

APPENDIX

**U.S. Equal Employment Opportunity Commission
EEOC Determination of Right To Sue for workplace
discrimination Issued 7/15/2024
Charge No. 540-2024-05311**

**Arizona Supreme Court Case No. Cv-24-0032-SA
Decision filed May 14, 2024**

**Decision of Ninth Circuit Court of Appeals
Denial of rehearing, April. 22, 2024**

**Ninth Circuit Court of Appeals
Summary Affirmance on October 23, 2023.**

**District Court Order Filed May 26, 2023
Docket No. 176**

**District Court Order Filed April 14, 2023
Docket No. 174**

**District Court Order Filed December 13, 2021
Docket No. 162**

**EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION**
DETERMINATION AND NOTICE OF RIGHTS
(This Notice replaces EEOC FORMS 161, 16I-A Li.
161-B)

Issued On: 07/15/2024

To: Richard Rynn
1299 East Marlin Drive
CHANDLER, AZ 85286

Charge No: 540-2024-05311
EEOC Representative and email: JEREMY
YUBETA Enforcement Manager
jeremy.yubeta@EEOC.gov

DETERMINATION OF CHARCE

The EEOC issues the fallowing determination: The EEOC will not proceed further with its investigation and makes no determination about whether further investigation would establish violations of the statute. This does not mean the claims have no merit. This determination does not certify that the respondent is in compliance with the statutes. The EEOC makes no finding as to the merits of any other issues that might be construed us has been raised by this charge.

NOTICE OF YOUR RIGHT TO SUE

This is official notice from the EEOC of the dismissal of your charge and of your right to sue. If you choose to tile a lawsuit against the respondent(s) on this charge under federal law in federal or state court, **your lawsuit must**

be filed WITHIN 90 DAYS of your receipt of this notice. Receipt generally occurs on the date that you (or your representative) view this document. You should keep a record of the date you received this notice. Your right to sue based on this charge will be lost if you do not file a lawsuit in court within **90** days. (The time limit for filing a lawsuit based on a claim under state law may be different.

If you file a lawsuit based on this charge, please sign in to the EEOC Public Portal and upload the court complaint to charge 540-2024-05311.

On behalf of the Commission.

Melinda Caraballo
Melinda Caraballo
District Director

SUPREME COURT OF ARIZONA
Arizona Supreme Court No. CV-24-0032-SA
Court of Appeals Division One No. 1 CA-CV 23-0092
Maricopa County Superior Court No. CV2022-011208

RICHARD RYNN

Petitioner

v.

HON. CRAIG JENNINGS, JUDGE OF
THE AVONDALE CITY COURT, CITY OF
AVONDALE, et al.,
Respondent
No. P02019000235

FILED 5/14/2024

O R D E R

On May 2, 2024, a panel composed of Chief Justice Bolick Justice Bolick, Justice Lopez and Justice

Montgomery denied Petitioner Rynn's petition for review in this proceeding. On May 13, 2024, Petitioner filed a motion for reconsideration, which the Court dismissed on May 13, 2024 under the Arizona Rules of Civil Appellate Procedure Rule 22(f). On May 13, 2024, Petitioner filed a Request for en banc review seeking an order vacating the trial court injunction. In an earlier proceeding, the Court of Appeals has, however, considered and rejected Petitioner's challenge to the injunction: Judge Craig Jennings issued an injunction against harassment ("Injunction") against Rynn as a result of his harassment of a coworker at their mutual place of employment, First Transit. The Injunction was upheld after a hearing on the merits and Rynn appealed to the Maricopa County Superior Court where he fully litigated the matter. Rynn has fully litigated his claims related to the Injunction and each has been finally determined. *See Rynn v. First Transit*, 21-16836, 2022 WL 17176487 (9th Cir. 2022); *Rynn v. First Transit, Inc.*, 2:20-cv-01309-JJT, 2021 WL 3209665 (D. Ariz. 2021); *Rynn v. First Transit, Inc.*, 2:21-cv-01755-DWL, 2021 WL 6050312 (D. Ariz. 2021); *Rynn v. First Transit Inc.*, CV-21-01755-PHX-DWL, 2022 WL 287003 (D. Ariz. 2022). *Rynn v. Avondale Court*, 1 CA-CV 23-0092, 2023 WL 8596484, at *2 (App. Dec. 12, 2023). This Court denied review on January 30, 2024 and denied Rynn's Motion for Reconsideration on January 31, 2024 in that proceeding. Therefore, **IT IS ORDERED** denying the request for en banc review. **IT IS FURTHER ORDERED** directing the Clerk to accept no further filings in this matter. DATED this 14th day of May, 2024.

/s/JOHN R. Iv
Duty Justice

UNITED STATES DISTRICT COURT OF APPEALS
FOR THE NINTH CIRCUIT

RICRARD RYNN,

April 22, 2024

Plaintiff-Appellant,

FIRST TRANSIT INC0RP)ORATED, an Ohio
Corporation; UNKNOWN PART LS, named as: ABC
Corporation 1-X, and Black, and White 'Partnerships,
and'or Sole Proprietorships 1-X,

Before: W. FLETCHER, CALLAHAN, and
BENNET Circuit Judges
Appellant's motion for reconsideration Docket
Entry No, I6 is denied. *See* 9th circ. R.27-10
other pending motions are denied as mow.

No further filings in this case its closed

UNITED STATES DISTRICT COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 23-15869 D.C. No. 2:20-cv411309. JJT
District of Arizona,Phoenix
RICHARD RYNN,

Plaintiff-Appellant,

v.

FIRST TRANSIT INCORPORATED, an Ohio
Corporation; UNKNOWN PARTIES, named as; ABC
Corporation and Black aind White Partnerships,
and. or Sole Proprietorships I-X,

Delendants..appellees.

ORDER

Before: W. FLETCHER, CALLAHAN, and
BENNET Circuit Judges

The motion to correct the opening brief (Docket Entry No. 8) is granted. The motion for judicial notice (Docket entry No. 8) is denied unnecessary, Appellant's motion for an extension of time (Docket entry No. 7) to file a response to the motion to dismiss is granted. The response has been filed. A review of the record, the opening brief submitted on September 12, 2024 and the parties' briefing on the motion to dismiss demonstrates that the questions raised in this appeal are so insubstantial as not to require further argument., *See. United States v. Hooton* 693 F.2d 857, 85\$ (4th Cir. I 982) (stating standard). Accordingly the motion to dismiss (Docket entry No. 4) is treated as a motion for summary affirmance and is Granted

AFFIRMED

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Richard Rynn, Case CV-20-01309

Plaintiff,

V

Order

First Transit Incorporated,

Defendants,

At issue is two of Plaintiff Richard Rynn's Motion for New Trial and material Evidentiary Fact in Support for Plaintiff Rule 60 Motion and Motion for Summary Judgment" (Doe. 175). Because the Court will deny the motion, it will not await a response from Defendants and will not hold oral argument „See 1.R (is 7.2(t).As the Court hies reiterated, judgment has been entered for Defendants in this Cast; the matter has been terminated and the Ninth Circuit has affirmed. Plaintiff now requests- yet again to set aside the judgment, for summary judgment, and for the undersigned to recuse [he Court has already addressed Plaintiff's arguments in its prior Orders, and Plaintiff has given the Court no basis in the new Motion to set aside the prior judgment—which has been affirmed on appeal or to grant summary judgment in favor of Plaintiff, or for the undersigned to recuse from this case. This matter has been and now remains closed. No further filings will be permitted. It is therefore ordered denying plaintiffs Motion For New Trial and Motion for Evidentiary and In Support for Plaintiff Rule 60 Motion and Motion for Summary Judgment" (D075). This case remains closed **IT IS FURTHER ORDERED** that the. Clerk of Court shall not accept any further filings in this matter.

Dated this 25th day of May, 2,023

Case 2:20-cv-01309-3,11 Document 174 Filed
04/14/23 Page 1 of 2.

United States District Court of Arizona

Richard Rynn

V

First Transit

Defendants

Order

On July 29, 2021 the Court granted defendant First Transit Incorporated's Motion for Summary Judgement. denied Plaintiff Richard Rynn's multiple motions, and directed the Clerk of Court to terminate the (nutlet. (Doc. 116.1) Since then, Plaintiff has continued to file numerous motions including three now pending before the Court (Dose. 170, 171, 173) — containing, frivolous allegations against the court and Defendant (hat the Court has already addressed, These motions; are without merit and will be denied.

The Court has reiterated that this matter is, and remains, closed and it has cautioned Plaintiff that "any misuse of the ecf system will result in immediate discontinuation of this privilege and disabling of the password assigned to (Plaintiff)." (Dose, 2 1.1 in its Order of December 13, 2021, the Court expressly warned Plaintiff that any further filings in this matter will result in the termination of his 17..C1² privilege (*id.*), an action the Court 110W Ninth Circuit affirmed and issued its mandate on March 2, 2023. (Dose. 169.) followed by court order or by local 'AC); LACis' 5,51d) ("Unless the Court orders otherwise, parties appearing without an attorney shall not file documents electronically,"), **IT IS THEREFORE ORDERED** denying Plaintiff's Motion for Retrial and to Set

Aside Judgment (L)oc. 170).

IT IS FURTHER ORDERED denying,: Plaintiffs Motion for Summary Judgment

(Doc, 171),**IT IS FURTHER ORDERED** denying, Plaintiff's Motion cur Change of Venue for

Cause (Doc. (73),**It IS FURTHER ORDERED** discontinuing Plaintiff's electronic filing, privilege, which the Court previously granted on October 19, 2020 (doc, 21). Plaintiff is no longer permitted to electronically file 'documents in this matter.

IT IS PURIFIER ORDERED that this, matter remains closed.

Dated this 14th day of April, 2023,

Cse 2:20-cv-01309-3,11 Document 116 Piled
07/29/21
Page 1 of 11

IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF ARIZONA

Richard Rynn
Plaintiff

No. cv.20.01309,pi ix.,,Jyr

V ORDER

First Transit
defendants

At issue is Defendant First Transit Incorporated's Motion for Summary Judgment (Doc. 82, "Def.'s MSJ") to which Plaintiff Richard Ryan filed a Response (Doc. 86, Pl.'s Rep.). and Defendant filed a Reply (Doe. 91, "Def.'s Reply"). Also at issue is Plaintiffs Motion for Summary Judgment (Doc. 81, "Pl.'s MSJ"). Defendant filed a Response (Doe. 89, "Def.'s Resp."), and Plaintiff filed a Reply (Doe. 100, "Pl.'s Reply"). This Order will also resolve Defendant's multiple Motions to Strike (Does. 31, 107) and Motion to Dismiss (Doc. 42). Motion for Discovery (Doc.76), Motion to Compel (Doe, 80, and Motion to Amend (Doc.96) For the following reasons. the Court will grant Defendant's Motion for Summary Judgment, deny Plaintiffs Motion for Summary Judgment. and deny all remaining motions at issue.

I. BACKGROUND

This matter arises from Defendant First Transit Incorporated's ("First Transit") handling of a third party's sexual harassment allegations against Plaintiff Richard Rynn, Mr. Rynn started working for First Transit in 2016 at its Mesa location. In December 2018

Case 2:20-cv-01309-3.1T Document 11.6 Filed
07/29/21 Page 2 of 11

he temporarily worked at the Tempe facility, where he met Shaylyc Matthews. (DSOF 3-4) While working together, Mr. Rynn told Ms. Matthews she was beautiful, commented on her Instagram page, and had other personal conversations with her, (DSOF 9, 18, Exhibit B. Richard Rynn Deposition at 2122-24:24, 77:18-79:20, 81:3-83:19,) lit February 2019, Ms. Matthews submitted an Incident Report form to First Transit complaining about these interactions. (DSOF 12-13, 16, Ex. 13 at 54:2-9, 54:13-25, 59:24-60:11; Exhibit C. Declaration of Shaytey Mathews ("Mathews Deer") ¶ 4, (.9,) Ms. Matthews also stated that Mr. Rynn was 'Internet stalking,' and Facebook stalking her, (DSOF ¶ 1

Matthews Decl., Ex. A.) On February 26, 2019, First Transit employee, Lynn McLean, met with Mr. Rynn to inform him of Ms. Matthews's complaint. (DSOF Exhibit A. Lynn McLean Declaration ("McLean Decl." 8.) I le instructed Mr. Rynn to stay away from the Tempe facility and not speak with any of the Tempo employees. (DSOE ¶ 21; McLean Declaration Subsequently, Ms. Matthews informed First Transit that Mr. Rynn had subscribed to her YouTube account and attempted to contact her through Facebook. (DSOF

26-27; Matthews Declaration: 12.) On April 19, 2019, Mr. Ryan entered the Tempe location with his daughter and provided a First Transit representative with an apology note for Ms. Matthews. (DSOF 29.) On April 30, 2019, First Transit released a confidential memo to Ms. Matthews concluding that "the investigation leads us to believe that inappropriate conduct did occur." (DSOF 30, Lx. 13 at 10g:20-109:22.) The next day, First Transit provided Mr. Rynn with a different confidential memo that found "your

unwanted comments and remarks were inappropriate under the circumstances and provided a basis for the employee to make allegations against you." It also instructed him to "not enter the Tempe property without the approval of upper management." (DSOF ' ; 31-32, Ex. B, 103:10-104:15.214:23-215:16; McLean Dec 1. ⁴110.) Less than two weeks later, Mr. Rynn sent Ms. Matthews flowers with a note requesting to speak or meet up in order to "resolve all unresolved issues." (DSOF Ill; 3436. Fix. B at 111:7-9, 112:11-113:5; Matthews Decl. 1 13.) in response, Ms. Matthews called the Avondale Police Department, who suggested that Ms. Matthews apply for an Injunction against Harassment ("IAH") against Mr. Rynn, (DSOF 37-38. Matthews Dec 14; Plaintiffs Supplemental Response to Defendant's First Set of Interrogatories and First Set of Production al 31-33.) Ms. Matthews immediately applied for the IAH which a Judge granted that day. (DSOF 43-45.) Additionally, both the responding Officer and Ms. Matthews contacted Mr. Rynn to inform him that Ms. Matthews did not wish to have further contact with him. (DSOF 39-41.) After receiving service of the IAH, Mr. Rynn moved for its dismissal. (DSOF Ex B at 148:14-15U:4, 167:20-I 68:15.) The court held a hearing, where Ms. Matthews, Mr. Camunez, and Mr. Rynn all testified, and ultimately upheld the (All. (DSOF 48-52; Matthews Decl. 111119.21: Ex. B at 134:12-16.) One day later, on June 4, 2019, Mr. Rynn filed a hotline complaint at work, alleging that (1) he was wrongfully teased asexual harassment; (2) Mr. Camunez provided false information at the hearing; (3) and Mr. Rynn was not informed of certain relevant information

Case 2:20-cv-01309-13T Document 116 Filed
07/29/2021 Page 3 of 11

until the (IAH hearing. (DSOF 53, Ex. B at 148:14-150:4, 167:20-168:15.) First Transit investigated the allegations and found no violation of its policies or procedures. (DSW' 154, Es. B at 1107:20-168:15: 170: li-71:2.)Mr. Rynn subsequently filed his initial Complaint in this matter, which has time been amended. 'the Complaint allege, (i) Defamation. (2) False Light, mat (3) Negligence, Both parties now move for summary judgment on all of Plaintiff's claims.

LEGAL STANDARD

Under Rule .56(c 1 of the Federal Rules of Civil Procedure, summary judgment is appropriate when: (I) the movant shows that there is no genuine dispute as to any material fact; and (2) after viewing the evidence most favorably to the non-moving party. the movant is entitled to prevail as a matter of law. Fed. R. Cie. P. 56: *Celoto- 477 U.S. 317..12.2-23 (1984 Etvenherg v. Ins. Cu. of N. Am., 81,5 F.2.d 1285, 1288-89 (9th Cir.)987).* Under this standard, oOnly disputes over facts that might affect the outcome of the suit under governing substantive law will properly preclude the entry of summary judgement," .,4nrIerson t. Libcro. Lobby, Inc., 477 U.S. 242, 24K (1986),. A "genuine issue" of material fact arises only 'if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.* In considering a motion for summary judgment. the court must regard as true the non-moving party's evidence, if it is supported fed by affidavits or other evidentiary material, (*Wows*, 477 U.S. at 324; *Eisenberg*. 815 F.2d at 128.9. However, the non-moving party may not merely rest Oh its pleadings. it amorist produce some significant probative evidence tending to contradict the moving party's allegations,

thereby creating a material question fact, *Ander, von*, 477 U.S. at 256-57 (holding that the plaintiff must present affirmative evidence in order to defeat a properly supported motion for summary judgment); *Firsit tot Bonk glAriz. r. Claes SOT. Co.*, 391 U.S. 253,289 (1968)"A summary judgment motion cannot be defeated by relying solely on conclusory allegations unsupported by factual data." *rurfor r. List.* 8S0 F.2d 1040. 1045 (9th (: ir. 1989).

"Summary judgment must be entered 'against a party who fails to make a showing sufficient to establish the existence *or* an element essential to that party's case, and on which that party will bear the burden of proof at trial. *United ,Slates t'. Carter*, 906 F.2d 1375, 1376 (9th Cir. 1990) (quoting *Ce/oia*, 477LS.at 122).Ill. ANALYSIS The Court Must first address the multiple issues with Plaintiffs tiling,. Plaintiff failed to file a statement of facts in conjunction with his Response to Defendant's Motion for summary Judgment as well as his own Motion for summary judgment Rather, plaintiff inexplicably waited to file the statement of facts until after the motions were fully briefed .(Does. 99, 1022. Defendant moved to strike the untimely filings. contending that they violate LRCiv 56.1. (Doc. 107). The Court agrees. However, after reviewing the untimely filings, the Court determines that they do not impact its decision and thus there is no prejudice to Defendant. Therefore, Defendant's Motion to Strike is denied as moot.

Additionally, Plaintiff filed a Notice of Removal purporting to remove the JAI i Avondale proceeding to this Court. (Does. 2S St 29). Defendant filed a Motion to Strike arguing that the motion failed to comply with multiple procedural requirements and that the

Court lacked subject-matter jurisdiction (Doc. 31). Rule 12(1) permits a court to "strike From a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(t). The purpose of a Rule 12(f) motion to strike is "to avoid the expenditure of time and money that must arise from litigating spurious issues by dispensing with those issues prior to trial" *Sidney Vinstein v. AH. Robins Co.*, 697 F.2d 880, 885 (9th Cit. 1983). The Court will grant the Motion to Strike. Plaintiff's Notice was procedurally improper and wholly inappropriate. Importantly, First Transit was not a party to the hearing. The Avondale court granted the IAll and alter multiple appeals. the Arizona Supreme Court denied Mr. Rynn's amended petition for review. *Le Due v Kentucky Life Ins' Co.*, 811 F. Stipp. 820, 830 (N.D. Cal. 1992) (stating motions to strike may be granted if "it is clear that the subject matter to be stricken could have no possible hearing on the subject matter of the litigation."). Therefore, Documents 28 and 29 shall be stricken from the record.

A. Defamation

It is unclear from Plaintiff's filings which statements he contends to be defamatory. Plaintiff's motions identify certain First Transit statements as incorrect but fail to analyze them in relation to his defamation claim. Defendant took the unusual but helpful step of using Plaintiff's deposition testimony to identify those statements Plaintiff potentially considers defamatory. (DSOF 56-68.) the Court will analyze these statements as well as others that Plaintiff discusses in his briefing and statement of facts. To

state a claim for defamation under Arizona law. Plaintiff must allege that (1) Defendant made a false and unprivileged statement; (2,) the statement was published or communicated to someone other than Plaintiff; and (3) the statement tends to harm Plaintiff's reputation. *Godwin v. Pinwiril Newspapers, inc.*, 783 P.2d 781, 787 (Ariz. 1989); *hindin a. 1)isc. • ureri' ('Innint • 'ns inc,* 352 F. Supp. 3d 949, 960 (D. Ariz. 2018).

Case 2:20-cv-01309-33T Document 116 Filed
07/29/21 Page 6 of II

The First Transit statements are not defamatory for numerous reasons. To simplify the analysis, the Court will separate the statements into three categories and explain why they do not constitute defamation: (1) privileged statements made at the IA14 hearing; (2) statements made only to Mr. Rynn;¹ and (3) statements made to other First Transit employees that are truthful or merely state one's opinion. The first two categories can be resolved quickly in favor of Defendants. Mr. Ryan contends that Mr. Camunez's testimony at the IA14 hearing was defamatory. However, statements made in judicial proceedings are privileged as a matter of law and thus are not defamatory. *Bailey v. Superior Court*, 636 P.2d 144, 146 (Ariz. Ct. App. 1981) ("An absolute privilege against a defamation charge arises in the context of judicial proceedings, legislator's proceedings and administrative or executive functions of the government."). Likewise, First Transit statements made only to Mr. Ryon are not defamatory because they are not published in a third party. *Godheher v. 783 P.2d* 787. The third category, statements made to

First Transit employees, requires slightly' more analysis but the Court similarly concludes that they are 910t defamatory. Plaintiff contends that First Transit instructed Ms. Matthews to notify the police. This does not constitute defamation because it was not a false statement about Mr. Ryan. *Id. Moreover.* Mr, Ryan contends that First Transit defamed hint by informing other employees that he Was. amongst other things, "untrustworthy, disloyal. difficult. radical, incorrigible..." and a host of other unflattering adjectives. however these arc mere opinions that arc "not laden with any false factual content' and thus do not constitute defamation. *Aloc'omiell r ftiillot*, 638 P.2d 689, 692 (i 98). Importantly. Mr. Ryan does not identify any underlying tactful statement that may have led First Transit to form such opinions except that First Transit informed employees that Ms. Matthews requested an IAH protective order. which is not defamatory because it is true. (Pl. resp. at 12, 15.). *Id.* First Transit employee. Chris. Dalton, told Mr. Rynn that he needed to transfer Mr. Rynn back to Mesa because Ryan was in danger This statement is not defamatory because it was not spoken to a third party. *Godbehere*, 783 1).2d at 787.Ms, Matthews filed a sexual harassment complaint against him. This does not constitute defamation because it is true. *Godbehere*, 783 P.2d at 787: *Read v. Phoeni.*" *NeWSpoperS* 819 P.2d 939, 941 (1991).

For these reasons. the Court wilt grant Defendant's Motion for SUMMARY Judgment on Mr, Rynns claim for defamation, B. False LightThe Court will also grant Defendant's Motion for Summary Judgment on Plaintiff's false light claim. Under Arizona law: One who gives. publicity to a matter concerning another dial places the other before the

public in a false light is subject to liability to the other would be invasion of his privacy, if (a) the false light in which the other was placed would be highly offensive to a reasonable person, and (b) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the plaintiff should be placed. *Godbehere*, 783 P.2d at 784 (quoting Restatement (Second) of Torts § 652(h) (1977 r) defamatory. false light does not protect reputation or good name, but rather protects mental and emotional interests." *Reynolds* ► • &plats, 294 P.3d 151, 156 (Ariz. Ct. App. 2013) td. at 341. 783 P.2d at 787. "To qualify as a false light invasion of privacy) , the publication must involve a major misrepresentation of the plaintiff's character, history, activities or beliefs.' not merely minor or unimportant inaccuracies." *Id*, The tort of false First Transit did not say the truth about Matthews incident report in which put Rynn in danger." (Pt. Resp. at 15.) no evidence to support this assertion. He merely states that First Transit falsely said Matthews incident report was just a comment when it was an incident report about Rynn. Mr. Rynn additionally contends that the First Transit incident report regarding light protects against a narrow class of wrongful conduct that falls just short of outrage. *Lemon v. Harlem Globetrotters intern.. Inc.*, 437 F. Supp.2d 1089, 108 (D. Ariz. 2006 Plaintiff appears to contend that the statements he alleges Were defamatory also constitute false light. Plaintiff again does not produce sufficient evidence to sustain the claim. There is no evidence that the statements are false, let alone a "major misrepresentation of Mr. Ryan's character or activities. Nor do the statements constitute conduct that "falls just short of outrage.".1(1. And Defendant produced substantial evidence. through Mr. Ryan's

deposition and Ms. Matthews's Declaration, that the statements are true. Finally, Mr. Rynn has not provided evidence of harm to his mental or emotional interests. Reynolds 294 P.3d at 156. Lastly, Mr. Ryan contends that the IAH put him in a false light as a matter of public record "made up by first Transit. (DSOF '79, Ex. B. 13 at 216:20-217:25; 218:18-219:1 2.) however, the existence of the IAH is not false. Mr. Ryan may assert that the foundation for the IAH is false, but that does not change the fact of its existence. Therefore, the Court will grant Defendant's Motion for Summary Judgment on Plaintiff's claim for false light, Negligence. Finally, the Court will grant Defendant's Motion for Summary Judgment on Plaintiff's negligence claim. To establish a *prima facia* negligence claim under Arizona law, Plaintiff must demonstrate the following elements: "1) a duty requiring the defendant to conform to a certain standard of care; 2) a breach by the defendant of that standard; 3) a causal connection between the defendant's conduct and the resulting injury; and 4) actual damages." *Gipxoi r. Kuser*, 150 P.2d 228, 230 (Ariz. 2007). Plaintiff appears to contend that First Transit was negligent due to (1) the investigation of Matthews's internal complaint: (2) the in

investigation of Mr. Ryan's hotline complaint; (3) the failure to properly and timely inform Mr. Ryan of Ms. Matthews's complaint; (4) the failure to advise him to not have contact with Matthews after May 1, 2019; (5) hiring Mr. Camunez"; and (6) the failure to supervise Mr. Camunez, at the IAH hearing. (Doc. 41, Amended Complaint 8, 18, 108, 111 Pl.'s MS.1 at 7-8; DEF MSJ However. Plaintiff failed to produce evidence of or even allege that First Transit owed Mr. Ryan a duty. Accordingly, Mr. Ryan has also not shown that First Transit's actions breached any duty. Even where Plaintiff could show a duty, he has failed to produce evidence of actionable damages. It appears that Plaintiff's alleged damages are embarrassment due to Ms. Matthews filing a sexual harassment complaint and First Transit employees' knowledge of that complaint as well as the IAN protective order, which do not constitute damages under Arizona law.

See (Grace v Larsen, 83 P.3d 26, 29 (Ariz. 2004)) explaining "actual injury or damages must be sustained before a cause of action in negligence is generated."). Because Mr. Rynn has not met his burden on multiple elements of his negligence claim, the Court will grant Defendant's Motion for Summary Judgment. Plaintiff's Motions for Additional Discovery Plaintiff's Motion for Discovery (Doc. 761) and Motion to Compel (Doe 80) are denied. Both motions pertain to alleged relevant information in the possession of third-party Union Operating Engineers Local 42g. Plaintiff provides no basis for the relevance of this additional evidence except that it will help clarify dates for various communications. This explanation is insufficient to show the Court that Union Operating Engineers possesses relevant evidence. To the extent Plaintiff contends that the evidence is relevant

merits rather than *on* the pleadings or technicalities." *Ehfridge* 8/ock. 832 1:,2d 1132. 1135 (9th Cir. 1987) (citation and internal quotation marks omitted) However, the policy in favor of allowing amendments is subject to limitations. After a defendant files a responsive pleading, leave to amend is not appropriate if the "amendment would cause prejudice to the opposing party, is sought in bad faith, is futile, or creates undue delay." *Madeja v OlympicTalkers*, 3 F.3d628.636(9th Cir.200.2) (citation and internal quotation marks omitted). "Futility alone can justify the denial of a motion for leave to amend." *Nunes V Ashcroft* 5 F.3d 815, 801.i (9th Cir. 2003). Here, Plaintiff proposed amendments would cause substantial prejudice to Defendants. Plaintiff filed this request to add additional claims after all motions for summary judgment were fully briefed and two and half months after the close of discovery. If the Court were to grant Plaintiff's request the case would essentially start from the beginning for the added claims. At the least, Defendant would need to respond to an amended complaint, re-take Mr. Rynn's deposition and participate in Discovery. Plaintiff does not provide any reason why the Court should subject Defendant to such prejudice. Nor does Plaintiff explain why it waited until the close of summary judgment to request to amend. Because of the extreme prejudice and delay, the Court will deny Plaintiff's Motion to Amend. Wanted to admit the new evidence, but he had the opportunity to use the evidence in support of his Motion for Summary Judgment, and in fact referenced the IAH hearing multiple times

2:20-cv-01309.3yr Document 110 Filed 07/29/21

Page 11 of 1

IT IS THEREFORE: ORDERED granting Defendant First Transit Inc.'s Motion for Summary Judgment (Doc. 82).**IT IS FURTHER ORDERED** denying Plaintiff Richard Rynn's Motion I'm Summary Judgment (Doc. 81).**IT IS FURTHER ORDERED** grunting Defendant First Transit Inc.'s Motion to Strike Plaintiffs • Notice of Removal of Civil Action to Federal Conti and Addendum to :Notice of Removal (Doe, 311, Accordingly, Documents 28 and 29 shall be stricken from 'the record. **IT IS FURTHER ORDERED** denying Plaintiff Richard Rynn's Motion to Supplement as moot (1)lie. 42).**IT IS FURTHER ORDERED** denying Defendant First 'Transit Inc.'s Motion to Dismiss as moot (Doc. 43).**IT IS FURTHER ORDERED** denying Plaintiff Richard Ryan's Motion for Discovery (Doc. 76).**IT IS FURTHER ORDERED** Plaintiff Richard Rynn's Motion to Compel (Doc, 80).**IT IS FURTHER ORDERED** Plaintiff Richard Rynn's Second Motion to Amend (Doc. 9(i)).**IT IS FURTHER ORDERED** denied ins.! Defendant First Transit Inc.'s Motion to Strike (Doe. 107).**IT IS Further ORDERED** the Court to enter judgment accordingly and Let minute this action. Dated this 28th day of. July 2021 District Judge

Case 2:20-cv-01309-JJT Document 162 Filed

12/13/21 Page 1 of 4

Richard Rynn,

Plaintiff,

v.

First Transit Incorporated, *et al.*,

Defendants.

WO

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

No. CV-20-01309-PHX-JJT ORDER

At issue are five motions filed by Plaintiff: two Motions Seeking Leave to File Fifth Amended Complaint (Docs. 140, 145), two Motions for Change of Judge (Docs. 141, 153), and a Motion to Set Aside Judgment (Doc. 142). Defendant responded to each of Plaintiff's motions (Docs. 149, 150, 151, and 161, respectively) and Plaintiff filed replies (Docs. 156, 157, 155, respectively). As the Court made clear in its order dated October 19, 2021 (Doc. 139), this matter is closed. Once again, like Plaintiff's previous filings, the new motions contain frivolous allegations against the Court and Defendant, many of which the Court has already addressed. Accordingly, the motions will be denied.

**I. Plaintiff's Motions Seeking Leave to File
Fifth Amended Complaint**

As the Court articulated in its previous Order (Doc. 139), this case is closed and judgment in this matter is now final. Thus, the Court will deny his motions for amendment as frivolous.

II. Plaintiff's Motions for Change of Judge

Title 28, Section 455(a) of the United States Code provides that a United States judge "shall disqualify" himself in any proceeding in which his "impartiality might reasonably be questioned." 28 U.S.C. § 455(a). Section 455(b)(1) provides that a judge must also disqualify himself where he "has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding[.]" *Id.* § 455(b)(1). Recusal pursuant to § 455(b) is required only if the bias or prejudice stems from an extra-judicial source, not from conduct or rulings during the course of the proceedings. *See Hasbrouck v. Texaco, Inc.*, 842 F.2d 1034, 1046 (9th Cir. 1987), *aftd.*, 496 U.S. 543 (1990). "[J]udicial rulings alone almost never constitute [a] valid basis for a bias or partiality motion." *Liteky v. United States*, 114 S. Ct. 1147, 1157 (1994). Adverse rulings should be appealed; they do not form the basis for a recusal motion. Further, where the judge forms opinions in the courtroom, either in the current proceeding or in a prior proceeding, these opinions "do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible." *Id.*

Similarly, 28 U.S.C. § 144 provides for recusal where a party files a "timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party." The affidavit must state the facts and reasons for the belief that the bias or prejudice exists. *Id.* If the judge finds the affidavit timely and legally sufficient, the judge must proceed no further, and another judge must be assigned to

hear the motion. *Id.*; *United States v. Sibla*, 624 F.2d 864, 867 (9th Cir. 1980).

Plaintiff fails to demonstrate that the undersigned has any bias or prejudice, nor has Plaintiff identified any extrajudicial matter from which an asserted bias arose. Accordingly, recusal pursuant to § 455(b) is not appropriate. See, e.g., *United States v. Studley*, 783 F.2d 934, 939 (9th Cir. 1986) (judge's prior adverse rulings are insufficient cause for recusal)

Case 2:20-cv-01309-JJT Document 162 Filed
12/13/21 Page 3 of 4

Similarly, Plaintiff has not established that recusal pursuant to § 144 is appropriate. Accordingly, the undersigned will deny the motion.

III. Plaintiff's Motion to Set Aside Judgment

Rule 60(d)(3) allows a court to "set aside a judgment for fraud on the court." Because of a court's inherent equity power to vacate judgments obtained by fraud, this ground for relief is not subject to the same time constraints as other Rule 60 motions and consequently can be raised after one year from the date of judgment, as is the case here. See Fed. R. Civ. P. 60(c, d).

In the motion before the Court, Plaintiff rehashes many of his arguments from the summary judgment phase of the case, alleges the Court failed to consider evidence, and accuses the undersigned of bias, prejudice, and harassment. (See generally Doc. 142.) Plaintiff's conclusory and frivolous allegations are insufficient to meet the high burden required for a finding of fraud on the Court. Accordingly, the present motion is denied.

IV. No Additional Filings Will be Entertained

The Court reiterates that this matter is closed. Any additional filings will be stricken from the record. Plaintiff has already been cautioned that "any misuse of the ECF system

Case 2:20-cv-01309-JJT Document 162 Filed
12/13/21 Page 4 of 4
will result in immediate discontinuation of this privilege and disabling of the password assigned to [Plaintiff]." (Doc. 21.) Plaintiff is warned that any further filings will result in the termination of his ECF privileges.

IT IS THEREFORE ORDERED denying Plaintiff's Fifth Motion to Amend (Docs. 140, 145).

IT IS FURTHER ORDERED denying Plaintiff's Motions for Change of Judge (Docs. 141, 153).

IT IS FURTHER ORDERED denying Plaintiff's Motion to Set Aside Judgment (Doc. 142).

Dated this 13th day of December, 2021.

Tuchi
District Judge