

United States Court of Appeals
For the Eighth Circuit

No. 23-2857

James E. Clifford

Plaintiff - Appellant

v.

Carla Walker, Property Manager; Yarco Company, Inc.; St. Michael Housing
Partners Investors I, L.P.

Defendants - Appellees

Appeal from United States District Court
for the Western District of Missouri - Kansas City

Submitted: February 20, 2024
Filed: February 23, 2024
[Unpublished]

Before LOKEN, BENTON, and ERICKSON, Circuit Judges.

PER CURIAM.

Missouri resident James Clifford appeals following the district court's¹ adverse grant of summary judgment on his federal housing discrimination and retaliation claims. On appeal, he refers to claims that were omitted from the operative complaint or voluntarily dismissed, and he challenges the summary judgment decision.

After careful review, we conclude the claims omitted from the operative complaint were abandoned, see In re Atlas Van Lines, Inc., 209 F.3d 1064, 1067 (8th Cir. 2000) (amended complaint supersedes original complaint); and Clifford may not seek review of the claims he voluntarily dismissed, see Bowers v. St. Louis Sw. Ry. Co., 668 F.3d 369, 369 (8th Cir. 1981) (per curiam) (plaintiff generally may not appeal from order granting voluntarily dismissal). We further conclude the adverse grant of summary judgment was proper for the reasons explained by the district court. See Gallagher v. Magner, 619 F.3d 823, 830 (8th Cir. 2010) (de novo review of grant of summary judgment, viewing evidence in light most favorable to non-movant).

Accordingly, we affirm. See 8th Cir. R. 47B. We also deny Clifford's motion to supplement the record.

¹The Honorable Gary A. Fenner, United States District Judge for the Western District of Missouri.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 23-2857

James E. Clifford

Plaintiff - Appellant

v.

Carla Walker, Property Manager; Yarco Company, Inc.; St. Michael Housing Partners Investors I, L.P.

Defendants - Appellees

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:22-cv-00058-GAF)

JUDGMENT

Before LOKEN, BENTON, and ERICKSON, Circuit Judges.

This appeal from the United States District Court was submitted on the record of the district court and briefs of the parties.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

February 23, 2024

Order Entered in Accordance with Opinion:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 23-2857

James Edward Clifford

Appellant

v.

Carla Walker, Property Manager, et al.

Appellees

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:22-cv-00058-GAF)

ORDER

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

March 26, 2024

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 23-2857

James Edward Clifford

Appellant

v.

Carla Walker, Property Manager, et al.

Appellees

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:22-cv-00058-GAF)

MANDATE

In accordance with the opinion and judgment of February 23, 2024, and pursuant to the provisions of Federal Rule of Appellate Procedure 41(a), the formal mandate is hereby issued in the above-styled matter.

April 02, 2024

Acting Clerk, U.S. Court of Appeals, Eighth Circuit

4052 Judge Denies it Meot.

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

JAMES E CLIFFORD,

)

Plaintiff,

3

VS.

1

Case No. 22-00058-CV-W-GAF

CARLA WALKER, et al.,

3

Defendants.

)

ORDER

Now before the Court is Defendants Carla Walker, Yarco Company, Inc. ("Yarco"), and St Michael Housing Partners Investors I, L.P.'s ("St. Michael") (collectively "Defendants") Motion for Summary Judgment. (Doc. 92). *Pro se* Plaintiff James E. Clifford ("Plaintiff") opposes. (Docs. 94, 95, 97). For the following reasons, Defendant's Motion is GRANTED.

DISCUSSION

I. FACTS

UD & State Court UD

A. The Parties' Proposed Statements of Facts

Defendants properly set forth their proposed “Statement of Uncontroverted Material Facts” in their suggestions in support of their summary judgment motion pursuant to Local Rule 56.1. (Doc. 93, pp. 1-8). Plaintiff, however, did not comply with Local Rule 56.1(b) by beginning his opposition “by admitting or controverting each separately numbered paragraph” of Defendants’ statement of facts. (Docs. 94, 95, 97). Nor did he set forth a “concise listing of material facts” he relied on in his suggestions. (*Id.*). Instead, Plaintiff provided an index of exhibits, which generally describes the contents of his attached exhibits, but he did not state the facts he believes the exhibits establish. (See Doc. 95). The attached exhibits span 75 pages. (Docs. 95-1, 95-2).

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Cunakable *to take*
Evidence *to receive*
to *remove*
myself

Under Local Rule 56.1(b)(1), any fact set forth by a movant is deemed admitted for purposes of summary judgment unless specifically controverted. Thus, each of Defendants' separately numbered statements of facts should be deemed admitted by Plaintiff. However, in light of Plaintiff's *pro se* status, the Court will only deem admitted Defendants' stated facts supported by the record. To the extent Plaintiff's exhibit index (Doc. 95) reasonably indicates a cited exhibit controverts one of Defendants' stated facts, the Court will consider Plaintiff's cited exhibit when making a finding of fact.

letter
Dec 9
Dodd
Walker

B. Background

At all relevant times, Plaintiff was a citizen and resident of Kansas City, Missouri. (Doc. 28 ("Fourth AC"), ¶ 1). Walker was also a citizen and resident of Kansas City, Missouri, and Yarco and St. Michael did business in Kansas City, Missouri. (*Id.* at ¶¶ 2-4). On July 16, 2021, St. Michael and Plaintiff entered in a Lease Agreement (the "Lease") for a dwelling located at 3838 Chelsea Drive, Apt. 116, Kansas City, Missouri 64128 (the "Premises"). (Doc. 93-1, pp. 1-6 ("Lease"); Doc. 93-2, ¶ 6; Doc. 93-3, 118:7-9; Doc. 93-4, 66:14-17). St. Michael owns the Premises; Yarco manages the Premises; and Walker was the onsite Community Manager. (Fourth AC, ¶¶ 10-12; Doc. 93-5, ¶ 2).

Release
Copy to
April 2023

The Lease, in relevant part, provided that:

- (a) Plaintiff shall "[u]se the premises for residential purposes only, comply with all laws, ordinances, orders and regulations of governmental authorities relating to the Premises or use thereof"; and
- (b) Material breaches included, but were not limited to, "[p]ermitting unauthorized persons to live in the [Premises]," and "exhibiting abuses, injurious or threatening behavior to any . . . member of the management or staff of the apartment community."

(Lease, ¶ 12(h), 14(c) and (f)). The ~~Amendment~~ Addendum to the Lease, which Plaintiff signed,

~~pg. 15~~

Carla stated says HAKC policy is not in lease

(a) "Serious or repeated violation of the lease" could result in termination of tenancy; and

(b) St. Michael could terminate the Lease for good cause.

(Doc. 93-1, pp. 28-41 ("HUD Add."), pg. 35, ¶ 8(b)(1), (d)). Additionally, the Community Policies, which were made a part of the Lease and which Plaintiff separately signed, stated that his residency could be terminated for multiple violations of those policies. (Doc. 93-1, pp. 10-21 ("Community Policies")). Plaintiff initialed by the statement "I/We understand and agree that multiple violations of this policy may result in the termination of residency." (Id. at p. 16). Further, Plaintiff admitted he was required to abide by the Communities Policies as part of his Lease. (Doc. 93-6, ¶ 7; Doc. 93-3, 129:4-5).

*Never had copy till Apr. 1 2023
after ND.*

relevant Plaintiff admitted the Lease required him to follow the Rules of the Housing Authority of Kansas City (the "HAKC Rules"). (Doc. 93-4, 68:25-69:3, 267:7-10). The HAKC Rules include eligibility requirements applicable to the Premises, which state: "A guest can remain in the assisted unit no longer than fourteen (14) consecutive days or a total of 30 cumulative calendar days during any 12 month period." (Doc. 93-7, ¶ 3-1.J).

*Not in the HUD Lease
or Yarco, or St. Michael's lease*

C. Lease and Rule Violations

Plaintiff admitted he lost his temper and berated Yarco/St. Michael's staff on more than one occasion. (Doc. 93-6, ¶ 12). He also admitted he threatened staff with harm if they entered the Premises without consent or notification. (Doc. 93-3, 133:2-17).

On February 8, 2022, Clifford told management personnel that he intended for his girlfriend to stay on the Premises from Monday to Friday despite multiple lease warnings. (Doc. 93-4, 136:8-21; Doc. 93-3, 130:10-14, 134:2-9). Plaintiff admitted his girlfriend stayed in the Premises for no less than 47 days and 31 nights from September 2021 through March 2022. (Doc. 93-3, 6:7-15). From June 25, 2022 until his eviction, his girlfriend stayed with him on the Premises

approximately 10-20 days per month. (Doc. 93-3, 7:8-11). Plaintiff acknowledged he violated the HAKC rule prohibiting guests from staying 14 consecutive days or a cumulative total of 30 days

in a calendar year. (Doc. 93-3, 119:15-120:16).

*Not leased a room here in
that it doesn't say. That's for less
than a month*

On February 11, 2022, Yarco issued a "Notice of Termination of Tenancy (10 days)" (the "Termination Notice"). (Doc. 93-2, ¶ 3; Doc. 93-8, pp. 1-2). The Termination Notice followed multiple lease violation notices to Plaintiff, summarized as follows:

1. *Sept 1, 2021* – lease violation for poor housekeeping/cleanliness;
2. *Before HAKC* – September 7, 2021 – lease violation for allowing unauthorized persons to use the laundry facilities after two verbal warnings;
3. *Actual* – December 2, 2021 – second lease violation for "[u]nauthorized guest staying longer than the allowable time frame per HAKC and/or your Community Policies" and lease violation for suspected vandalism and drug activity;
4. *Dec.* – January 31, 2022 – third lease violation for "[u]nauthorized guest staying longer than the allowable time frame per HAKC and/or your Community Policies." This notice also included a warning that "[m]anagement will be forwarding your file to legal for further actions";
5. – February 3, 2022 – fourth lease violation for "[u]nauthorized guest staying longer than the allowable time frame per HAKC and/or your Community Policies" and lease violation for "us[ing] derogatory language toward Management." This notice also included a warning that "[m]anagement will be forwarding your file to legal for further actions"; and
6. – February 7, 2022 – third lease violation for "us[ing] derogatory language toward Management." This notice also included a statement that "[m]anagement has forwarded your file to legal for further actions."

Carla said wasn't aware of it till Feb 7th

(Doc. 93-9, pp. 1-6). On *February 28, 2022*, Defendants' counsel mailed a "Demand" for "Immediate Possession" (the "Demand") to Plaintiff. (Doc. 93-8, p. 3). *On March 16, 2022,* Plaintiff received another notice of lease violation for having unauthorized guests "for the last 2-3 month[s] consistently." (Doc. 93-9, p. 7). Defendants reminded Plaintiff he was the only person

to occupy the Premises per the Lease and the female and two school-age children observed entering and exiting the Premises cannot live there. (*Id.*) *Which we paid for in HUD.*

D. Discrimination Accusations and Evidence

~~In December 2021, Plaintiff filed a HUD Complaint in which he accused Walker of discriminating against him because of his disability. (Doc. 93-10, pp. 4-6).~~ After filing the HUD Complaint, Plaintiff realized the underlying, allegedly discriminatory conduct occurred before Defendants knew of his disability, ~~and he dropped his discrimination claim. (Doc. 93-3, 103:15-105:1)~~ Plaintiff verbally told Walker that he was instructed not to speak to her because of a federal case against her. ~~(Doc. 95-1, p. 11).~~

Plaintiff is black. (Fourth AC, ¶ 9). Walker is a “woman of color.” (Doc. 93-5, ¶ 5). After filing the current lawsuit, Plaintiff learned of situations when Walker actually favored black people over people of other races; Plaintiff now claims he was ~~discriminated on the basis of color rather than race.~~ (Doc. 93-3, 106:17-107:7). Plaintiff believes Walker discriminates against dark black males who cause trouble. (Doc. 93-3, 121:9-21). Plaintiff also believes Walker discriminations against women; people who she thinks she is “better than” regardless of race/sex; people who Walker thinks are less “smart” than her; and anyone “who stands up to her” regardless of skin color, race, or sex. (Doc. 93-3, 135:6-136:7). However, Plaintiff testified that, even if someone falls within one of these categories, Walker will not discriminate against that person if the person (a) does not cause trouble, (b) “kowtows” to Walker, (c) is a “brownnoser,” (d) comes from a “good background,” (e) volunteers at the property, (f) has lived at the property for at least three years, or (g) does what she says because ~~the~~ person is intimidated by her. (Doc. 93-3, 121:9-18, 136:8-137:23, 140:20-22, 150:6-151:18). Plaintiff believes Walker did not like him because she thinks she is better than everyone. (Doc. 93-6, ¶ 15).

Plaintiff's designated witnesses include Marie Craig, Alex Foster, and Wilber Hardin. (Docs. 93-11, 93-12, 93-13). Ms. Craig testified Walker "treats [Plaintiff] bad" but does not know if it is because he is black. (Doc. 93-11, 22:10-19). Mr. Foster testified that (a) he does not know why Walker treated some residents better than others; (b) Walker treats people who are intelligent and/or follow the rules better; (c) he did not notice Walker treating people different based on color; and (d) he could not identify any resident treated differently based on color. (Doc. 93-12, 43:7-19, 54:22-55:6, 66:25-67:7, 67:19-23, 125:4-21). Mr. Hardin testified he believes Walker treats people who "kowtow" to her and people she has known longer better. (Doc. 93-13, 24:21-25:8).

E. Retaliation Accusations and Evidence

Plaintiff filed the above-captioned lawsuit on January 27, 2022. (Doc. 1). Walker and Yarco's registered agent were served on February 15, 2022. (Docs. 8, 9; Doc. 93-3, 161:20-162:4). Plaintiff has no evidence Walker knew of this lawsuit before mid-February 2022. (Doc. 93-3, 162:5-8). The only evidence Plaintiff possesses to support retaliation is that this lawsuit and the Unlawful Detainer case were filed close in time. (Doc. 93-3, 257:1-7). *BS!*

F. Agency and State Court Decisions

Plaintiff's HUD Complaint was dismissed because HUD did not find evidence substantiating Plaintiff's claims and there was no reasonable cause to believe Defendants discriminated against him based on disability or race. (Doc. 93-14).

The Circuit Court of Jackson County, Missouri (the “State Court”) decided against Plaintiff at summary judgment in the Unlawful Detainer case filed by St. Michael. ([Doc. 93-15](#)). The State Court determined Plaintiff: (1) “willfully and without force held over . . . following termination of his lease; (2) “[d]elivery of notice of termination was proper on February 11, 2022, and demand for possession was proper on February 28, 2022”; and (3) Plaintiff’s “admitted violations of his

Only person in 2022
awarded for this. Not Jerry, Alonso or anyone

lease (including but not limited to allowing guests/authorized persons to stay in his unit for more than 30 days in a 12-month period) were material. (Doc. 93-15, ¶¶ 1-3).

The HAKC terminated Plaintiff's housing assistance payments following a hearing, finding he had "an unauthorized occupant residing with him for at least several months" and did not find "sufficient mitigating circumstances to reverse the HAKC's decision to terminate [Plaintiff's] Housing Choice Voucher housing assistance." (Doc. 93-16, p. 3).

II. LEGAL STANDARD

Summary judgment should be granted "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." Fed. R. Civ. P. 56(a). "A court considering a motion for summary judgment" must view the evidence and inferences that may be reasonably drawn from the evidence in the light most favorable to the nonmoving party." *Dryer v. NFL*, 814 F.3d 938, 941-42 (8th Cir. 2016). "Once the moving party has made and supported their motion, the nonmoving party must proffer admissible evidence demonstrating a genuine dispute as to a material fact." *Holden v. Hirner*, 663 F.3d 336, 340 (8th Cir. 2011). Parties resisting a motion for summary judgment "may not rest on mere allegations or denials, but must set forth specific facts in the record showing that there is a genuine issue for trial." *Dryer*, 814 F.3d at 942 (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986)). "Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial." *Green Plains Otter Trail, LLC v. Pro-Env't., Inc.*, 953 F.3d 541, 545 (8th Cir. 2020). However, summary judgment should not be granted if a reasonable jury could find for the nonmoving party. *Woodsmith Publ'g Co. v. Meredith Corp.*, 904 F.2d 1244, 1247 (8th Cir. 1990) (citing *Anderson*, 477 U.S. at 248).

III. ANALYSIS

Retal.

Plaintiff claims Defendants violated the Fair Housing Act ("FHA" or the "Act"), 42 U.S.C. § 3601 et seq., in two ways when they evicted him. (Fourth AC). First, Plaintiff alleges the eviction was discriminatory based on his race and/or color. (*Id.*). Second, he claims the eviction was in ~~retaliation~~ for filing the HUD complaint and/or the current lawsuit. (*Id.*).

The FHA was enacted "to eradicate discriminatory practices within a sector of our Nation's economy." *Tex. Dep't of Hous. & Cnty. Affairs v. Inclusive Cnty. Project, Inc.*, --U.S.--, 135 S. Ct. 2507, 2511 (2015); *see 42 U.S.C. § 3601*. The FHA prohibits landlords from "refus[ing] to . . . rent . . . or otherwise make unavailable or deny, a dwelling to any person because of race [or] color." 42 U.S.C. § 3604(a). Further, it is unlawful to "discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling . . . because of race [or] color." *Id.* at § 3604(b). The FHA also prohibits retaliation against any individual who engages in protected activities under the Act. 42 U.S.C. § 3617 (making it "unlawful to coerce, intimidate, threaten, or interfere with . . . any right granted or protected" by the FHA). Claims arising under § 3604 or § 3617 can be based on discriminatory or retaliatory acts occurring after housing has been acquired. *United States v. Koch*, 352 F. Supp. 2d 970, 975-76 (D. Neb. 2004) (citing *Neudecker v. Boisclair Corp.*, 351 F.3d 361 (8th Cir. 2003)).

*yet v'l
here we
ARE!!*

A plaintiff may establish an FHA claim through "(a) direct evidence of discriminatory intent or (b) indirect evidence creating an inference of discriminatory intent under the *McDonnell Douglas*¹ burden-shifting framework." *Gallagher v. Magner*, 619 F.3d 823, 831 (8th Cir. 2010). Although racial slurs can be direct evidence of intentional discrimination, *Browning v. President Riverboat Casino-Mo., Inc.*, 139 F.3d 631, 635 (8th Cir. 1998), such evidence must be specifically

¹ 411 U.S. 792 (1973).

linked to the challenged action. *Gallagher*, 619 F.3d at 831. “Direct evidence does not include stray remarks in the workplace, statements by nondecisionmakers, or statements by decisionmakers unrelated to the decisional process itself.” *Twymon v. Wells Fargo & Co.*, 462 F.3d 925, 933 (8th Cir. 2006) (cleaned up).

Plaintiff alleged Walker once directed a racial slur at him on October 28, 2021. (Fourth AC, ¶ 17). Plaintiff ~~provided no citation to evidence in the record establishing this allegation as fact.~~ (Docs. 94, 95, 97). Even if he had, Plaintiff cannot link the racial slur to his eviction. Walker allegedly used the racial slur on October 28, 2021. ~~But~~ Defendants did not notify Plaintiff of his eviction until February 11, 2022. The several-month gap between the racial slur and the eviction is not close enough to link the two events. *See Smith v. Fairview Ridges Hosp.*, 625 F.3d 1076, 1087-88 (8th Cir. 2010), *abrogated on other grounds by Torgerson v. City of Rochester*, 643 F.3d 1031 (8th Cir. 2011) (one-month gap insufficient to establish causal link). Additionally, Plaintiff does not allege, nor does he have supporting evidence, that Walker made the racial slur in connection with the decision to evict. *See Twymon*, 462 F.3d at 933. Moreover, Walker was not the sole decisionmaker when evicting Plaintiff. Walker forwarded all lease violations notices to legal, and Defendants’ attorney issued the Termination Notice and the Demand to Plaintiff. The presence of a neutral decisionmaker further weakens any possible link between the one alleged racial slur to the decision to evict. As such, the allegation of a racial slur is not direct evidence that the eviction was discriminatory based on race or color.²

When no direct evidence of discrimination or retaliation exists, the *McDonnell Douglas* burden-shifting framework applies. *Radecki v. Joura*, 114 F.3d 115, 116 (8th Cir. 1997). Under

² Nor is it evidence of retaliatory motive because the alleged racial slur occurred before Plaintiff engaged in any protected activity.

this familiar framework, a plaintiff must first establish a *prima facie* case of the claim. *Olsen v. Cap. Region Med. Ctr.*, 713 F.3d 1149, 1153 (8th Cir. 2013). If the plaintiff establishes the *prima facie* case, “the burden of production shifts to the defendant to articulate a legitimate, nondiscriminatory reason” for the adverse action. *Perry v. Zoetis, LLC*, 8 F.4th 677, 682 (8th Cir. 2021) (quotation omitted). If the defendant satisfies its burden of production, “the burden shifts back to the plaintiff to show that the [] proffered reason is merely a pretext for intentional discrimination.” *EEOC v. Prod. Fabricators, Inc.*, 763 F.3d 963, 969 (8th Cir. 2014).

Prima facie
Defendants
issued at least seven separate lease violation notices before the Termination Notice. Plaintiff has
admitted he violated the Lease. The State Court in the Unlawful Detainer case held that Plaintiff's
“admitted violations of his lease (including but not limited to allowing guests/Unauthorized persons
to stay in his unit for more than 30 days in a 12-month period) were material” and Defendants
were entitled to evict Plaintiff as a matter of law. (Doc. 93-15). Because they were entered
his apt. without notice

Not a consideration
*considering the legitimacy of the eviction. See *Young v. Jackson*, 417 F. App'x 592, 594 (8th Cir.*
2011) (state court order upholding eviction and entering money judgment in favor of landlord
precluded FHA retaliation claim, even though state court order came after federal suit was filed);
*see also *Banks v. Int'l Union Elec., Elec., Tech., Salaried & Mach. Workers*, 390 F.3d 1049, 1052-*
53 (8th Cir. 2004) (“Where a plaintiff fashions a new theory of recovery or cites a new body of
law that was arguably violated by a defendant's conduct, res judicata will still bar the second claim.”)

if it is based on the same nucleus of operative facts as the prior claim.”) (internal quotation omitted).

~~However, the Court would come to the same conclusion if not precluded from reaching the merits. Again, Defendants issued at least seven separate lease violation notices before the Termination Notice. Four lease violations notices included findings that Plaintiff had unauthorized guests using the laundry facilities or staying with him. Plaintiff has admitted he violated the Lease. Plaintiff has provided no evidence to support that the lease violations were not the real reason for his eviction. See Johnson v. AT&T Corp., 422 F.3d 756, 763 (8th Cir. 2005). Plaintiff's belief alone does not create a triable issue. See Reed v. Cty. of St. Charles, Mo., 561 F.3d 788, 791-92 (8th Cir. 2009) (plaintiff must provide “sufficient probative evidence” that would permit a finding in his favor “without resort to speculation, conjecture, or fantasy”) (quotations omitted). This is true for both the discrimination claim and the retaliation claim.~~

CONCLUSION

No genuine issue of material fact remains. Plaintiff cannot show Defendants' legitimate explanation for why they evicted Plaintiff is pretext. For this reason and the reasons stated above, Defendants' Motion for Summary Judgment is GRANTED.

IT IS SO ORDERED.

s/ Gary A. Fenner
GARY A. FENNER, JUDGE
UNITED STATES DISTRICT COURT

DATED: August 3, 2023

**Additional material
from this filing is
available in the
Clerk's Office.**