., Inc.*, 610 F.3d 1253, 1270 (11th Cir. 2010).

Even if there were a connection between Plaintiff's alleged protected activity and her termination, that connection is severed by Plaintiff's intervening misconduct. *See Henderson*, 442 F. App'x at 506 (explaining, "[i]ntervening acts of misconduct can break any causal link between the protected conduct and the adverse employment action."); *Hankins v. AirTran*

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[5] Plaintiff made a complaint on June 28, 2019; hours before her termination. However, this protected activity needs no discussion as Plaintiff admitted she had already been told she would be terminated on June 28, 2019, if she refused reversion. The decision was already made and could not have in retaliation for the complaint. (Dkt 74, Ex. 1 pgs. 200-201).

Airways, Inc., 237 F. App'x 513, 521 (11th Cir. 2007) (agreeing an "intervening act of misconduct . . . severed the causal connection (if any) between [plaintiff's] initial complaint of discrimination and [defendant's] decision to terminate her employment."). JEA had legitimate, non-discriminatory reasons to give Plaintiff the option of reversion to her previous position or termination of her job, and JEA was able to act on those reasons. JEA did not demote Plaintiff because she complained about her pay or her work environment.

Hostile Work Environment

Plaintiff's claims to have endured a hostile work environment. The evidence for this allegation appears to be: her work product was subject to extra scrutiny; her supervisor did not allow her to attend workplace training (or forced her to abruptly withdraw from training); she was demoted without cause; her supervisor required her to submit the supervisor's drafted job factors rather than Plaintiff's own; her supervisor made statements that Plaintiff and her coworkers served at the pleasure of JEA's CEO; and her supervisor told her she didn't "look so good" and directed her to go home one day.

Title VII prohibits employers from discriminating "against any

individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e–2(a)(1). A Title VII hostile work environment claim "is established upon proof that 'the workplace is permeated with discriminatory intimidation, ridicule, and insult, that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment.'" *Miller v. Kenworth of Dothan, Inc.*, 277 F.3d 1269, 1275 (11th Cir. 2002) (quoting *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993)).

The Eleventh Circuit has "repeatedly instructed" if a plaintiff is to prove a claim, she must show:

> (1) that he belongs to a protected group; (2) that he has been subject to unwelcome harassment; (3) that the harassment must have been based on a protected characteristic of the employee, such as national origin; (4) that the harassment was sufficiently severe or pervasive to alter the terms and conditions of employment and create a discriminatorily abusive working environment; and (5) that the employer is responsible for such environment under either a theory of vicarious or of direct liability.

Miller, 277 F.3d at 1275. The fourth prong of this test "contains both an objective and a subjective component." *Id.*

In appraising the "objective severity of the harassment," the Circuit has provided the following factors to consider: "(1) the frequency of the conduct;

(2) the severity of the conduct; (3) whether the conduct is physically threatening or humiliating, or a mere offensive utterance; and (4) whether the conduct unreasonably interferes with the employee's job performance." *Id.* at 1276.

Plaintiff's claim for a hostile work environment fails. Plaintiff's list of alleged adverse actions—which occurred over more than six months—includes no conduct sufficiently severe or pervasive, humiliating or threatening to create a hostile work environment. Nor did the alleged harassment interfere with Plaintiff's ability to do her job. JEA is, therefore, entitled to summary judgment on this claim.

Conclusion

For the reasons outlined above, JEA is entitled to summary judgment. Plaintiff failed to establish her claims of discrimination, retaliation and hostile work environment.

Accordingly, it is **ORDERED**:

1. Plaintiff's Motion for Summary Judgment (Dkt. 65) is **DENIED**;

2. JEA's Motion for Summary Judgment (Dkt. 74) is **GRANTED**; and

3. The Clerk is directed to enter Judgment for Defendant JEA and close this file.

DONE AND ORDERED at Jacksonville, Florida, this 28th day of March 2022.

HARVEY E. SCHLESINGER
UNITED STATES DISTRICT JUDGE

Copies to:
Deirdre Baker, *Pro Se*
Ariel Cook, Esq.
Ashley Benson Rutherford, Esq.

In the
United States Court of Appeals
For the Eleventh Circuit

No. 22-11335

DEIRDRE BAKER,

Plaintiff-Appellant,

versus

JEA,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 3:20-cv-00889-HES-PDB

ON PETITIONS FOR REHEARING AND PETITIONS FOR REHEARING EN BANC

Appendix D

Before BRANCH and LUCK, Circuit Judges, and SMITH,* District Judge.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. FRAP 35. The Petitions for Panel Rehearing are also DENIED. FRAP 40.

* Honorable Rodney Smith, United States District Judge for the Southern District of Florida, sitting by designation.

No. 22-11335-J

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Deirdre Baker,

Plaintiff-Appellant,

v.

JEA

Defendant-Appellee.

Petition for Rehearing En Banc of Appeal from the United States District Court for the Middle District of Florida, Jacksonville Division

No. 3:20-cv-00889-HES-PDB

PETITION FOR REHEARING EN BANC

Deirdre Baker
2517 Pine Summit Dr E
Jacksonville, FL 32211
904-743-9449

Pro Se Party

Appendix E

No. 22-11335-J
Deirdre Baker v. JEA

Certificate of Interested Persons and Corporate Disclosure Statement

Pursuant to 11th Cir. R. 26.1-2(c), Deirdre Baker lists the persons and entities that were omitted from Appellee's untimely Certificate of Interested Persons (void of Corporate Disclosure Statement) to which Appellant does not agree deletion is proper per 11th Cir. R. 26.1-4:

City of Jacksonville

Lambert, Laura Lothman – U.S. District Trial Judge

Morales Construction Co., Inc.

Morales, Ricardo III – JEA Board / U.S. District Trial Judge Family Member

Office of General Counsel

Statement of *Pro Se* Appellant

I, Deirdre Baker, express a belief, based on a reasoned and studied judgment, that the panel decision is contrary to the following decision(s) of the Supreme Court of the United States or the precedents of this circuit and that consideration by the full court is necessary to secure and maintain uniformity of decisions in this court (should panel members not correct the clear errors of law brought to their attention in the petition for panel rehearing): *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986) and *Vance v. Ball State University*, 570 U.S. 421, 133 S. Ct. 2434, 186 L. Ed. 2d 565 (2013).

s/ Deirdre Baker
Pro Se Party

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Rules

Statement of the Issue

I. Panel decision is contrary to decisions of the Supreme Court of the United States.

Statement of the Course of Proceedings and Disposition of the Case

District Court Proceedings

Background: On August 7, 2020, Deirdre Baker ("Baker") – a *pro se* litigant, brought suit against JEA for its retaliation against her as a result of her race. On Pro Se 7 (Rev. 12/16) Complaint for Employment Discrimination Form of the federal district court, it specifically states "*(Note: Only those grounds raised in the charge filed with the Equal Employment Opportunity Commission can be considered by the federal district court under the federal employment discrimination statutes).*" See Doc. No. 30, pg. 4 and pg. 9 (retaliation based on race). During the discovery on September 28, 2021, Baker moved for summary judgment for her retaliation claim based on race and supported her motion with 174+ pages of credible evidence – thereby meeting her initial burden of production imposed by FRCP 56. On September 30, 2021, discovery ended, and the district court's summary judgment notice was filed by Deputy Clerk (Doc. No. 66).

In its response to her motion, JEA (Doc. No. 75) did not offer a legitimate reason for the two challenged adverse employment actions – the MSP nor the

demotion and stated, "Plaintiff's own record evidence shows that there are, in fact, no issues of fact." *Id.* at 10. **All** material facts asserted by Baker in her motion (Doc. No. 65) were admitted true by JEA and thus JEA via Ms. Ariel P. Cook gave the judge instruction to **deny** its own motion for summary judgment filed 34 days later. See Doc. No. 75, page 11 "**IV. Conclusion** WHEREFORE, for the foregoing reasons, JEA submits that Defendant's Motion for Summary Judgment should be denied. DATED this 1st day of November, 2021." On March 28, 2022, the district court considered other grounds that were ***not*** raised in the charge filed with EEOC, overlooked and omitted Baker's **undisputed** facts and evidence of retaliation, then granted Defendant's MSJ – *which judge was instructed by Ms. Cook to deny*, based on unsupported false allegations of "intervening misconduct" that were disputed by Baker with evidence already in the discovery record. See Doc. No. 65, pg. 22 and its supporting factual evidence Doc. No. 32-1, pg. 1 "THE DISCHARGE WAS FOR REASON OTHER THAN MISCONDUCT CONNECTED WITH THE WORK."

On April 8, 2022, Baker appealed to the district court when she objected to this judicial error via a Rule 60(b) motion for relief (Doc. No. 100) which was denied on April 13, 2022. On April 22, 2022, Baker timely filed her Notice of Appeal to request *de novo* review of her denied motion for summary judgment against JEA for its unlawful employment practices that JEA admitted true.

Appeals Court Proceedings

Oral argument was held on August 15, 2023, and the Opinion was issued on August 28, 2023. In its opinion, the panel showed deference to the lower court's decision as it also considered other grounds that were ***not*** raised in the charge filed with EEOC, overlooked and omitted Baker's **undisputed** facts and evidence of retaliation, then affirmed the district court entering judgment for Defendant based on unsupported false allegations of "intervening misconduct" that were disputed. On September 11, 2023, Baker objected to this judicial error via a Petition for Panel Rehearing. See USCA11 Case: 22-11335 Document: 37.

Argument and Authorities

The panel erred when it failed to perform *de novo* review from the beginning in accordance with Rule 56(e)(3) precedent set forth in *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). Both the district court and the panel erred when it overlooked and omitted the **undisputed** facts and evidence of retaliation it is required by law to state and rely on pursuant to Rule 56(e) to determine the legal consequences – to which JEA could **not** demonstrate a genuine issue for trial. A proper *de novo* review is a non-deferential standard of review which would have revealed the errors the district court made and would have addressed the issue of fraud that both this Court and the lower court continue to overlook. Because JEA announced it was seeking summary judgment via a motion

on October 14, 2021, (Doc. No. 67), Baker countered JEA's defense argument **under Rule 56(e)**. However, the panel alleges that it lacks jurisdiction to review the magistrate ruling (Doc. No. 68) "because Baker did not appeal [[1]] to the district court", then cites authority stating, "…party failed to object to the order…". Opinion at 9 n.5. Below are three screenshots *precisely* showing her Rule 60(b) appeal to the district court – its docket sheet entries 70-72[2], her brief (Doc. No. 9, pg. 20), and her relief sought (Doc. No. 70) objecting to the order:

10/20/2021	70	MOTION for Relief from Order by Deirdre Baker. (BGR) (Entered: 10/21/2021)
10/21/2021	71	**ORDER denying 70 Plaintiff's Motion for Relief from Order. Defendant shall have up to and including 11/1/21 to respond to Plaintiff's Motion for Summary Judgment. SEE ORDER FOR DETAILS. Signed by Magistrate Judge James R. Klindt on 10/21/2021. (KEH)** (Entered: 10/21/2021)
10/25/2021	72	**ORDER of recusal. Signed by Judge Marcia Morales Howard on 10/25/2021. (JW)** (Entered: 10/25/2021)

USCA11 Case: 22-11335 Document: 9 Date Filed: 06/01/2022 Page: 20 of 33

Argument

I. Magistrate Judge James R. Klindt abused his discretion when he allowed JEA to obtain its sixth extension of time via intrinsic fraud on the court

[1] **Misapprehended Fact:** The issue of **fraud** is brought forth on appeal, **not** the extension itself. The Supreme Court of the United States has held that "[n]o fraud is more odious than an attempt to subvert the administration of justice." See *Hazel-Atlas Co. v. Hartford Co.*, 322 U.S. 238, 252, 64 S. Ct. 997, 88 L. Ed. 1250 (1944).

[2] "The district judge in the case must consider timely objections…" See FRCP 72(a). Thus, district judge Howard failed to perform her role in the judicial process on summary judgment as she was obligated to decide the motion and **set aside the order granting the extension procured by fraud**.

Relief Requested

WHEREFORE, for the reasons stated above, Plaintiff respectfully requests relief from Order (Doc. No. 68) and deny Motion to Extend Defendant's Deadline to Respond (Doc. No. 67), on the grounds of fraud, See Fed. R. Civ. P. 60(b)(3), and it is her prayer that this Court expeditiously adjudicate Plaintiff's legal claim pursuant to Fed. R. Civ. P. 56(e)(2) & (3) and 56(f)(2) & (3).

Accordingly, it **is** within this Court's jurisdiction to review the magistrate ruling (Doc. No. 68) which allowed fraud on the court to occur by extending JEA's response time to its summary judgment filed date asserting unsupported false allegations that both this Court and the district court relied on to make its ruling.

Conclusion

The Supreme Court of United States makes clear that "[i]f the supervisor's harassment culminates in a tangible employment action, the employer is strictly liable." See *Vance v. Ball State University*, 133 S. Ct. 2434, 2439, 570 U.S. 421,186 L. Ed. 2d 565 (2013). In violation of Rule 56(e), the panel overlooked and omitted the **undisputed** facts and evidence of retaliation proving Smith's harassment resulted in two tangible employment actions causing Baker to suffer economic harm. "Rule 56(e) therefore requires [JEA] to…designate "specific facts

showing that there is a genuine issue for trial." See *Celotex Corp.* at 324. In response to her motion, JEA did **not** demonstrate a genuine issue for trial. Thus, Baker's "summary judgment, if appropriate, shall be entered against [JEA]." See *Celotex Corp.* at 322, n. 3 (emphasis added).

Therefore, the Opinion must be vacated and issue a new order reversing the district court's ruling with no further proceedings as this is a summary judgment record which already includes Baker's calculated damages caused by JEA.

Date: September 18, 2023

Deirdre Baker

Pro Se Party

Certificate Of Compliance

This petition complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) – excluding the parts of the document exempted by FRAP 32(f), because it contains 1134 words (excluding the three screenshots). This response complies with the typeface requirements of FRAP 32(a)(5) and the type-style requirements of FRAP 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word, in 14-point Times New Roman font.

Relief Requested

Accordingly, JEA is liable for the resulting damages as stated during oral argument (time stamp 8:13 – 10:10). Compensatory damages include economic damages and back pay ($472,571.77), front pay ($1,275,262.45), and $500,000 for emotional distress caused by JEA in the amount of $2,247,834.22 (before applicable prejudgment interest on the back pay portion). Baker's termination date was June 28, 2019. Pursuant to Florida Statute 768.73(c), $22,500,000 in punitive damages are supported by the same subject prior precedent *Charles V. Leo 2019 Appeals Court* decision cited in Baker's MSJ (Doc. No. 65, pgs. 19-20), her Reply (Doc. No. 76, pg. 7), and her Brief pg. 10.

As a matter of law, the district court's ruling must be **REVERSED** with no further proceedings as this is a summary judgment record which already includes Baker's calculated damages caused by JEA.

Date: September 11, 2023

Deirdre Baker

Pro Se Party

In the
United States Court of Appeals
For the Eleventh Circuit

No. 22-11335

DEIRDRE BAKER,

Plaintiff-Appellant,

versus

JEA,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 3:20-cv-00889-HES-PDB

ON PETITIONS FOR REHEARING AND PETITIONS FOR REHEARING EN BANC

Appendix F

Before BRANCH and LUCK, Circuit Judges, and SMITH,* District Judge.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. FRAP 35. The Petitions for Panel Rehearing are also DENIED. FRAP 40.

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* Honorable Rodney Smith, United States District Judge for the Southern District of Florida, sitting by designation.

On July 21, 2023, (*25 days before oral argument in this case*) the Honorable Harvey Schlesinger, sitting by designation in this Eleventh Circuit authored an opinion[6] on the **same important matter**, but ruled opposite in the way that he did in this case. Additionally, he documented numerous times examination of the record, "Following oral argument and **a review of the record**, we affirm…", pg. 3, "After **a careful review of the record**, however, we conclude…", pg. 20, "We conclude that there is substantial **evidence on the record** to support…", pg. 23 n.2, "This conclusion is **amply supported by the record**…", pg. 25 (emphasis added).

In contrast, he made no mention of Baker's 174+ pages of evidence filed on or before September 28, 2021, when this became a summary judgment record for disposition – and neither did Hon. Branch, Luck, and Smith on appeal. **Proving the required *de novo* review was not done,** the opinion continuously made deference to the lower court's decision to affirm the incorrect judgment. Baker will explain that the judgment of the lower court and the subsequent opinion affirming it raises compelling reasons for the United States Supreme Court to grant certiorari and settle these significant questions of federal law.

This motion establishes that a good cause exists for a stay and is made in good faith for the reasons stated above and not for purposes of delay.

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[6] See Circuit Cases: 21-11791 Document 56-1, Before JORDAN and ROSENBAUM, Circuit Judges, and SCHLESINGER,* District Judge (authoring).

#	Protected Expression 42 U.S.C. § 2000e-2(a)	Adverse Employment Action 42 U.S.C. § 2000e-3(a)	Temporal Proximity
1	Complaint to manager (*racial compensation disparity*) **10/09/18**	Subject to **harassment** / hostile working environment beginning on **11/16/18** through termination of employment	38 days
2	Discussion on job factors (*privilege of employment*) and compensation disparity complaint 12/03/18 **11:30 a.m. -12:30 p.m.**	***Tangible***: Plaintiff was provided with discriminatory job factors that did not include the opportunity to exceed standard – which hindered her pay increase 12/03/18 **4:16 p.m.**	**Within 4 hours**
3	Re: job factors – complaint to Director, Organizational Effectiveness and Payroll 12/10/18	1. Interference with work 12/12/18 **11:18 a.m.** 2. Retaliation 12/12/18 **4-4:30 p.m.** **MSP[10] IP Items (1&2)** 3. Work related threat 12/12/18 **4:58 p.m.**	**2 days**
4	*Harassment* complaint to CHRO[11] 12/13/18	***Tangible*** Disciplinary **MSP IP item 1.** 1/23/19, precluding bonus	41 days / 1.4 mos.
5	Formal Internal EEO complaint 12/14/18	***Tangible*** Disciplinary **MSP IP item 2.** 1/23/19, precluding bonus	40 days / 1.3 mos.
6	Re: compensation and MSP complaint to CHRO 02/20/19	Plaintiff not afforded opportunity via **MSP IP item 2.** to "debate" job audit results 04/03/19, precluding her pay increase	42 days / 1.4 mos.
7	*Hostile work environment* complaint to Management, HR, and Labor relations 06/18/19	1. JEA's failure to complete **required** investigation 6/19/19 per HR policy 2. ***Tangible*** Demotion / Reversion Option 06/27/19, reducing pay	**1 day** 9 days
8	*Workplace retaliation* complaint to Senior Management including Chief Operating Officer (COO) 06/28/19 **8:26 a.m.**	1. ***Termination*** – undeserved negative (ineligible for rehire) employment reference, causing economic harm 2. PRIDE recognition reward 06/29/19 (**Saturday**), 07/01/19, 07/03/19, respectively 3. JEA's 8/23/19 unwarranted contesting of unemployment compensation claim	**Within 2 hours** **1 day** 3 days 5 days 56 days / 1.9 mos.

Accordingly, regarding magistrate judge Patricia D. Barksdale's findings of discriminatory intent for the retaliation and hostile work environment claims, she

[10] Manager Support Program (disciplinary action)
[11] Chief Human Resources Officer, Angelia (Angie) Hiers

Appendix G

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

DEIRDRE BAKER,

Plaintiff,

v. Case No. 3:20-cv-889-J-34JRK

JEA,

Defendant.

MOTION FOR SUMMARY JUDGMENT

COMES NOW Plaintiff, pursuant to Local Rules of the United States District Court for the Middle District of Florida Rule 3.01(a) and Federal Rules of Civil Procedure Rule 56, and respectfully moves for summary judgment on all the claims in the operative Complaint for Employment Discrimination (Doc. No. 30):

- Plaintiff served on Defendant her Request for Admissions on July 13, 2021. See Doc. No. 59; Response – Exhibit A ("Resp. – Ex.").
- On August 12, 2021, Defendant served on Plaintiff their Responses[1] and Objections to Plaintiff's Request for Admissions (See Attached Exhibit A).

Appendix H

[1] This critical information to the case was deliberately omitted from Defendant's two Motions and Response (See Doc. Nos. 51, 57, and 58) filed on August 12, 20, and 23, 2021. Being fully aware of Defendant's liability, JEA served objections and denials – blatantly committing perjury, to preclude the awarding of non-pecuniary and punitive damages to Plaintiff.

Claims Upon Which Summary Judgment is Sought

On August 7, 2020, Deirdre Baker ("Plaintiff") filed a lawsuit as a *pro se* litigant against Defendant, ("JEA") in which she identifies Title VII of the Civil Rights Act of 1964, as codified, U.S.C. § § 2000e to 2000e-17 as the legal basis of her employment discrimination claim – including harassment, based on race. The discriminatory conduct of which Plaintiff complains is that she was retaliated against after filing an internal EEO complaint with her employer (JEA). Being subjected to a hostile work environment, she reached out to ten individuals over the course of eight months for resolution. JEA [being aware of plaintiff's written documented complaints to management], terminated plaintiff's employment.

See Doc. No. 30; Complaint & Doc. No. 59; Resp. – Exhibits E and H.

Title VII, 42 U.S.C. § 2000e-2 Unlawful employment practices, states:

(a) Employer practices
It shall be an unlawful employment practice for an employer—
(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race…

Title VII, 42 U.S.C. § 2000e-3 Other unlawful employment practices, states:

(a) Discrimination for making charges, testifying, assisting, or participating in enforcement proceedings
It shall be an unlawful employment practice for an employer to discriminate against any of his employees… because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

Memorandum of Law

Pursuant to Federal Rules of Civil Procedure Rule 37(c)(2), which states:

> (c) **Failure to Disclose, to Supplement an Earlier Response, or to Admit.**
> (2) *Failure to Admit.* If a party fails to admit what is requested under Rule 36 and if the requesting party later proves…the matter true…

Pursuant to Federal Rules of Civil Procedure Rule 56(a), which states:

> (a) **Motion for Summary Judgment or Partial Summary Judgment.** A party may move for summary judgment, identifying each claim or defense – or the part of each claim or defense – on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

Material Facts and Admissions by Defendant, JEA

This case was brought by Plaintiff, a former employee of JEA – hired to a full-time position on July 30, 2001, after having worked under the temporary contract agency as an employee since May 30, 2000. It is undisputed that she was a qualified employee. On August 10, 2015, Plaintiff earned her sixth (6th) promotion to an appointed leadership position as the Financial Analyst W/WW Operations, compensated at pay grade F. In acknowledgement, Plaintiff was told by senior level management that her "[promotion] is not only good for [plaintiff], but also good for the company." Excitedly, Plaintiff was selected to move to the corporate headquarters of JEA, under the supervision of a newly hired manager, Melinda

Ruiz-Adams ("Ruiz") in October of 2017. Other than Plaintiff, JEA had no other incumbents at the Analyst level. See JEA's Admission to Plaintiff's Request for Admissions ("RFA") Nos. 1, 2, 4, 16 and 21.

It is undisputed that Plaintiff – a black female, is a member of a protected class and that her race [African American] was a factor in employment actions taken by JEA with respect to Plaintiff. See Doc. No. 31; Answer, id. at 2, and 5. At the request of senior level management on November 29, 2017, Plaintiff began performing the same work duties as her white comparator – Ruth Remsen ("Remsen"), who was compensated at a higher pay grade G (See Attached Exhibit B), See Doc. No. 59; Resp. – Ex. D, id. at 5, 10-12, 14-18, proving the matter true which JEA failed to admit on RFA No. 3 – demonstrating there is no genuine dispute as to this material fact. See Fed. R. Civ. P. 37(c)(2) and 56(a). On October 8, 2018, Plaintiff earned an 'exceeds standard' performance rating of those same work duties – demonstrating that she was [more than] qualified for her position. See Doc. No. 59; Resp. – Ex. D, id. at 2, and JEA's Admission to RFA No. 5 of this undisputed fact. Shortly thereafter, Plaintiff verbally[2] communicated with Ruiz about the racially disparate treatment with respect to compensation of Plaintiff as she was treated less favorably than Remsen – who was identified as the similarly

[2] This verbal communication was also backed up in writing, See Doc. No. 59; Response – Exhibit E, validating that JEA knew of the protected activity.

situated employee in all relevant respects. When Plaintiff opposed the perceived discrimination against Plaintiff with respect to her compensation, she engaged in protected activity. "The term 'protected activity' refers to action taken to protest or oppose statutorily prohibited discrimination." *Cruz v. Coach Stores Inc.*, 202 F.3d 560, 566 (2nd Cir.2000) (*citing* 42 U.S.C. § 2000e-3 and *Wimmer*, 176 F.3d at 134-135); *see also Sumner v. U.S. Postal Service*, 899 F.2d 203, 209 (2nd Cir.1990) "In addition to protecting the filing of formal charges of discrimination, § 704(a)'s opposition clause protects as well informal protests of discriminatory employment practices, including making complaints to management..."

Being a first-year manager, See Doc. No. 59; Resp. – Ex. D, id. at 11, Ruiz responded to Plaintiff's opposition by indicating that she needed to "get with Carol(e)" regarding the compensation. Meanwhile, the deadline for appointed employees to set their own goals and objectives ("goals" / "objectives" / "job factors") was November 30, 2018. As a privilege of employment, this group of JEA appointed [approximately 300 of the 2,000+ total] employees set their own objectives. See Doc. No. 59; Resp. – Ex. F[3], proving the matter true which JEA failed to admit on RFA No. 8 – demonstrating there is no genuine dispute as to this material fact. See Fed. R. Civ. P. 37(c)(2) and 56(a). On November 29, 2018,

[3] Note this is the same document Plaintiff provided to JEA who admitted the matter true on RFA No. 9 – see section titled "Civil Service Objective Setting" as representative of the employees who do not receive the same privilege of employment.

Plaintiff set and submitted into Oracle her own goals and objectives in accordance with the appointed employees' privilege of employment. On December 3, 2018, Ruiz held a meeting with Carol Higley ("Higley") – Human Resources Business Partner, Carole Smith ("Smith") – Ruiz's manager, and Plaintiff. In this meeting, the substantially equal work duties of both Remsen and Plaintiff were confirmed. Plaintiff again reiterated the compensation disparity and noted the required increase in work duties (particularly the O&M Budget Expense Detail) is on the job description of Ruiz – who was compensated at an even higher pay grade H (See Attached Exhibit C). In response, Higley indicated that she would get clarification and advice from 'Scott' in Compensation on the 'job factors' – instructing Plaintiff to hold off [on Plaintiff entering her goals and objectives relative to performance management of her job duties] and put "to be determined: pending Scott's input" instead.

Plaintiff met applicable standards. In meeting "management's expectations", Plaintiff continued to perform the same work duties at a lower pay rate than her white peer, Remsen. See Doc. No. 59; Resp. – Ex. D, id. at 13. However, because the ulterior motive of the December 3rd meeting was to intimidate Plaintiff rather than investigate her discrimination complaint via the forthcoming job audit as instructed by Higley, Ruiz took matters into her own hands and repeatedly harassed Plaintiff to resubmit her goals and objectives (now referred to as 'job

factors') – *under Compensation's review*, on 12/3, 12/6, 12/10, and 12/12/2018 respectively. Instead of putting "to be determined: pending Scott's input" as directed by Higley, Plaintiff obeyed her manager and resubmitted as instructed by Ruiz who stated, "use this [job factors written by Ruiz] as your guide" when Plaintiff revised her own goals and objectives on each respective date in accordance with the appointed employees' privilege of employment.

On December 10, 2018, after revising and resubmitting *in a different way* each time exactly as instructed by her manager – but being denied twice, Plaintiff requested permission from Ruiz during their telephone conversation at 1:26 p.m. to meet with Robb Mack ("Mack") Director, Organizational Effectiveness and Payroll. Receiving permission from Ruiz, Plaintiff met with Mack – who confirmed Plaintiff was meeting the applicable standards in submission of her own goals and objectives in accordance with the appointed employees' privilege of employment. See 42 U.S.C. § 2000e-2(a)(1). Accordingly, Plaintiff obeyed her manager in that she revised and resubmitted (a third time) her own goals and objectives in accordance with the appointed employees' privilege of employment, then emailed Ruiz the results of said meeting (See Attached Exhibit D). See Doc. No. 59; Resp. – Ex. H, id. at 12.

Subsequently, Smith – a white female [*cognizant of the prior protected activity Plaintiff engaged in*], allowed her personal bias against plaintiff's race to dictate

Smith's unlawful retaliatory and hostile behavior in an environment that was not hers to control. For example, two days later – on December 12, 2018, at 11:12 a.m. [*nine days following acknowledgement of the protected activity*], Smith[4] interfered with plaintiff's work stating, "It [plaintiff's work] is not in accordance with the department's plans" while she was conspiring a Reversion[5] and Replacement meeting with Higley and Ruiz (*the same attendees of the December 3rd meeting, absent Plaintiff*) held from 4:00 until 4:30 p.m. – demonstrating her coercive power. Twenty-eight (28) minutes after the conclusion of Smith's meeting, at 4:58 p.m., Plaintiff suffered an adverse employment action receiving a job threatening email from Ruiz – Cc Smith, [*imposing consequence if Plaintiff continues to oppose a perceived EEO violation*] to again resubmit "job factors" a fourth time even though she was meeting the applicable standards as an appointed employee's privilege of employment (See Attached Exhibit E). See Doc. No. 59; Resp. – Ex. G, id. at 2, 42 U.S.C. § 2000e-2(a)(1) & § 2000e-3(a), and Fla. Stat. §768.72(2)(a).

This adverse action [which] occurred under circumstances giving rise to an inference of discrimination caused Plaintiff to reach out to the Chief Human Resources Officer ("CHRO"), Angie Hiers ("Hiers" / "CHRO") – Higley's manager, as the investigation of Plaintiff's complaint of the compensation disparity

[4] Undermining Ruiz, Smith [not a recipient of the email] inserted herself into the conversation.
[5] See Doc. No. 59; Response – Exhibit A, id. at 5, "Reversion" definition.

via the forthcoming job audit had not occurred. "To prove a Title VII racial discrimination claim, the plaintiff must prove the following elements to make out a prima facie case: (1) she is a member of a protected class; (2) she was qualified for her position; (3) she suffered an adverse employment action; and (4) the adverse action occurred under circumstances giving rise to an inference of discrimination. *Fisher v. Vassar College*, 114 F.3d 1332, 1344 (2d Cir.1997)." *Sample v. Wal-Mart Stores, Inc.*, 273 F.Supp.2d 185, 188 (D.Conn.,2003).

It is undisputed that Plaintiff engaged in protected activity. Charna Flennoy ("Flennoy") – Labor Relations Specialist, held a meeting on December 13, 2018, wherein Plaintiff engaged in protected activity by her participation in the internal EEO investigation process at JEA – exercising her right to be free from employment discrimination, including harassment under the law. See JEA's Admission to RFA No. 11 of this undisputed fact. Immediately following said meeting, Plaintiff notified Ruiz Cc Smith of her participation of said investigation. On December 14, 2018, Plaintiff furthered her verbal complaint by subsequently filing her formal written internal EEO complaint against Ruiz and Smith via email to Flennoy – Cc Maryanne Evans ("Evans"), to ensure JEA was aware of the protected activity and at the time of the adverse action, Plaintiff was meeting the applicable standards. Obeying her manager – for the fourth time, Plaintiff revised and resubmitted her own goals and objectives in accordance with the appointed

employees' privilege of employment, exactly in line with the objective/goal content expectation. Plaintiff emailed Ruiz Cc Smith as such, informed of her formal internal complaint, then participated in two additional meetings – one when Flennoy met with Plaintiff and Ruiz on December 14, 2018. On December 17, 2018, Plaintiff emailed additional support of her harassment complaint against Smith – who was identified to have been inserting herself and interfering with plaintiff's work ever since Plaintiff engaged in protected activity when she communicated opposition of an unlawful employment practice to Ruiz (See Attached Exhibit F). See 42 U.S.C. § 2000e-3(a). Thus, on January 9, 2019, following the three-week holiday / vacation period, Flennoy continued her investigation; however, she met only with Plaintiff, absent Smith.

It is undisputed that Plaintiff suffered an adverse employment action. While she continued to perform at an exceeds standard rating and without any prior discipline, Plaintiff suffered an adverse employment action. See JEA's Admission to RFA Nos. 5 & 12. Smith [*offender of Plaintiff's current investigative complaint*] took matters into her own hands – acting on the December 12th threat, by holding a meeting with Evans and Plaintiff (*excluding Ruiz*) on January 23, 2019, wherein Smith retaliated by imposing on Plaintiff a condition of continued employment. Plaintiff was unwarrantedly placed on a disciplinary Appointed / Manager[6]

[6] See Doc. No. 59; Response – Exhibit A, id. at 4, "MSP" definition.

In the

United States Court of Appeals

For the Eleventh Circuit

No. 22-11335

DEIRDRE BAKER,

Plaintiff-Appellant,

versus

JEA,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 3:20-cv-00889-HES-PDB

ON PETITIONS FOR REHEARING AND PETITIONS FOR REHEARING EN BANC

Appendix D

Before BRANCH and LUCK, Circuit Judges, and SMITH,* District Judge.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. FRAP 35. The Petitions for Panel Rehearing are also DENIED. FRAP 40.

* Honorable Rodney Smith, United States District Judge for the Southern District of Florida, sitting by designation.

Support Program ("MSP"), told to sign the form, resubmit 'job factors' verbatim as Ruiz set for Plaintiff [*discriminating against Plaintiff with respect to her privilege of employment*] and discontinue communication about job duties or be terminated from employment. See Doc. No. 59; Resp. – Ex. G, id. at 6, and Fla. Stat. § 768.72(2)(a). This retaliation by Smith in response to Plaintiff's 'protected activity (forbidden motive)', See *Verdrager* v. *Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C.*, 474 Mass. 382, 405-406 (2016), caused Plaintiff to be ineligible for any bonus that would be due to her [because of her earned exceeds standard performance rating], as stated by Evans. See Fla. Stat. § 768.73(1)(c). Only *after* Plaintiff signed the MSP, was she then provided with a *misleading*[7] job audit (See Attached Exhibit G). Not being allowed to speak with her manager, Plaintiff conformed with the MSP – including submission of the job factors that were set[8] and approved by Ruiz on January 24, 2019. Ruiz's review and approval of said job factors included her admission of the job factors "written by Melinda Ruiz-Adams." Thus, Plaintiff's employment continued – demonstrating she was meeting the applicable standards. See JEA's Admission to RFA Nos. 13 & 14, and See Doc. No. 59; Resp. – Ex. G, proving the matter true which JEA failed to admit on RFA Nos. 10 and 13 – demonstrating there is no genuine dispute as to this material

[7] The CHRO later confirmed the misleading job audit was bogus on February 25, 2019.
[8] The set 'job factors' were written by Ruiz in a way to preclude Plaintiff from achieving an 'exceeds standard' performance rating the next fiscal year, thereby inhibiting Plaintiff from advancing financially because of her unsurpassed work performance.

fact. See Fed. R. Civ. P. 37(c)(2) and 56(a). Title VII analysis requires that "none of the participants in the employment decision-making process" be influenced or motivated by racial bias. *Anderson v. WBMG-42*, 253 F.3d 561, 566 (11th Cir. 2001), quoting *Jones v. Gerwens*, 874 F.2d 1534, 1542 n. 13 (11th Cir. 1989).

On January 25, 2019, when Plaintiff rebutted the validity of the MSP (as she was not in agreement with what she signed – under compulsion, and the meeting was not conducted by plaintiff's manager), Evans refused to respond. See Doc. No. 59; Resp. – Ex. H, id. at 12. By having her privilege of employment revoked by Smith, Plaintiff was treated less favorably than the other approximately 299 similarly situated appointed employees. As the results of the internal EEO investigation was still pending, Plaintiff furthered her rebuttal of the MSP by following up with the CHRO to reiterate JEA violating its own harassment-free workplace policy and the pay grade discrimination inquiry remain unresolved – as documented by the February 8, 2019, email to Flennoy. See Doc. No. 59; Resp. – Ex. E[9] and See 42 U.S.C. § 2000e-2(a)(1) proving the matter true which JEA failed to admit on RFA Nos. 6 and 7 – demonstrating there is no genuine dispute as to this material fact. See Fed. R. Civ. P. 37(c)(2) and 56(a). In the February 20, 2019, meeting with Hiers, Plaintiff discussed the racially disparate treatment with respect

[9] This email recorded the prior verbal communication between Plaintiff and Ruiz – validating that JEA knew of the protected activity.

to Plaintiff's compensation, her privilege of employment, and her rebuttal to the MSP. The CHRO indicated Ruiz "may be on the defense as a new manager" and explained the MSP is only valid if [Plaintiff's] manager is having recurring meetings (i.e., weekly or biweekly basis) with [Plaintiff] in regard to the MSP for improvement. **Ruiz never met with Plaintiff.** The CHRO asked Plaintiff to send her the referenced documents discussed in the meeting so that she [Hiers] can address the issue. On February 25, 2019, the CHRO revealed that a job audit had *not* been completed for Plaintiff's position. Consequently, the CHRO ordered a job audit – validating the 'job audit' Smith purported as fulfillment of the agreement to Plaintiff after signing the MSP on January 23, 2019, was bogus.[10] Additionally, the CHRO scheduled 'mentoring' sessions with Ruiz because of the February 20th meeting with Plaintiff (See Attached Exhibit H).

JEA intended to discriminate. Disparate treatment analysis "requires that none of the participants in the decision-making process be influenced by racial bias." *Gerwens,* 874 F.2d at 1542 n. 13. "Thus, the motivations of both the [JEA Human Resources Business Partner] and of [upper management] are pertinent." *Id.* See *Anderson v. WBMG-42*, 253 F.3d 561, 566 (11th Cir. 2001). During March of 2019, Ruiz conformed to the official job audit investigation, with the results returned on April 3rd – proving Plaintiff's compensation and job duties

[10] See JEA's Admission to RFA No. 15, as additional confirmation.

discrimination claim. Take note that the purported job audit – which was proposed by Higley in the December 3rd meeting, has now been proven bogus by the CHRO – Higley's manager. Subsequently, Higley – a white female [*cognizant of the prior protected activity Plaintiff engaged in*], allowed her personal bias against plaintiff's race to dictate Higley's unlawful retaliatory behavior. Before the pay increase adjustment and/or adjustment to job responsibilities and/or job title were ever addressed, the CHRO retired on April 26, 2019 (See Attached Exhibit I). After her manager's retirement, Higley [conspiring against Plaintiff] took matters into her own hands and began "help[ing]" Ruiz[11] over the next *two months*. See JEA's Admission to RFA No. 27, and Fla. Stat. § 768.72(2)(a).

Over the next *two months*, Plaintiff continued to be subjected to the retaliatory and hostile behavior of Ruiz and Smith. Another member of the Senior Leadership Team ("SLT") Deryle Calhoun ("Calhoun" / "VP/GM") – Smith's manager, began in May of 2019, requesting and preferred Plaintiff's skillset for financial deliverables over Ruiz going forward and requested Plaintiff take the lead on presenting to his team of upper management. Following Plaintiff's discovery of an error within the General Ledger (missed by both the accounting and budget departments) during the May 20, 2019, VP/GM directors meeting, Plaintiff received verbal recognition from the VP/GM, (Smith's manager) for Plaintiff's

[11] Ruiz later recognized Higley three business days after Ruiz terminated Plaintiff's employment.

keen eye in making the "good catch." Ruiz conformed to the VP/GM's prestige acknowledgment of Plaintiff's praiseworthy job performance by awarding the recommended recognition points on May 21, 2019. See JEA's Admission to RFA No. 17. The error that Plaintiff discovered – wherein she was praised in front of upper management team, was reflected in Smith's department budget. As a result, Plaintiff was selected by the VP/GM to be included in his meeting with Ruiz before his scheduled Monthly Business Review with the JEA Board of Directors. Additionally, Plaintiff was selected by the VP/GM to meet one-on-one with each of his direct reports (which includes Smith[12]) monthly to ensure each are monitoring their own respective budgets appropriately and for Plaintiff to make presentation of her work in his next Weekly W/WW Directors Meeting which was scheduled for June 17, 2019 (See Attached Exhibit J).[13]

Plaintiff subjected to hostile behavior. Two to three minutes before the said meeting in which Plaintiff was to present her exemplary work to Smith's manager and peers, Smith abruptly and abrasively entered Plaintiff's cubicle verbally attacking her – imposing on Plaintiff an impossible task,[14] in direct contradiction to Plaintiff's agreement with Ruiz (plaintiff's manager) and the VP/GM. Smith

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[12] Plaintiff met with Smith on June 14, 2019, wherein she set forth her work to be presented.
[13] Note the number of emails (including over the weekend) following the 14th meeting, id. at 4.
[14] As stated on the record, Plaintiff did not have access to the Hyperion software Ruiz used to create her [Ruiz] manager roll-up report that Smith wanted, stating: "I want this one, get it to me!", intentionally pursuing Plaintiff. See Doc. No. 47; Reply – Ex. C, id. at 18:2-19:24.

succeeded in causing Plaintiff harm in that the level of anxiety and stress Plaintiff experienced because of Smith's misconduct, affected Plaintiff physically so much to the point that Plaintiff was unable to execute the remainder of her work duties – including her scheduled presentation in said meeting. In observing and commenting on Plaintiff's physical ailment stating "you [Plaintiff] don't look so good" following Smith's misconduct, Ruiz instructed Plaintiff to go home. See Doc. No. 47; Reply – Ex. B, id. at 24:20-25:3, Fla. Stat. § 768.72(2)(a) and Fla. Stat. § 768.73(1)(c). This premediated, hostile conduct of Smith – intentionally interfering with plaintiff's work and causing Plaintiff harm, was reported on June 18, 2019,[15] to Smith (perpetrator), Calhoun, Ruiz, Flennoy, Evans, and Higley[16] – validating JEA was cognizant of Plaintiff's protected activity. Just as Flennoy did on December 13, 2018, she began the internal EEO investigation process at JEA from Plaintiff's June 18, 2019, documented harassment complaint. See Doc. No. 59; Resp. – Ex. H, proving the matters true which JEA failed to admit on RFA Nos. 18-20 – demonstrating there is no genuine dispute as to these material facts. See Fed. R. Civ. P. 37(c)(2) and 56(a). Flennoy organized a June 19, 2019, 9:30 a.m. "discussion" meeting in the office of Jon Kendrick ("Kendrick" / "Interim CHRO") – Higley's peer, which [meeting request] was forwarded to Ruiz. Flennoy

[15] See JEA's Admission to RFA No. 18.
[16] Note "catch up" meeting organized by Higley June 18th from 2:30-3pm on Ruiz's calendar (*same attendees of the December 12th Reversion and Replacement meeting*). See Attached Exhibit K, id. at 2.

met with Plaintiff on June 20, 2019, wherein Plaintiff described her emotional distress caused by Smith's intentional misconduct. See Fla. Stat. § 768.72(2)(a). Plaintiff demonstrated with her actual work product how she was meeting the applicable standards – which was approved and documented by both Ruiz and the VP/GM. Later that afternoon, Plaintiff was prescribed by her dentist to wear a custom occlusal mouth guard *during the day* due to subconscious clenching of her teeth in coping with the hostile working conditions. See Doc. No. 47; Reply – Ex. B, id. at 38:5-40:1 and Doc. No. 52; Resp. – Ex. A. Meanwhile, Smith [*offender of Plaintiff's documented complaint three days prior*], organizes an "employee discussion" meeting with Ruiz in Higley's office (*the same three attendees of the December 12th Reversion and Replacement meeting*) on June 21, 2019 (See Attached Exhibit K). Plaintiff emailed Flennoy on June 25, 2019, as she still had not heard back from Flennoy regarding completion of the unfinished investigation. See Doc. No. 59; Resp. – Ex. H, id. at 3. Plaintiff did not receive a response to her email.

It is undisputed that the retaliatory MSP caused the adverse employment action. Nine days after Plaintiff's June 18, 2019, harassment complaint of Smith's misconduct and without completing the investigation thereof pursuant to JEA's "officially-promulgated" "HUMR 652" policy against discrimination, Plaintiff suffered an adverse employment action. See Doc. No. 59; Resp. – Ex. H, id. at 4-6.

On June 27, 2019, Plaintiff was attending a training that contributes to her professional development when she was interrupted by Ruiz who walked into the training room asking Plaintiff to meet her in the building next door and informed that she [plaintiff] could come back to training afterwards. Upon entering, Plaintiff saw another person in the meeting room who later introduced himself as Tom Wigand ("Wigand") – Labor Relations Specialist. Wigand began speaking first [prefacing the document] before handing to Plaintiff, wherein Evans Cc Smith (*the same attendees of the January 23rd MSP meeting, absent plaintiff*) imposed on Plaintiff a condition of her continued employment via a reversion[17] (demotion – transfer to previous department) to accept [demotion] or be terminated (See Attached Exhibit L). See JEA's Admission to RFA Nos. 20-22. This adverse action [unwarranted demotion] occurred under circumstances giving rise to an inference of discrimination. Plaintiff responded accordingly, engaging in protected activity when she complained to her employer in an email to Evans, Kendrick – Interim VP & CHRO, Melissa Dykes ("Dykes" / "COO") – President/Chief Operating Officer, Cc Smith, and Ruiz about the workplace retaliation on Friday, June 28, 2019. See JEA's Admission to RFA No. 23, See 42 U.S.C. § 2000e-2(a)(1) and § 2000e-3(a).

Within two hours, Plaintiff suffered an adverse action as she was discharged

[17] A reversion would have diminished Plaintiff to a civil service employee, thereby revoking her appointed privileges of employment – including financial allowances, insurance benefits, and employer 401a contributions. See 42 U.S.C. § 2000e-2(a)(1).

because of the retaliatory MSP by Smith – to which Plaintiff met the applicable standards per Ruiz's approval on January 24, 2019. The June 28, 2019, termination[18] meeting included Evans, Ruiz, Smith, and Wigand (in that order) and Plaintiff was seated alone on the other side of the table across from Ruiz. Evans began speaking first [prefacing the termination document], stating "because you [plaintiff] were placed on an MSP…", See JEA's Admission to RFA No. 28 of this undisputed fact, before handing it to Ruiz to sign then for Plaintiff to sign. See Doc. No. 59; Resp. – Ex. I, proving the matter true which JEA failed to admit on RFA No. 24 – demonstrating there is no genuine dispute as to this material fact. Shortly after Plaintiff signed, Ruiz motioned her arms to the right – stating "this is my manager [Smith] and I do what she say." Ruiz made it clear that Smith was successful in the coercion of Ruiz to be violative of Title VII by discriminatory termination of plaintiff's employment. Paralleling to *Charles vs. Leo*, Plaintiff was in a similar position as Charles and Fleming was in a similar position as Ruiz. Fleming was instructed by Leo (similar position as Smith) to give Charles an unjustified performance review. However, unlike Fleming who "refused to capitulate," Ruiz acted with full awareness of Smith's desire to retaliate and instead of refusing, she followed through with the discriminatory termination – making JEA liable for all charges. See *Charles v. Leo*, 96 Mass. App. Ct. 326

[18] See JEA's Admission to RFA No. 24.

(App. Ct. 2019).[19] See Fla. Stat. § 768.72(2)(a) and Fla. Stat. §768.73(1)(c).

JEA Violative of Title VII – Cognizant and Liable

Compensatory, economic, and non-pecuniary damages. It is undisputed that Plaintiff's race [African American] was a factor in employment actions taken by JEA with respect to Plaintiff as admitted by JEA. Consequently, she was discriminated against with respect to her compensation and after she engaged in protected activity, she was **reprimanded** via her placement on an MSP because she communicated opposition of an unlawful employment practice to management *(discriminating against Plaintiff with respect to her privilege of employment)*. See 42 U.S.C. § 2000e-2(a)(1) and § 2000e-3(a). She was **denied eligibility for her bonus** that was due to her (because of her earned exceeds standard performance rating) and she never received her pay increase because of the April 3, 2019, job audit – which proved her compensation and job duties discrimination claim. Although she met the applicable standards, she was victim to harassment and made report thereof on June 18, 2019. In JEA's concealment of Smith's misconduct, Plaintiff suffered an adverse employment action. Plaintiff was offered an unwarranted **demotion** on June 27, 2019, and on June 28, 2019, she complained of the workplace retaliation. Subsequently, JEA terminated her employment within

[19] Charles – a black female, was awarded compensatory damages including $500,000 for emotional distress and $10 million in punitive damages for her racial discrimination and retaliation claims.

two hours of said complaint. See Doc. No. 31; Answer, id. at 2, and 5, and JEA's Admissions to RFA Nos. 1, 2, 4, 5, 11, 12, 14[20], 17, 18, 20, 22, 23, 24, and 28.

Punitive damages. JEA consciously disregarded Plaintiff's rights – punishing her for seeking protection of an anti-discrimination law, trying to save her career. JEA concealed its intentional unlawful misconduct and made egregious celebration thereof. For example, using corporate dog-whistle politics – *hours after plaintiff was discharged*, on June 29, 2019, plaintiff's manager, Ruiz received PRIDE[21] recognition via a "Made Me Smile" badge – "Thank you!" from Jennifer (Jenny) McCollum. See JEA's Admission to RFA Nos. 20, 21, 22, and 25. The next business day after plaintiff was discharged, on July 1, 2019, plaintiff's manager, Ruiz received PRIDE recognition via a "You Did It" badge – "Great job!" from Smith. Three business days after plaintiff was discharged, on July 3, 2019, plaintiff's manager, Ruiz gave PRIDE recognition to Higley via a "Super Star" badge – for "help the last two months." See JEA's Admission to RFA Nos. 26 and 27. Through their recognition – *all within three days of plaintiff's termination*, JEA revealed the collective parties involved in conspiring the premeditated retaliatory reversion and replacement of Plaintiff following her communicated opposition of an unlawful employment practice. "In determining whether [JEA's] conduct was so

[20] Note this admission is a direct contradiction to JEA's objections and denials RFA Nos. 24-27. JEA objected to the definition of Defendant as Melinda Ruiz-Adams in Nos. 25-27 but accepts the definition of Defendant as Melinda Ruiz-Adams in No. 14.
[21] See Doc. No. 59; Resp. – Ex. A, id. at 4-5, "PRIDE" definition.

outrageous or egregious that punitive damages under [Fla. Stat. § 768.73] are warranted," "[factor] may include: the duration of the wrongful conduct and any concealment of that conduct by [JEA]." See *Haddad* v. *Wal-Mart Stores, Inc. (No. 1)*, 455 Mass. 91, 110 (2009). *Id.* at 111. Post retaliation occurred when JEA contested Plaintiff's unemployment compensation claim. Plaintiff points out to Court that there is an absence of evidence from JEA to support its case. Consequently, JEA did not appeal the FL DEO investigation results [no misconduct], See Doc. No. 32; Motion – Exhibit A, which proved JEA's 'legitimate' non-discriminatory/non-retaliatory reason for the adverse action – stating, "you [plaintiff] chose…to act in an insubordinate[22] manner" was a pretext for the unlawful motive [*concealment of Smith's wrongful conduct which was reported by Plaintiff on June 18, 2019, and hence failure to complete the investigation thereof that began on June 19, 2019, by Flennoy*].

But for the discriminatory termination. In addition to the job audit confirming Plaintiff's performance met 'management's expectations', Plaintiff's demonstrated working knowledge of the company (six promotions throughout different business units) – to which was acknowledged, preferred, and requested by the top tier of management, alongside verbal, written, and monetary recognition for her positive work performance *just one month prior* to her termination showed her

[22] Negative employment reference.

employment would have continued, but for the discrimination. Further proving there was a continued corporate need for Plaintiff – being the only incumbent of Financial Analyst position, JEA's failure to reemploy Plaintiff on three[23] different occasions wherein she exercised reasonable diligence to mitigate her damages, See JEA's Admission to RFA Nos. 28-30, and Doc. No. 47; Reply – Ex. B, id. at 120:23-121:12, shows JEA's purposeful effort to ensure Plaintiff not receive employment offers thereby causing significant economic harm to Plaintiff who filed a discrimination complaint. Finally, "[i]t is enough that the plaintiff had a reasonable, good-faith belief that a violation occurred; that [s]he acted on it; that the employer knew of the plaintiff's conduct; and that the employer lashed out in consequence of it." *Trainor v. Hei Hospitality, LLC,* 699 F.3d 19 (1st Cir. 2012), quoting *Mesnick v. Gen. Elec. Co.*, 950 F.2d 816, 827 (1st Cir.1991).

Plaintiff has established JEA's affirmative defenses are legally insufficient, See Doc. No. 32; Motion, id. at 5-6, and she has disproved these defenses by evidence. Plaintiff has appreciated JEA's Answer denying "as framed" most of the relevant factual allegations included in her Second Amended Complaint. See Doc. No. 34; Order, id. at 4-5. In doing so, by JEA's own Admissions, alongside Plaintiff's evidence proving all remaining matters true Plaintiff has disproved these denials

[23] Two of which followed FL DEO investigation results of no misconduct of Plaintiff – JEA did not remove 'ineligible for rehire' status of Plaintiff.

which shows that there is no genuine dispute as to any material fact and Plaintiff is entitled to judgment as a matter of law.

Relief Requested

WHEREFORE, for the reasons stated above, it is Plaintiff's prayer that this Court grant Summary Judgment as a matter of law.

DATED this 28th day of September, 2021.

Respectfully submitted,

s/ Deirdre Baker
Pro Se Party
2517 Pine Summit Dr E
Jacksonville, FL 32211
tonydeirdre97@bellsouth.net
904-743-9449

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of September, 2021, I electronically filed the above and foregoing with the Clerk of Court for uploading to the CM/ECF system and served a copy of the foregoing by means of email to acook@coj.net and dorothyo@coj.net, Office of General Counsel.

s/ Deirdre Baker
Pro Se Party

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

DEIRDRE BAKER,

Plaintiff,

v. Case No. 3:20-cv-889-J-34JRK

JEA,

Defendant.

MOTION FOR RELIEF FROM ORDER

COMES NOW Plaintiff, pursuant to Local Rules of the United States District Court for the Middle District of Florida Rule 3.01(a), and Federal Rules of Civil Procedure Rules 60(a) and (b)(3), requesting relief from Court's October 19, 2021, ruling (Doc. No. 68; "Order") on the following grounds:

- On **September 28, 2021**, Plaintiff filed her Motion for Summary Judgment (Doc. No. 65) along with her evidentiary material previously provided to Defendant – validating there is no genuine dispute as to any material fact stated in her Second Amended Complaint (Doc. No. 30).
- Pursuant to Rule 3.01(c) of the Local Rules of the Middle District of Florida, Defendant's deadline to respond was **October 19, 2021**, See Fed. R. Civ. P. 6(a)(1)(B), failing which "the motion is subject to treatment as unopposed."

Appendix I

Memorandum of Law

Pursuant to Federal Rules of Civil Procedure Rule 60(b)(3), which states:

> (b) **Grounds for Relief from a Final Judgment, Order, or Proceeding**. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

Fraud on the Court

On October 14, 2021, Counsel of Record for Defendant filed a Motion to Extend Defendant's [**October 19, 2021**] Deadline to Respond (Doc. No. 67; "Motion") to Plaintiff's Motion for Summary Judgment (Doc. No. 65), intentionally aiming falsification of facts directly at the Court. Plaintiff did not realize the Court simultaneously granted the Motion (Doc. No. 68; "Order") while she was preparing[1] her response (Doc. No. 69; "Response"). Consequently, Defendant has been granted Motion to unfairly receive thirty-four (34) days (solely for delay) to respond – violative of Local Rule 3.01(c), when they did not articulate good cause for an extension, See Fed. R. Civ. P. 6(b)(1), nor was the Motion served on Plaintiff as required by Fed. R. Civ. P. 5(a)(1)(D), as falsely stated in Motion at 4. The Order at n.1. stated, "In light of Defendant's initial deadline of

[1] This is the second time the Court did not await Plaintiff's response – cutting off her response time. See Doc. No. 44. On the other hand, the Court – on two separate occasions, not only awaited Defendant's response, but granted extensions (without motion) after the deadline "to do so [respond] [had] passed", See Doc. Nos. 26, 56, and Response at 3, prejudicing Plaintiff.

October 20, 2021" – which was not the deadline. These misrepresentations by Counsel for Defendant perpetrated fraud on the Court as follows:

Deadline or Event	Correct Date	Falsified Date
Summary Judgment filed date	September 28, 2021	September 29, 2021
Deadline to respond	October 19, 2021	October 20, 2021
Requested extension computation of time	Thirteen additional days beyond the twenty-one days expended	Eight business days

In the same way the Court denied Plaintiff's motion (Doc. No. 50) stating "[she] has not articulated any reason why her deposition cannot be completed in person", See Doc. No. 60; Order, the Court should have unbiasedly denied Defendant's motion (Doc. No. 67) for not articulating "good cause" why they could not complete their response in the time allotted pursuant to Local Rule 3.01(c) as required by Fed. R. Civ. P. 6(b)(1). As an alternative, Counsel of Record for Defendant arrogantly **chose** not to respond by making material misrepresentations via the computation of time and their misusage of case law to support their intrinsic fraud to the Court. See Fed. R. Civ. P. 60(b)(3). In *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253 (9th Cir. 2010), See Motion at 2, Ahanchian clearly demonstrated the "good cause" to extend, including:

> (1) the eight day response deadline (with three of those days falling over a federal holiday weekend)
> (2) his preplanned absence, beginning the day defendants filed the motions, in fulfillment of an out-of-state commitment; and
> (3) the large number [1,000 pages] of supporting exhibits attached to defendants' motion.

In contrast, Counsel of Record for Defendant dishonestly used eight business days (when it was nine), See Fed. R. Civ. P. 6(a)(1)(B), to compute the [thirteen days] time between their response deadline and the dispositive motion deadline – to receive a tactical advantage, wherein there was no "overlap between response and motion", See Motion at 2, as they dishonestly stated. "Since attorneys are officers of the court, their conduct, if dishonest, would constitute fraud on the court." *Porter*, 536 F.2d at 1119. See *Bulloch v. United States*, 763 F.2d 1115 (10th Cir. 1985). Defendant "cannot produce admissible evidence to support" their February 19, 2021, Answer, Affirmative Defenses, or Defenses (Doc. No. 31), See Fed. R. Civ. P. 56(c)(1)(B), demonstrated by its failure to file a dispositive motion "at any time." See Fed. R. Civ. P. 56(b). Instead, Counsel continued their unethical practices by inciting this Court to abuse its discretion and "establish new law" for their frivolous defense and bad faith motion(s), See Fed. R. Civ. P. 11(b)(1). This misconduct "improperly influencing the [Court]", See *Aoude v. Mobil Oil Corp.*, 892 F.2d 1115 (1st Cir. 1989), to violate an existing rule undermines the integrity of the judicial system. Defendant was given notice (Doc. No. 66; "Notice"), stating "[response to Plaintiff's Motion for Summary Judgment] **must be filed** with the Clerk of this Court in accordance with the Federal Rules of Civil Procedure.", See Notice at 1, "failing which it [is] deemed unopposed." See Doc. No. 26; Order.

By Defendant "failing to respond to [Plaintiff's Motion for Summary Judgment

(Doc. No. 65)], [it is] not opposed." See Notice at 2. This "applies to *all* parties litigant." See *Griffith v. Wainwright*, 772 F.2d 822 (11th Cir. 1985), quoting *Milburn v. United States*, 734 F.2d 762 (11th Cir. 1984). Consequently, Plaintiff is entitled to have the Court rule on her ripe summary judgment motion without delay. Cognizant of Defendant's liability and their inability to rebut the material facts on the existing record as set forth in Plaintiff's Motion for Summary Judgment, Counsel for Defendant unequivocally filed their Motion solely for delay and in bad faith – interfering with the ability of the court to fairly and expeditiously adjudicate Plaintiff's legal claim. In not being forthright with the Court, Defendant is subverting the swift administration of justice in the case, causing Plaintiff severe prejudice as she is still unemployed greater than two years because of this unfortunate lawsuit, See Doc. No. 42, id. at 18 n.12. See Fed. R. Civ. P. 56(h). Counsel's purposeful fraud on the court should make void the Order of the Court (Doc. No. 68) as her right to fair ruling is paramount to uphold the merits of the case and she is entitled to judgment as a matter of law.

Local Rule 3.01(g) Certification

I HEREBY CERTIFY that Plaintiff has conferred in a good faith effort with Counsel of Record for Defendant via email regarding the relief sought herein and Defendant has noted their objection thereto.

Relief Requested

WHEREFORE, for the reasons stated above, Plaintiff respectfully requests relief from Order (Doc. No. 68) and deny Motion to Extend Defendant's Deadline to Respond (Doc. No. 67), on the grounds of fraud, See Fed. R. Civ. P. 60(b)(3), and it is her prayer that this Court expeditiously adjudicate Plaintiff's legal claim pursuant to Fed. R. Civ. P. 56(e)(2) & (3) and 56(f)(2) & (3).

DATED this 20th day of October, 2021.

Respectfully submitted,

s/ Deirdre Baker
Pro Se Party
2517 Pine Summit Dr E
Jacksonville, FL 32211
tonydeirdre97@bellsouth.net
904-743-9449

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of October, 2021, I electronically filed the above and foregoing with the Clerk of Court for uploading to the CM/ECF system and served a copy of the foregoing by means of email to acook@coj.net and dorothyo@coj.net, Office of General Counsel.

s/ Deirdre Baker
Pro Se Party

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Deirdre Baker – APPLICANT

VS.

JEA – RESPONDENT

PROOF OF SERVICE

I, Deirdre Baker, do swear or declare that on this date, November 17, 2023, as required by Supreme Court Rule 29 I have served the enclosed **EMERGENCY APPLICATION TO HONORABLE CLARENCE THOMAS FOR A STAY OF MANDATE PENDING FILING AND DISPOSITION OF PETITION FOR A WRIT OF CERTIORARI** on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Laura Boeckman, Office of General Counsel
117 W Duval St, Suite 480
Jacksonville, FL 32202

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 17, 2023

Deirdre Baker
(Signature)