No. __-___

IN THE

Supreme Court of the United States

BRITTNEY FELDER,

PETITIONER

v.

MGM NATIONAL HARBOR, LLC,

RESPONDENT

APPENDIX A

In Appendix A, please find the decision, decided on January 09, 2026, of the United States Court of Appeals for the Fourth Circuit affirming the judgment of the United States District Court for the District of Maryland, Greenbelt Division.

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 25-1694

BRITTNEY FELDER, PLAINTIFF-APPELLANT

v.

MGM NATIONAL HARBOR, LLC,
DOES 1 THROUGH 50, INCLUSIVE, DEFENDANTS-APPELLEES

Decided: January 09, 2026

Appeal from the United States District Court
for the District of Maryland, at Greenbelt
No. 8:18-cv-03405-ABA — **Adam B. Abelson**, District Judge

Before DIAZ, Chief Judge, and QUATTLEBAUM and HEYTENS, Circuit Judges.

PER CURIAM:

Brittney Felder appeals the district court's final judgment in favor of MGM National Harbor, LLC ("MGM"), after a jury rendered a verdict in MGM's favor on Felder's color discrimination claim, brought pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e to 2000e-17.* We have reviewed the record and find

no reversible error. Accordingly, we affirm the district court's judgment. *Felder v. MGM Nat'l Harbor, LLC*, No. 8:18-cv-03405-ABA (D. Md. June 9, 2025). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

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* Felder has filed a motion to exceed the length limitations for her informal brief, which we grant.

No. __-___

IN THE

Supreme Court of the United States

BRITTNEY FELDER,

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MGM NATIONAL HARBOR, LLC,

RESPONDENT

APPENDIX B

In Appendix B, please find the Order of Judgment, filed on June 09, 2025, of the United States District Court for the District of Maryland, Greenbelt Division.

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
GREENBELT DIVISION

No. 18-cv-03405

BRITTNEY FELDER, PLAINTIFF

v.

MGM NATIONAL HARBOR, LLC, DEFENDANT

Filed: June 09, 2025

ORDER OF JUDGMENT

Judge ADAM B. ABELSON

The jury having returned a verdict in favor of Defendant MGM National Harbor, LLC, it is hereby ORDERED that:

1. Judgment is entered in favor of Defendant MGM National Harbor, LLC.
2. Any and all prior rulings made by this court disposing of any claims against any parties are incorporated by reference herein, and this Order shall be deemed to be a final judgment within the meaning of Federal Rule of Civil Procedure 58.

3. The Clerk shall close this case.

Date: June 9, 2025

/s/

Adam B. Abelson
United States District Judge

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IN THE

Supreme Court of the United States

BRITTNEY FELDER,

PETITIONER

v.

MGM NATIONAL HARBOR, LLC,

RESPONDENT

APPENDIX C

In Appendix C, please find the Order, filed on February 06, 2026, of the United States Court of Appeals for the Fourth Circuit denying the petition for rehearing and rehearing en banc.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 25-1694

BRITTNEY FELDER, PLAINTIFF-APPELLANT

v.

MGM NATIONAL HARBOR, LLC,
DOES 1 THROUGH 50, INCLUSIVE, DEFENDANTS-APPELLEES

Filed: February 06, 2026

Appeal from the United States District Court
for the District of Maryland, at Greenbelt.
No. 8:18-cv-03405-ABA — **Adam B. Abelson**, District Judge.

ORDER

Panel: Chief Judge DIAZ, Judge QUATTLEBAUM, and Judge HEYTENS.

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 40 on the petition for rehearing en banc.

Entered at the direction of the panel: Chief Judge Diaz, Judge Quattlebaum, and Judge Heytens.

For the Court

/s/ Nwamaka Anowi, Clerk

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IN THE

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BRITTNEY FELDER,

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MGM NATIONAL HARBOR, LLC,

RESPONDENT

APPENDIX D

In Appendix D, please find the decision, filed on July 21, 2022, of the United States Court of Appeals for the Fourth Circuit affirming in part, vacating in part, and remanding this case for further proceedings to the United States District Court of Maryland, Greenbelt Division.

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-2373

BRITTNEY FELDER, PLAINTIFF-APPELLANT

v.

MGM NATIONAL HARBOR, LLC,
DOES 1 THROUGH 50, INCLUSIVE, DEFENDANTS-APPELLEES

Decided: July 21, 2022

Appeal from the United States District Court
for the District of Maryland, at Greenbelt
No. 8:18-cv-03405-PJM — **Peter J. Messitte**, Senior District Judge

Before DIAZ, QUATTLEBAUM and HEYTENS, Circuit Judges.

Affirmed in part, vacated in part, and remanded by unpublished per curiam opinion.

PER CURIAM:

Brittney Felder appeals the district court's order dismissing her discrimination claims under 42 U.S.C. § 1981 and Title VII of the Civil Rights Act of 1964 (Title VII), *as amended*, 42 U.S.C. §§ 2000e to 2000e-17, as well several state law claims. With

respect to her discrimination claims, Felder alleged that her employer, MGM National Harbor, LLC ("MGM"), and employees of MGM, discriminated against Felder, and eventually terminated Felder's employment, because of her race, color, and sex. We affirm in part, vacate in part, and remand for further proceedings.

We review de novo a district court's order granting a motion to dismiss under Fed. R. Civ. P. 12(b)(6), "accept[ing] the factual allegations in the complaint as true and constru[ing] them in the light most favorable to the nonmoving party." *Rockville Cars, LLC v. City of Rockville*, 891 F.3d 141, 145 (4th Cir. 2018). To survive a motion to dismiss under Rule 12(b)(6), "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted). A pleading that offers only "labels and conclusions" or "a formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

A plaintiff seeking relief under Title VII must demonstrate some adverse employment action. *Holland v. Wash. Homes, Inc.*, 487 F.3d 208, 219 (4th Cir. 2007).*

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* Although Felder raised her race discrimination claim under both Title VII and § 1981, we analyze them together. *See Guessous v. Fairview Prop. Invs., LLC*, 828 F.3d

"An adverse employment action is a discriminatory act that adversely affects the terms, conditions, or benefits of the plaintiff's employment." *Id.* (cleaned up). Examples of an adverse employment action include a "decrease in compensation, job title, level of responsibility, or opportunity for promotion." *James v. Booz-Allen & Hamilton, Inc.*, 368 F.3d 371, 376 (4th Cir. 2004) (internal quotation marks omitted). The only adverse employment action Felder alleged was her termination. Therefore, the district court was correct to dismiss Felder's claims of discrimination that did not relate to her claim of wrongful termination.

A plaintiff is not required to plead a prima facie case of discrimination under Title VII to survive a motion to dismiss. *McCleary-Evans v. Md. Dep't of Transp.*, 780 F.3d 582, 584-85 (4th Cir. 2015). Instead, a plaintiff must allege sufficient facts "to satisfy the elements of a cause of action created by [the applicable] statute." *Id.* at 585 (internal quotation marks omitted). Thus, Felder had to plausibly allege that she was terminated "'*because of*'" her race, color, or sex to withstand a motion to dismiss. *See id.* (quoting 42 U.S.C. § 2000e–2(a)(1)). In making this determination, we have cautioned that "a well pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and that a recovery is very remote and unlikely." *Woods v. City of Greensboro*, 855 F.3d 639, 652 (4th Cir. 2017) (cleaned up).

208, 219 (4th Cir. 2016) (noting that elements of discriminatory discharge based on race under Title VII and § 1981 "are effectively the same").

We agree with the district court that Felder failed to adequately plead her claims of race- and sex-based discrimination. Although Felder frequently indicated the race and sex of various individuals throughout her amended complaint, she failed to describe how those attributes played a role in any of the alleged discriminatory conduct, much less her termination.

However, construing the complaint in Felder's favor, as we must at this stage in the litigation, we conclude that she has alleged a plausible claim of color-based discrimination. Color discrimination and race discrimination claims are separate causes of action, which may be brought together or irrespective of one another. *See Bryant v. Bell Atl. Md., Inc.*, 288 F.3d 124, 132-33 & n.5 (4th Cir. 2002). Thus, it is appropriate for courts to address race- and color-based discrimination claims separately, such that the court can independently assess whether each claim passes muster.

With respect to color-based discrimination, Felder alleged that lighter tone African Americans, including herself, were punished more frequently and more harshly than darker tone African Americans. She further alleged that her direct supervisor, a darker tone African American, predominantly hired darker tone African Americans, and that MGM perpetuated a workplace in which derogatory remarks were frequently made against lighter tone African Americans. Indeed, Felder stated that her direct supervisor referred to Felder by use of a derogatory term that implicated Felder's color a mere three days before Felder was terminated. Finally, Felder repeatedly alleged that she was performing her job to at least a satisfactory

level. We conclude that these allegations, if proven true, could demonstrate that Felder was terminated because of her color.

Finding no other reversible error, we affirm the district court's dismissal of Felder's sex and race discrimination claim under Title VII; the dismissal of her state law claims; and the dismissal of any other discrimination claims unrelated to Felder's claim of wrongful termination. However, we vacate the district court's dismissal of Felder's wrongful termination claim based on color discrimination, and remand for further proceedings. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED IN PART,

VACATED IN PART,

AND REMANDED

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APPENDIX E

In Appendix E, please find the constitutional and statutory provisions involved in this case.

APPENDIX E

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

FIFTH AMENDMENT: (U.S. Const. amend. V)

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

SIXTH AMENDMENT: (U.S. Const. amend. VI)

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

SEVENTH AMENDMENT: (U.S. Const. amend. VII)

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall

be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

FOURTEENTH AMENDMENT: Section 1: (U.S. Const. amend. XIV, §1)

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

THE AMERICAN BAR ASSOCIATION'S MODEL RULES OF PROFESSIONAL CONDUCT RULE 3.3: **Candor Toward the Tribunal**:

Advocate

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A

lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

THE AMERICAN BAR ASSOCIATION'S MODEL RULES OF PROFESSIONAL CONDUCT RULE 8.2: **Judicial & Legal Officials:**

Maintaining The Integrity of The Profession

(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

(b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.

THE AMERICAN BAR ASSOCIATION'S MODEL RULES OF PROFESSIONAL CONDUCT RULE 8.4: **Misconduct**:

Maintaining The Integrity of The Profession

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or

(g) engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law. This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude legitimate advice or advocacy consistent with these Rules.

FEDERAL RULES OF CIVIL PROCEDURE RULE 11(b), (c)(1)):

(b) REPRESENTATIONS TO THE COURT. By presenting to the court a pleading, written motion, or other paper — whether by signing, filing, submitting, or later advocating it — an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

(c) SANCTIONS.

(1) *In General.* If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional

circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.

APPENDIX E. MARYLAND STATE BAR ASSOCIATION CODE OF CIVILITY:

In May 1997, the Maryland State Bar Association's Board of Governors approved the following aspirational Code of Civility for all lawyers and judges in Maryland. MSBA encourages all Maryland lawyers and judges to honor and voluntarily adhere to the standards set forth in these codes. Civility is the cornerstone of the legal profession.

LAWYERS' DUTIES

1. We will treat all participants in the legal process, in a civil, professional, and courteous manner and with respect at all times and in all communications, whether oral or written. These principles are intended to apply to all attorneys who practice law in the State of Maryland regardless of the nature of their practice. We will refrain from acting upon or manifesting racial, gender, or other bias or prejudice toward any participant in the legal process. We will treat all participants in the legal process with respect.
2. We will abstain from disparaging personal remarks or acrimony toward any participants in the legal process and treat everyone with fair consideration. We will advise our clients and witnesses to act civilly and respectfully to all participants in the legal process. We will, in all communications, speak and write civilly and respectfully to the Court, staff, and other court or agency

personnel with an awareness that they, too, are an integral part of the judicial system.

3. We will not encourage any person under our control to engage in conduct that would be inappropriate under these standards if we were to engage in such conduct.

4. We will not bring the profession into disrepute by making unfounded accusations of impropriety or attacking counsel, and absent good cause, we will not attribute bad motives or improper conduct to other counsel.

5. We will strive for orderly, efficient, ethical and fair disposition of litigation, as well as disputed matters that are not yet the subject of litigation, and for the efficient, ethical, and fair negotiation and consummation of business transactions.

6. We will not engage in conduct that offends the dignity and decorum of judicial and administrative proceedings, bring disorder to the tribunal or undermines the image of the legal profession, nor will we allow clients or witnesses to engage in such conduct. We will educate clients and witnesses about proper courtroom decorum and to the best of our ability, prevent them from creating disorder or disruption in the courtroom.

7. We will not knowingly misrepresent, mischaracterize, or misquote fact or authorities cited.

8. We will be punctual and prepared for all scheduled appearances so that all matters may begin on time and proceed efficiently. Furthermore, we will also

educate everyone involved concerning the need to be punctual and prepared, and if delayed we will notify everyone involved, if at all possible.

9. We will attempt to verify the availability of necessary participants and witnesses so we can promptly reschedule appearances if necessary.
10. We will avoid ex parte communications with the court, including the judge's staff, on pending matters in person (whether in social, professional, or other contexts), by telephone, and in letters and other forms of written communication, unless authorized.

JUDGES' RESPONSIBILITIES

1. We will not use hostile, demeaning or humiliating words in opinions or in written or oral communications with lawyers, parties or witnesses.
2. We will be courteous, respectful and civil to lawyers, parties, witnesses, and court personnel. We will maintain control of all court proceedings, recognizing that judges have both the obligation and the authority to ensure that judicial proceedings are conducted with dignity, decorum and courtesy to all.
3. Within the practical limits of time, we will afford lawyers appropriate time to present proper arguments and to make a complete and accurate record.
4. We will make reasonable efforts to decide promptly all matters presented for decision.
5. We will be considerate of professional and personal time schedules of lawyers, parties, witnesses and court staff in scheduling hearings, meetings, and conferences, consistent with the efficient administration of justice.

6. We will be punctual in convening trials, hearings, meetings, and conferences; if they are not begun when scheduled; proper and prompt notification will be given.
7. We will inform counsel promptly of any rescheduling, postponement, or cancellation of hearings, meetings or conferences.
8. We will work cooperatively with all other judges and other jurisdictions with respect to availability of lawyers, witnesses, parties and court resources.
9. We will treat each other with courtesy and respect.
10. We will conscientiously assist and cooperate with other jurists to assure the efficient and expeditious processing of cases, while, when possible, accommodating the trial schedule of all lawyers, parties and witnesses.

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APPENDIX F

In Appendix F, please find the citation of scriptural authorities.

APPENDIX F

CITATION OF SCRIPTURAL AUTHORITIES

PAGE 4:

New World Translation of the Holy Scriptures, 2013, Proverbs 22:1

> "A good name is to be chosen rather than great wealth; To be respected is better than silver and gold."

PAGE 5:

New World Translation of the Holy Scriptures, 2013, John 17:14

> "I have given your word to them, but the world has hated them, because they are no part of the world, just as I am no part of the world."

New World Translation of the Holy Scriptures, 2013, John 17:16

> "They are no part of the world, just as I am no part of the world."

New World Translation of the Holy Scriptures, 2013, John 18:36

> "Jesus answered: "My Kingdom is no part of this world. If my Kingdom were part of this world, my attendants would have fought that I should not be handed over to the Jews. But as it is, my Kingdom is not from this source.""

New World Translation of the Holy Scriptures, 2013, 1 John 5:19

> "We know that we originate with God, but the whole world is lying in the power of the wicked one."

New World Translation of the Holy Scriptures, 2013, Revelation 12:12

> "On this account be glad, you heavens and you who reside in them! Woe for the earth and for the sea, because the Devil has come down to you, having great anger, knowing that he has a short period of time."

New World Translation of the Holy Scriptures, 2013, Jeremiah 22:3

"This is what Jehovah says: "Uphold justice and righteousness. Rescue the one being robbed from the hand of the defrauder. Do not mistreat any foreign resident, and do not harm any fatherless child or widow. And do not shed any innocent blood in this place.""

New World Translation of the Holy Scriptures, 2013, Isaiah 3:11

"Woe to the wicked one! Disaster will befall him, For what his hands have done will be done to him!"

New World Translation of the Holy Scriptures, 2013, Isaiah 9:6

"For a child has been born to us, A son has been given to us; And the rulership will rest on his shoulder. His name will be called Wonderful Counselor, Mighty God, Eternal Father, Prince of Peace."

New World Translation of the Holy Scriptures, 2013, Isaiah 9:7

"To the increase of his rulership And to peace, there will be no end, On the throne of David and on his kingdom In order to establish it firmly and to sustain it Through justice and righteousness, From now on and forever. The zeal of Jehovah of armies will do this."

New World Translation of the Holy Scriptures, 2013, John 65:13

"Therefore this is what the Sovereign Lord Jehovah says: "Look! My servants will eat, but you will go hungry. Look! My servants will drink, but you will go thirsty. Look! My servants will rejoice, but you will suffer shame.""

New World Translation of the Holy Scriptures, 2013, Isaiah 65:17

"For look! I am creating new heavens and a new earth; And the former things will not be called to mind, Nor will they come up into the heart."

New World Translation of the Holy Scriptures, 2013, 2 Peter 3:13

"But there are new heavens and a new earth that we are awaiting according to his promise, and in these righteousness is to dwell."

New World Translation of the Holy Scriptures, 2013, Matthew 6:20

"Rather, store up for yourselves treasures in heaven, where neither moth nor rust consumes, and where thieves do not break in and steal."

New World Translation of the Holy Scriptures, 2013, Psalm 83:18

"May people know that you, whose name is Jehovah, You alone are the Most High over all the earth."

PAGE 7:

New World Translation of the Holy Scriptures, 2013, Isaiah 43:10

""You are my witnesses," declares Jehovah, "Yes, my servant whom I have chosen, So that you may know and have faith in me And understand that I am the same One. Before me no God was formed, And after me there has been none."

New World Translation of the Holy Scriptures, 2013, Acts 22:15

"because you are to be a witness for him to all men of the things you have seen and heard."

New World Translation of the Holy Scriptures, 2013, Luke 21:13

"It will result in your giving a witness."

New World Translation of the Holy Scriptures, 2013, Acts 17:27

"so that they would seek God, if they might grope for him and really find him, although, in fact, he is not far off from each one of us."

New World Translation of the Holy Scriptures, 2013, Psalm 71:12

"O God, do not remain far away from me. O my God, hurry to help me."

New World Translation of the Holy Scriptures, 2013, Psalm 145:8

"Jehovah is compassionate and merciful, Slow to anger and great in loyal love."

New World Translation of the Holy Scriptures, 2013, Psalm 145:18

"Jehovah is near to all those calling on him, To all who call on him in truth."

New World Translation of the Holy Scriptures, 2013, Romans 3:23

"For all have sinned and fall short of the glory of God,"

New World Translation of the Holy Scriptures, 2013, Romans 3:24

"and it is as a free gift that they are being declared righteous by his undeserved kindness through the release by the ransom paid by Christ Jesus."

New World Translation of the Holy Scriptures, 2013, Ephesians 1:7

"By means of him we have the release by ransom through the blood of that one, yes, the forgiveness of our trespasses, according to the riches of his undeserved kindness."

PAGE 10:

New World Translation of the Holy Scriptures, 2013, Romans 10:14

"However, how will they call on him if they have not put faith in him? How, in turn, will they put faith in him about whom they have not heard? How, in turn, will they hear without someone to preach?"

New World Translation of the Holy Scriptures, 2013, Romans 10:15

"How, in turn, will they preach unless they have been sent out? Just as it is written: "How beautiful are the feet of those who declare good news of good things!""

New World Translation of the Holy Scriptures, 2013, Matthew 28:19

"Go, therefore, and make disciples of people of all the nations, baptizing them in the name of the Father and of the Son and of the holy spirit,"

New World Translation of the Holy Scriptures, 2013, Matthew 28:20

"teaching them to observe all the things I have commanded you. And look! I am with you all the days until the conclusion of the system of things.""

PAGE 11:

New World Translation of the Holy Scriptures, 2013, Acts 25:11

> "If I am really a wrongdoer and have committed anything deserving of death, I do not beg off from dying; but if there is no substance to the accusations these men have made against me, no man has the right to hand me over to them as a favor. I appeal to Caesar!""

PAGE 15:

New World Translation of the Holy Scriptures, 2013, Matthew 10:18

> "And you will be brought before governors and kings for my sake, for a witness to them and the nations."

New World Translation of the Holy Scriptures, 2013, Mark 13:9

> ""As for you, look out for yourselves. People will hand you over to local courts, and you will be beaten in synagogues and be put on the stand before governors and kings for my sake, for a witness to them."

PAGE 30:

New World Translation of the Holy Scriptures, 2013, Hebrews 11:1

> "Faith is the assured expectation of what is hoped for, the evident demonstration of realities that are not seen."

PAGE 33:

New World Translation of the Holy Scriptures, 2013, Deuteronomy 1:17

> "You must not be partial in judgment. You should hear the small one the same as the great one. You must not become intimidated by men, for the judgment belongs to God; and if a case is too difficult for you, you should present it to me, and I will hear it.'"

New World Translation of the Holy Scriptures, 2013, Matthew 12:34

> "Offspring of vipers, how can you speak good things when you are wicked? For out of the abundance of the heart the mouth speaks."

New World Translation of the Holy Scriptures, 2013, Luke 6:45

> "A good man brings good out of the good treasure of his heart, but a wicked man brings what is wicked out of his wicked treasure; for out of the heart's abundance his mouth speaks."

PAGE 34:

New World Translation of the Holy Scriptures, 2013, Matthew 7:5

> "Hypocrite! First remove the rafter from your own eye, and then you will see clearly how to remove the straw from your brother's eye."

New World Translation of the Holy Scriptures, 2013, Mark 7:6

> "He said to them: "Isaiah aptly prophesied about you hypocrites, as it is written, 'This people honor me with their lips, but their hearts are far removed from me.""

New World Translation of the Holy Scriptures, 2013, Galatians 5:17

> "For the flesh is against the spirit in its desire, and the spirit against the flesh; these are opposed to each other, so that you do not do the very things you want to do."

PAGE 35:

New World Translation of the Holy Scriptures, 2013, Proverbs 13:5

> "The righteous one hates lies, But the actions of the wicked bring shame and disgrace."

PAGE 40:

New World Translation of the Holy Scriptures, 2013, 1 John 4:19

> "We love, because he first loved us."

New World Translation of the Holy Scriptures, 2013, Romans 2:11

> "For there is no partiality with God."

New World Translation of the Holy Scriptures, 2013, 2 Corinthians 1:4

"I always thank my God for you in view of the undeserved kindness of God given to you in Christ Jesus;"

New World Translation of the Holy Scriptures, 2013, Jeremiah 10:23

"I well know, O Jehovah, that man's way does not belong to him. It does not belong to man who is walking even to direct his step."

New World Translation of the Holy Scriptures, 2013, Psalm 89:47

"Remember how short my life is! Was it to no purpose that you created all humans?"

New World Translation of the Holy Scriptures, 2013, Proverbs 16:4

"Jehovah has made everything work for his purpose, Even the wicked for the day of disaster."

New World Translation of the Holy Scriptures, 2013, 2 Corinthians 4:17

"For though the tribulation is momentary and light, it works out for us a glory that is of more and more surpassing greatness and is everlasting;"

PAGE 41:

New World Translation of the Holy Scriptures, 2013, Matthew 10:28

"And do not become fearful of those who kill the body but cannot kill the soul; rather, fear him who can destroy both soul and body in Ge·hen′na."

New World Translation of the Holy Scriptures, 2013, Psalm 56:8

"You keep track of my wandering. Do collect my tears in your skin bottle. Are they not recorded in your book?"

New World Translation of the Holy Scriptures, 2013, Psalm 31:7

"I will rejoice greatly in your loyal love, For you have seen my affliction; You are aware of my deep distress."

New World Translation of the Holy Scriptures, 2013, Proverbs 3:27

"Do not withhold good from those to whom you should give it If it is within your power to help."

New World Translation of the Holy Scriptures, 2013, Psalm 28:4

"Pay them back for their deeds, According to their evil practices. Repay them for the work of their hands, According to what they have done."

New World Translation of the Holy Scriptures, 2013, Job 34:26

"He strikes them for their wickedness, In a place where all can see,"

New World Translation of the Holy Scriptures, 2013, Deuteronomy 32:35

"Vengeance is mine, and retribution, At the appointed time when their foot slips, For the day of their disaster is near, And what awaits them will come quickly.'"

New World Translation of the Holy Scriptures, 2013, Hebrews 10:30

"For we know the One who said: "Vengeance is mine; I will repay." And again: "Jehovah will judge his people.""

New World Translation of the Holy Scriptures, 2013, Deuteronomy 32:4

"The Rock, perfect is his activity, For all his ways are justice. A God of faithfulness who is never unjust; Righteous and upright is he."

New World Translation of the Holy Scriptures, 2013, Romans 9:14

"What are we to say, then? Is there injustice with God? Certainly not!"

New World Translation of the Holy Scriptures, 2013, Psalm 119:142

"Your righteousness is an eternal righteousness, And your law is truth."

New World Translation of the Holy Scriptures, 2013, Deuteronomy 10:17

"For Jehovah your God is the God of gods and the Lord of lords, the God great, mighty, and awe-inspiring, who treats none with partiality and does not accept a bribe."

New World Translation of the Holy Scriptures, 2013, 2 Samuel 22:21

"Jehovah rewards me according to my righteousness; He repays me according to the innocence of my hands."

New World Translation of the Holy Scriptures, 2013, Psalm 85:12

"Yes, Jehovah will give what is good, And our land will yield its harvest."

New World Translation of the Holy Scriptures, 2013, Nahum 1:7

"Jehovah is good, a stronghold in the day of distress. He is mindful of those seeking refuge in him."

New World Translation of the Holy Scriptures, 2013, Isaiah 12:2

"Look! God is my salvation. I will trust and feel no dread; For Jah Jehovah is my strength and my might, And he has become my salvation.""

New World Translation of the Holy Scriptures, 2013, Psalm 145:14

"Jehovah supports all who are falling And raises up all who are bowed down."

New World Translation of the Holy Scriptures, 2013, Psalm 9:10

"Those knowing your name will trust in you; You will never abandon those seeking you, O Jehovah."

New World Translation of the Holy Scriptures, 2013, Psalm 55:22

"Throw your burden on Jehovah, And he will sustain you. Never will he allow the righteous one to fall."

New World Translation of the Holy Scriptures, 2013, 1 Corinthians 9:26

"Therefore, the way I am running is not aimlessly; the way I am aiming my blows is so as not to be striking the air;"

New World Translation of the Holy Scriptures, 2013, Exodus 15:3

"Jehovah is a powerful warrior. Jehovah is his name."

New World Translation of the Holy Scriptures, 2013, Proverbs 16:3

"Commit to Jehovah whatever you do, And your plans will succeed."

New World Translation of the Holy Scriptures, 2013, Luke 16:10

"The person faithful in what is least is faithful also in much, and the person unrighteous in what is least is unrighteous also in much."

New World Translation of the Holy Scriptures, 2013, Jeremiah 17:5

"This is what Jehovah says: "Cursed is the man who puts his trust in mere humans, Who relies on human power, And whose heart turns away from Jehovah."

New World Translation of the Holy Scriptures, 2013, 2 Corinthians 13:5

"Keep testing whether you are in the faith; keep proving what you yourselves are. Or do you not recognize that Jesus Christ is in union with you? Unless you are disapproved."

New World Translation of the Holy Scriptures, 2013, 2 Corinthians 12:10

"So I take pleasure in weaknesses, in insults, in times of need, in persecutions and difficulties, for Christ. For when I am weak, then I am powerful."

New World Translation of the Holy Scriptures, 2013, James 5:11

"Look! We consider happy those who have endured. You have heard of the endurance of Job and have seen the outcome Jehovah gave, that Jehovah is very tender in affection and merciful."

New World Translation of the Holy Scriptures, 2013, Psalm 145:9

"Jehovah is good to all, And his mercy is evident in all his works."

New World Translation of the Holy Scriptures, 2013, Proverbs 10:3

"Jehovah will not cause the righteous one to go hungry, But he will deny the wicked what they crave."

New World Translation of the Holy Scriptures, 2013, Job 1:22

"In all of this, Job did not sin or accuse God of doing anything wrong."

New World Translation of the Holy Scriptures, 2013, Job 32:12

> "I paid close attention to you, But none of you could prove Job wrong Or answer his arguments."

New World Translation of the Holy Scriptures, 2013, Isaiah 57:10

> "You have toiled in following your many ways, But you did not say, 'It is hopeless!' You found renewed strength. That is why you do not give up."

New World Translation of the Holy Scriptures, 2013, Exodus 3:14

> "So God said to Moses: "I Will Become What I Choose to Become." And he added: "This is what you are to say to the Israelites, 'I Will Become has sent me to you.'""

New World Translation of the Holy Scriptures, 2013, Proverbs 3:5

> "Trust in Jehovah with all your heart, And do not rely on your own understanding."

New World Translation of the Holy Scriptures, 2013, Jeremiah 17:7

> "Blessed is the man who puts his trust in Jehovah, Whose confidence is in Jehovah."

New World Translation of the Holy Scriptures, 2013, Isaiah 26:4

> "Trust in Jehovah forever, For Jah Jehovah is the eternal Rock."

New World Translation of the Holy Scriptures, 2013, James 1:5-7

> "So if any one of you is lacking in wisdom, let him keep asking God, for he gives generously to all and without reproaching, and it will be given him. But let him keep asking in faith, not doubting at all, for the one who doubts is like a wave of the sea driven by the wind and blown about. In fact, that man should not expect to receive anything from Jehovah;"

New World Translation of the Holy Scriptures, 2013, Isaiah 55:11

> "So my word that goes out of my mouth will be. It will not return to me without results, But it will certainly accomplish whatever is my delight, And it will have sure success in what I send it to do."

APPENDIX G

CITATION OF ONLINE AUTHORITIES

<u>PAGES 08, 14, 20, 23:</u>

Andrew Pei, *Self-Represented Litigants and the Pro Se Crisis*, Cornell Journal of Law and Public Policy (Nov. 04, 2023)
https://publications.lawschool.cornell.edu/jlpp/2023/11/04/self-represented-litigants-and-the-pro-se-crisis/

Brian Vukadinovich, *Letter to the editor: Posner's pro se comments troubling*, The Indiana Lawyer (Nov. 14, 2017)
https://www.theindianalawyer.com/articles/45375-letter-to-the-editor-posners-pro-se-comments-troubling

Debra Cassens Weiss, *Posner: Most judges regard pro se litigants as 'kind of trash not worth the time'*, ABA Journal (Sept. 11, 2017, 11:57 AM)
https://abajournal.com/news/article/posner_most_judges_regard_pro_se_litigants_as_kind_of_trash_nor_worth_the_t

Lyle Denniston, *Chief Justice Wants Less Gamesmanship by Lawyers*, SCOTUSblog (Dec. 31, 2015, 12:00 AM)
https://www.scotusblog.com/2015/12/chief-justice-wants-less-gamesmanship/

Mitchell Levy, *Empirical Patterns of Pro Se Litigation in Federal District Courts* (2018). The University of Chicago Law Review. Retrieved March 20, 2026, from
https://lawreview.uchicago.edu/print-archive/empirical-patterns-pro-se-litigation-federal-district-courts#footnote4_j6d4d84

Seth Endo, *De-Othering Pro Se Litigants*, JOTWELL (June 14, 2024) (reviewing Roger Michalski & Andrew Hammond, *Mapping the Civil Justice Gap in Federal Court*, 57 Wake Forest L. Rev. 463 (2022)),
https://courtslaw.jotwell.com/de-othering-pro-se-litigants/

Sonja Ebron, *Pro Se Litigants Are Key to Rebuilding American Democracy*, Courtroom5 (May 17, 2025)
https://courtroom5.com/blog/pro-se-litigants-are-key-to-rebuilding-american-democracy/

Unknown author, *Reframing the Pro Se Litigation Crisis*, Harvard Civil Rights – Civil Liberties Law Review (Nov. 21, 2019)
https://journals.law.harvard.edu/crcl/reframing-the-pro-se-litigation-crisis/

No. __-___

IN THE

Supreme Court of the United States

BRITTNEY FELDER,

PETITIONER

v.

MGM NATIONAL HARBOR, LLC,

RESPONDENT

APPENDIX H

In Appendix H, please find attached the Letter Order and Opinion of United States District Court Magistrate Judge Gina L. Simms related to Plaintiff's (Petitioner's) granted motion for sanctions filed in the District Court of Maryland.

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

CHAMBERS OF
GINA L. SIMMS
UNITED STATES MAGISTRATE JUDGE

U.S. COURTHOUSE
6500 CHERRYWOOD LANE
GREENBELT, MARYLAND 20770
(301) 344-0627

February 19, 2025

RE: *Felder v. MGM National Harbor, LLC*
Case No. ABA-18-3405

LETTER ORDER AND OPINION RELATED TO DISCOVERY SANCTIONS

On January 26, 2023, the Hon. Peter J. Messitte[1] referred this case to the undersigned for all discovery and related scheduling. (ECF No. 62).

The extensive procedural history of this case relevant to this Letter Order and Opinion is outlined in a Memorandum Opinion issued by the undersigned. (ECF No. 131, "Memorandum Opinion"). In brief, during discovery, several disputes arose that led Plaintiff Brittney Felder ("Plaintiff") to seek sanctions against Defendant MGM National Harbor, LLC ("Defendant"). *See* ECF Nos. 90, 93, 94. In response to two of Plaintiff's allegations, the undersigned issued a Memorandum Opinion, finding that some of Defendant's conduct warranted sanctions. *See* Memorandum Opinion, pp. 31-37. Consequently, the undersigned directed Plaintiff to file a motion in which she identified whether she sought an award of expenses as a sanction for Defendant's conduct. (ECF No. 132).

Presently pending before the Court is "Plaintiff's Motion for an Award of Expenses" ("the Motion"), a memorandum, and exhibits related thereto. (ECF Nos. 133, 133-1 through 133-4). In the Motion, Plaintiff seeks fees and expenses incurred due to Defendant's failure to proceed with scheduled depositions of two witnesses. Defendant has filed a response in opposition ("Opposition"). (ECF No. 137). The matter has been fully briefed, and upon review of the parties' submissions, no hearing is necessary. *See* Local Rule 105.6 (D. Md. 2023). For the reasons set forth herein, the Motion is granted in part, denied in part.

I. DISCUSSION

In the memorandum and exhibits submitted in support of the Motion, Plaintiff, who is *pro se*, seeks an award of: (1) attorney's fees or professional service fees in an unspecified amount for the 67.5 hours that she expended to prepare for the Jones and Fisher depositions; (2) $51.01 for printing expenses; and (3) "loss wages" in the amount of $210.00. (Motion; ECF No. 133-2, ¶¶ 10-12). Plaintiff's exhibits are: (a) a declaration; (b) an expense report; and (c) internet articles on attorney rates and salaries in Washington, D.C. (ECF No. 133-1 through 133-4). Regarding her

[1] The case has been reassigned to Hon. Adam B. Abelson.

request for attorney's fees, Plaintiff describes that she spent 67.5 hours during a roughly two-week period preparing for the depositions. According to Plaintiff, she performed the following tasks:

> (1) research as to the who, how, what, where and when depositions are operated and carried out; (2) viewing of several online videos related to depositions; (3) read through and review discovery documents provided by both Plaintiff and Defendants; (4) examine and configure questions and potential rebuttals that could arise during the depositions; (5) prepare and set-up the remote location and digital media from where I was to hold/view/conduct the depositions; (6) review of the federal and local rules, laws, and statutes that govern depositions; and (7) email communications to Defendants regarding questions and concerns related to the depositions of Lisa Jones and Patrick Fisher (*see* attached emails to this Declaration).

(ECF No. 133-2, "Declaration," ¶ 8). In addition, Plaintiff declares that she "did not have many expenses to recover due to the remote nature that the depositions were to occur." (Declaration, ¶ 11). Regarding the printing expenses, Plaintiff incurred $51.01 in "printing expenses for paper from Office Depot for research and other relevant documents to be used or considered for the depositions," which were reasonable and necessary. (Declaration, ¶ 11). Regarding the "loss(sic) wages," Plaintiff declares that at the time that the depositions were to occur, she tutored six children from 2pm-8pm, at the rate of $35.00 per hour, and that she cancelled the sessions scheduled on the day of Ms. Jones' and Mr. Fischer's depositions before she received Defendant's last-minute notice cancelling their depositions. Plaintiff's lost wages total $210.00. (Declaration, ¶ 10). In sum, Plaintiff seeks $261.01, plus whatever amount that the Court deems reasonable for the value of the professional services that she performed in connection with the deposition preparation. (ECF No. 133-1, p. 11).

Defendant counters that the Motion should be denied outright, or, alternatively, that only a limited monetary amount should be awarded as reasonable expenses. Specifically, Defendant avers: (1) that Plaintiff, who is *pro se*, cannot be awarded attorney's fees; (2) the "expenses and costs" requested by Plaintiff are "excessive and unreasonable;" and (3) if the Court does find that an award of expenses is appropriate, it should be "limited to the expenses associated with her lost opportunity costs in cancelling her tutoring sessions." (Opposition, p. 3).

In my Memorandum Opinion, the undersigned found that Plaintiff had met her burden in establishing that discovery violations occurred related to the Defendant's last-minute cancellations of Ms. Jones' and Mr. Fisher's depositions. (Memorandum Opinion, pp. 31-37). After finding that sanctions were in order, the undersigned interpreted Federal Rule of Civil Procedure 30(g) and relevant caselaw within the Fourth Circuit to allow Plaintiff to recover "reasonable expenses" incurred related to the Defendant's willful conduct. (*Id.*). The undersigned did not interpret Fed. R. Civ. P. 30(g) to allow for the award of attorney's fees. *See* Memorandum Opinion, p. 34.

When redressing discovery misconduct, this Court enjoys broad discretion in determining the appropriate award. *Poole v. ex rel. Elliott v. Textron, Inc.*, 192 F.R.D. 494, 497 (D. Md. 2000).

However, any award must be consistent with the law. In addition, Fed. R. Civ. P. 30(g) requires the Court to find that the fees and costs sought are reasonable before Defendant is ordered to pay them. *Gordon v. New Eng. Tractor Trailer Training Sch.*, 168 F.R.D. 178, 180 (D. Md. 1996).

A. Attorney's Fees

Because the Motion appears to be seeking attorney's fees, I performed a survey of the law related to whether a *pro se* plaintiff can recover attorney's fees in civil litigation. The trend appears to be that *pro se* plaintiffs are not entitled to recover attorney's fees in a variety of contexts. *See, e.g., Goodman v. Praxair Services, Inc.*, 632 F.Supp.2d 494, 524 (D. Md. 2009)(*pro se* plaintiff not entitled to award of attorney's fees as a Fed. R. Civ. P. 37 spoliation sanction); *Arias-Zeballos v. Tan*, Civ. No. 06-1268-GELKNF, 2007 WL 1946542, at *1 (S.D.N.Y. Jun. 27, 2007)(*pro se* plaintiff not entitled to attorney's fees in connection with a motion to compel because "one cannot 'incur' fees payable to oneself."); *Adams v. Agrusa*, Civ. No. 15-7270-SVW-RAO, 2016 WL 7665411 (C.D. Ca. Jul. 19, 2016)(*pro se* plaintiff not entitled to statutory attorney's fees in a copyright infringement action); *SEC v. Price Waterhouse*, 41 F.3d. 805, 808 (2nd Cir. 1994)(*pro se* litigant cannot recover attorney's fees under the Equal Access to Justice Act); *Falcone v. IRS*, 466 U.S. 908 (1984)(Stevens, J., dissenting)(attorneys' fees are not awarded to *pro se* plaintiffs in FOIA actions)(collecting cases from the 1st, 3rd, 5th, 6th, 10th, and 11th Circuits). Against this legal landscape, then, the undersigned must follow legal precedent and decline to award attorney's fees to Plaintiff calculated in a way that reflects an attorney's rate for services performed.

B. Professional Services Fees

It is possible to construe the Motion as alternatively asking for an award of a non-lawyer professional's hourly fee performed in connection with the deposition preparation; for example, a paralegal's hourly fee. I say this because Plaintiff has argued, *inter alia*, that "pro se litigants' time is money," and "the experienced trial judge is the best judge of the value of professional services rendered in his or her court." (ECF No. 133-1, pp. 10, 11).

The undersigned has also examined whether I could award reasonable paralegal fees to Plaintiff, a non-attorney, for her legal work to prepare for the cancelled depositions without running afoul of the above-cited law. Examining the relevant case law and the Local Rules, I do not believe that I can make such an award because she is seeking an award based on tasks traditionally performed by an attorney or paralegal, namely for: performing legal research; reviewing discovery; preparing questions; reviewing the law and local rules; and emailing opposing counsel about the depositions. (Declaration ¶ 8). Because I believe that the law precludes me from awarding attorney's fees, I cannot award paralegal fees for legal work. *See, e.g., Hyatt v. Barnhart*, 315 F.3d 239, 249 (4th Cir. 2002)(citing *Jean v. Nelson*, 863 F.2d 759, 774-75 (11th Cir. 1988) ("[P]aralegal time is recoverable as part of a prevailing party's award for attorney's fees and expenses")); *Allen v. United States Steel Corp.*, 665 F.2d 689, 697 (5th Cir. 1982) ("Paralegal expenses are separately recoverable only as part of a prevailing party's award for attorney's fees and expenses."); United States District Court for the District of Maryland - Local Rules, Appendix B, p. 124 (July 1, 2023)("these rules and guidelines apply to cases in which a prevailing party would be entitled, by applicable law. . . to reasonable attorney's fees."). Against this legal landscape, then, the undersigned must follow precedent and decline to award paralegal fees to Plaintiff for legal services performed.

C. Reasonable Expenses

Because I believe that one of the purposes of imposing sanctions for insufficient and untimely notice of cancellation of a deposition is to consequence a party from engaging in such discovery misconduct, I find that it would be unfair to not award Plaintiff some reasonable expenses. Based on my review of the record in this case, including ECF Nos. 90-4, pp. 28-32 and ECF No. 93-1, pp. 130-140, the Court will exercise its discretion and find that Plaintiff is entitled to an award for the lost wages incurred in cancelling the tutoring sessions and for the printing expenses. I find that these amounts are reasonable. Indeed, Defendant does not object to the award of such expenses. *See generally* Opposition.

II. CONCLUSION

For the reasons set forth in this Letter Order and Opinion, Plaintiff's "Motion for an Award of Expenses," ECF No. 133, is **GRANTED IN PART DENIED IN PART**. Accordingly, it is hereby **ORDERED** that Defendant shall pay Plaintiff $261.51 as a sanction for the deposition-related discovery violations. Defendant shall remit such payment to Plaintiff by no later than **March 5, 2025**.

Although informal, this Letter Order and Opinion are considered a formal Order and Opinion of the Court, and shall be docketed as such.

/s/
The Honorable Gina L. Simms
United States Magistrate Judge

No. __-___

IN THE

Supreme Court of the United States

BRITTNEY FELDER,

PETITIONER

v.

MGM NATIONAL HARBOR, LLC,

RESPONDENT

APPENDIX I

In Appendix I, please find attached the following: (1) US District Court Judge Adam B. Abelson's Order to judgments resulting from the matters addressed during the in-person pre-trial conference; (2) Plaintiff's Motion for Sanctions pertaining to Judge Abelson's order; and (3) Plaintiff's Memorandum in support of the aforementioned motion for sanctions.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

BRITTNEY FELDER,
Plaintiff,

v.

MGM NATIONAL HARBOR, LLC, *et al.*,
Defendants

No. 18-cv-3405-ABA

ORDER

The Court held a pre-trial conference yesterday, May 14, 2025, and a case management conference today, May 15, 2025, with Ms. Felder and counsel for the Defendants in attendance for both conferences. ECF Nos. 169, 173. For the reasons stated by the Court orally in these conferences or expanded upon below, the Court hereby ORDERS as follows:

1. **Motions in Limine**

   a. The motion in limine to exclude certain claims already dismissed by this Court (ECF No. 152) is GRANTED as unopposed.

   b. The motion in limine to exclude evidence, testimony, and argument regarding surveillance video (ECF No. 153) is GRANTED. Upon review of Plaintiff's supplement to her response to this motion (ECF Nos. 171, 172) and Defendants' reply (ECF No. 174), Plaintiff has not established evidence that would compel this Court to reverse Judge Simms' previous ruling on the spoliation issue (ECF No. 131 at 8-19). The supplement (ECF No. 172) still does not establish the culpable state of mind or that the Defendants acted with the intent necessary for the Court to find that

Defendants spoliated the video surveillance evidence. *Charter Oak Fire Ins. Co. v. Marlow Liquors, LLC*, 908 F. Supp. 2d 673, 678 (D. Md. 2012); *Jennings v. Frostburg State Univ.*, 679 F. Supp. 3d 240, 265 (D. Md. 2023).

c. The motion in limine to exclude economic damages (ECF No. 154) is DENIED for the reasons explained by the Court in the pre-trial conference.

d. The motion in limine to exclude evidence, testimony, and argument about the historical nature of the word "queen" and its use as a "racial slur" (ECF No. 155) is GRANTED IN PART and DENIED IN PART for the reasons explained by the Court in the pre-trial conference. The exhibits attached to the motion (ECF Nos. 155-1, 155-2) are excluded as hearsay. Ms. Felder may testify only as to her personal knowledge or experiences pursuant to Federal Rule of Evidence 701.

e. The motion in limine to exclude evidence, testimony, and argument about the precise demarcation between dark and light skin (ECF No. 156) is DENIED for the reasons explained by the Court in the pre-trial conference.

f. The motion in limine to exclude evidence, testimony, and argument regarding plaintiff's diagnoses (ECF No. 157) is CONDITIONALLY GRANTED. If Dr. Ursula Poydras is called as a witness during trial, the Court may modify its ruling on this motion if the evidence, testimony, and argument regarding plaintiff's diagnoses are no longer hearsay under Federal Rule of Evidence 802.

g. The motion in limine to exclude evidence, testimony, and argument about improper comparators (ECF No. 158) is HELD IN ABEYANCE but will be decided before the trial begins.

h. The motion in limine to exclude post-employment hearsay communications (ECF No. 159) is GRANTED for the reasons explained by the Court in the pre-trial conference.

i. The motion in limine to strike compensatory damages (ECF No. 160) is DENIED for the reasons explained by the Court in the pre-trial conference.

2. **Motion for Sanctions**: For the reasons explained by the Court in the pre-trial conference, Plaintiff's motion for sanctions (ECF No. 161) is DENIED.

3. ***De Bene Esse*** **Depositions**

a. Defendants shall file the complete transcripts of the *de bene esse* depositions of Lisa Jones, Patrick Fisher, and Whitney Wilburn on the docket (with all or parts of the transcript filed under seal as necessary) by May 16, 2025.

b. The parties shall jointly file their designations of and objections to the *de bene esse* depositions of Lisa Jones, Patrick Fisher, and Whitney Wilburn by Wednesday, May 21, 2025. The parties shall track these designations and objections through charts as follows:

Joint Designations
[Page:Line] – [Page:Line]
[Page:Line] – [Page:Line]

Plaintiff's Designations (objected-to by Defendant)		
Page:Line Range	Defendants' Objection(s)	RULING (*leave blank*)
[Page:Line] – [Page:Line]		
Defendants' Designations (objected-to by Plaintiff)		
Page:Line Range	Plaintiff's Objection(s)	RULING (*leave blank*)
[Page:Line] – [Page:Line]		

c. The designated portions of the *de bene esse* depositions shall be played principally during Plaintiffs' case-in-chief during trial. However, the Court will allow Defendants to play portions of the *de bene esse* depositions that are designated *only by Defendants* during the Defendants' case-in-chief, so long as the testimony will not be disjointed or difficult for the jury to follow.

Date: May 15, 2025

/s/
Adam B. Abelson
United States District Judge

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

GREENBELT DIVISION

BRITTNEY FELDER, *

Plaintiff, *

vs. * **Civil Action No. ABA-18-03405**

MGM NATIONAL HARBOR, LLC, *et al*, *

Defendants. *

PLAINTIFF'S MOTION FOR SANCTIONS

Pro Se Plaintiff Brittney Felder ("Felder" or "Plaintiff") respectfully submits this Motion, pursuant to Rules 30 and 37 of the F.R.C.P., and this Court's inherent powers, for an order granting the imposition of sanctions on Defendants MGM National Harbor, LLC ("National Harbor" or "Defendants"). The reasons for this Motion are set forth in the Memorandum of Points and Authorities in Support of Plaintiff's Motion for Sanctions and the Exhibits thereto.

As shown herein, the Defendants have continued to engage in constant, severe, and egregious misconduct of the same exact nature for which Defendants were previously sanctioned. Defendants persist in acts that prejudice and greatly harm, frustrate, and harass the Plaintiff in matters of the proceedings of this litigation. The Plaintiff seeks to not only make this Court aware of these bad faith, discourteous, and unfair violations of conduct the Defendants consistently employ, but also to ask for relief so that these actions will not evade severe penalty.

Plaintiff's trial for this case is scheduled to occur on June 02, 2025, with a Pretrial Conference/Motions Hearing scheduled for May 14, 2025. Plaintiff is extremely concerned that if

Defendants are not sanctioned for their misconduct, then the Plaintiff's trial and quest for justice is in jeopardy. A proposed order is filed concurrently herewith.

Respectfully submitted,

April 18, 2025

Brittney Felder
Plaintiff, *Pro Se*
6902 Forbes Boulevard,
Seabrook, Maryland 20706
Telephone: (301) 221 - 3833
Email: brittfel@verizon.net
Facsimile: (301) 577 – 6001

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of April 2025, the foregoing **Plaintiff's Motion for Sanctions and Proposed Order** were served upon the Defendants by electronic mail and electronically via the District Court's Electronic Document Submission System to the following:

Jeremy Schneider
(Jeremy.Schneider@jacksonlewis.com)
11790 Sunrise Valley Drive,
Suite 400
Reston, Virginia 20191

Christian Yingling
(Christian.Yingling@jacksonlewis.com)
11790 Sunrise Valley Drive,
Suite 400
Reston, Virginia 20191

Brittney Felder

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

GREENBELT DIVISION

BRITTNEY FELDER,	*	
Plaintiff,	*	
vs.	*	**Civil Action No. ABA-18-03405**
MGM NATIONAL HARBOR, LLC, ***et al,***	*	
Defendants.	*	

PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES

IN SUPPORT OF PLAINTIFF'S MOTION FOR SANCTIONS

Brittney Felder
Plaintiff, *Pro Se*
6902 Forbes Boulevard,
Seabrook, Maryland 20706
Telephone: (301) 221 - 3833
Email: brittfel@verizon.net
Facsimile: (301) 577 - 6001

Dated: April 21, 2025

INTRODUCTION

This is a discrimination case. *Pro Se* Plaintiff Brittney Felder ("Felder" or "Plaintiff") brings forth in her Amended Complaint ("Complaint") discrimination claims under Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. §§ 2000e to 2000e-17. Concerning Plaintiff's discrimination claims, Plaintiff alleges that the Defendants — Plaintiff's former employer — MGM National Harbor, LLC ("National Harbor" or "Defendants"), and its employees, discriminated against her on the basis of her skin color, resulting in her termination.

This case has been in litigation for eight years and counting; indeed, an extreme delay in justice. There is a famous biblical Hebrew prophet of the tribe of Judah by the name of Habakkuk. Distressed over what is taking place in Judah, Habakkuk asks God: *"Why is it that you make me see what is hurtful, and you keep looking upon mere trouble?... Why is it that you look on those dealing treacherously, that you keep silent when someone wicked swallows up someone more righteous than he is?"* In reply, Jehovah God says: *"I am raising up the Chaldeans, the nation bitter and impetuous."* The prophet expresses surprise that God would use "those dealing treacherously" to punish Judah. (*New World Translation of the Holy Scriptures*, 2013, Habakkuk 1:3, 6, 13) Habakkuk is then assured by Jehovah God (a God governed by love and rules with compassion, perfect wisdom, fairness, and justice) that the righteous one will keep living, but the enemy will not escape punishment. Moreover, Habakkuk records five woes to be taken up against the Chaldean foe. (*New World Translation of the Holy Scriptures*, 2013, Psalm 86:15; Habakkuk 2:4)

Like Habakkuk, Plaintiff finds herself in a very similar situation, where for eight years, Plaintiff has had to "look on" while the Defendants have engaged in rampant, continuous, and egregious misconduct. All parties are expected and required to act in good faith during litigation;

but sadly, this has not been the case. Like Habakkuk, Plaintiff is asking this Court 'how long' will she have to put up with the senseless gamesmanship of the Defendants? While the Court granted sanctions —which Plaintiff is very grateful for — against the Defendants, the penalty did not match the severity of the offenses, and as a result, the sanctions amounted to nothing more than a slap on the wrist. Thus, the Defendants have found no reason to stop their misconduct in subsequent proceedings. As a result, Plaintiff is once again forced to respectfully ask the Court: "Will this Court have the same response as that in Habakkuk's situation, and within the bounds of law punish the offender for their repetitive, shameful misconduct?"

Here, comes now, the Plaintiff — after two Motions to Compel filed by the Plaintiff were granted, Plaintiff's Motion for Sanctions was granted in part, and a ruling (but no sanctions administered) against the Defendants for violating a Protective Order — imploring for relief. Sadly, again, the Plaintiff comes before this Court in a Motion for Sanctions due to the continuous wanton behavior of the Defendants and their unwillingness to change and correct their course of action despite knowledge of and warnings.

This Motion is based on the support and grounds as set forth in Plaintiff's Memorandum of Points and Authorities in Support of Plaintiff's Motion for Sanctions ("Motion"), and accompanying Exhibits, which is incorporated herein by reference. The Plaintiff asserts that the misconduct of the Defendants warrants relief. For the reasons set out below, this Court, which has jurisdiction, should grant Plaintiff's Motion for Sanctions.

NATURE AND STAGE OF PROCEEDINGS

This is a discrimination case remanded back to this Court on appeal by the Judgment of the Court of Appeals for the Fourth Circuit on July 21, 2022, to allow for additional proceedings to

occur. On August 17, 2022, Honorable Judge Peter J. Messitte reinstated Plaintiff's claim for employment discrimination based on color. (ECF No. 36)

A Scheduling Order was then put in place by Judge Messitte, whereby the initial Discovery deadline was December 30, 2022, and the deadline to submit dispositive pretrial motions was January 30, 2023. (ECF No. 37) However, due to various substantial discovery issues that occurred because of the Defendants' noncompliance with the Federal Rules of Civil Procedure, Plaintiff was forced to file a Motion to Compel a Response to Plaintiff's First Set of Interrogatories (ECF No. 43) on December 06, 2022, and a Motion to Compel Production of Documents (ECF No. 51) on December 17, 2022.

The Defendants correspondingly filed a Motion for Extension of Time of Scheduling Order Deadlines (ECF No. 44) on December 07, 2022. Despite Plaintiff's opposition (ECF No. 45) thereto, on December 21, 2022, Judge Messitte granted Defendants' Motion to extend the scheduling deadlines by sixty (60) days — instead of the requested ninety (90) days by Defendants — thereby changing the Discovery deadline to February 28, 2023, and the deadline to file dispositive motions to March 31, 2023. (ECF No. 54)

On February 23, 2023, a Paperless Order (ECF No. 69) scheduling a telephonic conference with Magistrate Judge Simms for March 02, 2023, to discuss all outstanding Discovery disputes and Motions was filed. At the aforementioned Conference (ECF No. 72), Magistrate Judge Simms noted the "gamesmanship" and warned of the sanctionable actions of the Defendants. As a result, Judge Simms filed three Orders: (1) a Protective Order regarding confidentiality of discovery materials (ECF No. 73); (2) an Order setting the deadline for parties/counsel to file an Attestation of Compliance (ECF No. 74); and (3) an order (ECF No. 75) granting in part and denying in part Plaintiff's ECF No. 43 and ECF No. 51 Motions to Compel as set forth; setting the date for parties

to engage in a good faith meet and confer session with a court reporter as set forth; granting Plaintiff's pleadings construed as request for entry of protective order; setting the deadline for a Joint Status Report ("JSR"); and revising the deadline for dispositive motions after submission of the JSR. The Plaintiff submitted her attestation (ECF No. 76) on March 08, 2023, and Defendant their attestation (ECF No. 77) on March 10, 2023.

The parties also filed a Joint Status Report (ECF No. 78) on April 21, 2023, in which the parties disclosed that all discovery disputes had been resolved; requested a 60-day extension for Defendants' to supplement their responses and documents (meaning that Discovery would close on June 23, 2023); and a JSR would also be filed on that date relating to the parties proposed dispositive motions briefing schedule and views on whether the parties' would seek referral of this case for mediation. On April 24, 2023, Judge Simms through a paperless order (ECF No. 79), granted all requests.

The parties thus filed a Joint Status Report on June 23, 2023. (ECF No. 80). In receipt of this JSR, Judge Simms filed a paperless order (ECF No. 81) on June 26, 2023, in which the parties request for a limited extension to the close of the discovery deadline was construed as a motion to extend the Scheduling Order deadlines. Upon consideration of the Motion, the Court found good cause to grant the requested relief, and the Motion was granted. As a result, Discovery now closed on Jue 30, 2023. Also, by no later than July 14, 2023, the parties were to provide a JSR related to the parties' proposed dispositive motions briefing schedule and views on whether they seek referral of this case for mediation.

Even with the multiple requests to extend the scheduling deadlines for the Defendants to finish supplementing their documents granted, the Defendant petitioned the plaintiff yet again to extend the Discovery deadline. The Plaintiff agreed to a seven-day extension for Defendants to supply the

additional critical discovery documents. Therefore, in the JSR (ECF No. 82), filed on July 14, 2023, the Defendants' request was incorporated therein. On July 17, 2023, Judge Simms issued a paperless order (ECF No. 83) construing the request as a motion to extend the Scheduling Order deadlines and granted the requested relief in order for the Defendants to "supplement its production with the additional personnel profiles, emails, and video recordings/surveillance."

Although the Defendants were granted several extensions that amounted to several months of delays, the Defendants still had not provided Plaintiff with all that she requested. Additionally, there were still concerning behaviors that the Defendants were displaying, prompting the request of a telephonic Status Conference within the JSR filed on September 01, 2023. (ECF No. 84) On September 15, 2023, Judge Simms filed a paperless order scheduling the telephonic status hearing for October 03, 2023. (ECF No. 85) On October 03, 2023, the teleconference was held before Magistrate Judge Simms. (ECF No. 86) Based off the information divulged in the teleconference, Judge Simms found it necessary to issue an order on October 04, 2023, granting Plaintiff leave to file a motion for sanctions by October 20, 2023; affirmed the October 13, 2023, deadline to file dipositive motions; and established a briefing schedule. (ECF No. 87) On October 06, 2023, a Joint Motion (ECF No. 88) to refer this case to mediation was filed, wherein the Defendant, despite strong opposition from the Plaintiff and against the affirmed Order of Magistrate Judge Simms, requested that the Court allow the dispositive motions deadline — October 13, 2023 — be held in abeyance until two weeks after the Parties complete mediation. On October 13, 2023, the day the dispositive Motions were due, Judge Messitte, in ECF No. 89, granted the referral of the case to mediation, which was conducted on December 18, 2023 (ECF No. 96), and ordered that the October 13th dispositive motions deadline be held in abeyance until two weeks after the Parties completed mediation. Concurrently, on October 20, 2023, Plaintiff filed a Motion for Sanctions.

(ECF No. 90) Defendants filed their Response in opposition to Plaintiff's Motion for Sanctions on November 09, 2023. (ECF No. 93); and Plaintiff filed her Reply to Defendants' Response on November 27, 2023. (ECF No. 94).

On January 01, 2024, Plaintiff filed a Motion for Recusal of Judge Peter J. Messitte citing seven reasons centered around bias and prejudice (ECF No. 98), as well as a Motion for Summary Judgment (ECF Nos. 99, 100, 101, and 102). Defendants filed their Response in Opposition to the Motion for Recusal on January 16, 2024, and their Cross Motion for Summary Judgment and Opposition to Plaintiff's Motion for Summary Judgment. (ECF Nos. 103 and 104). Plaintiff filed her Reply to Defendants' Response to the Motion for Recusal on January 22, 2024. (ECF No. 107) However, within Defendants Cross Motion for Summary Judgment, Plaintiff found Defendants included Exhibits of several documents that: contained sensitive information; were labeled "Confidential"; and were in violation of the Protective Order put in place by Magistrate Judge Gina L. Simms. As a result, on January 19, 2024, Plaintiff filed a Motion to Seal Exhibits A, D, and E of Defendants' Cross Motion for Summary Judgment (ECF No. 106) and an Amended Motion to Seal (ECF No. 109) the documents containing sensitive and confidential information. The Defendants filed their Response and Reply to Plaintiff's Motion to Seal respectively on January 24, 2024, and February 13, 2024. (ECF Nos. 108 and 111) And parallel to that, Plaintiff filed her Response to Defendants' Response to Plaintiff's Motion to Seal on January 30, 2024. (ECF No. 110) On February 13, 2024, Judge Messitte signed an Order granting Plaintiff's Amended Motion to Seal. (ECF No. 113). On the other hand, on February 14, 2024, Judge Messitte denied Plaintiff's Motion for Recusal. (ECF No. 112). Additionally, On February 15, 2024, Plaintiff filed her Response and supporting documents to Defendants' Cross Motion for Summary Judgment. (ECF Nos. 114-118) On February 16, 2024, Plaintiff's Amended Motion to Seal

Exhibits in the Case Record was deemed filed. (ECF No. 120). And, consequently, on February 27, 2024, Plaintiff's Reply to Defendants' Response to Motion to Seal was also filed. (ECF No. 121). The following day, on February 28, 2024, Defendants' Reply to Plaintiff's Response to the Cross Motion for Summary Judgment and Opposition to Plaintiff's Motion for Summary Judgment was filed. (ECF No. 122). Then, finally, on June 21, 2024, Judge Messitte signed an Order granting Plaintiff's Amended Motion to Seal. (ECF No. 125). And a few days later, Judge Messitte denied both Plaintiff's and Defendants' Motion and Cross Motion, respectively, for Summary Judgment, citing disputes of material facts and ordering this case to proceed to trial. (ECF No. 125).

With the case now proceeding to trial, on July 23, 2024, the parties were ordered to confer and promptly notify Chambers of trial availability. (ECF No. 128) However, even this portion of litigation proved to be turbulent for the Plaintiff, resulting in Plaintiff having no choice but to document and file a Response with the Court on July 23, 2024, regarding trial availability. (ECF No. 129) On July 24, 2024, Judge Messitte's Chambers issued a Paperless Correspondence setting the jury trial date to begin on June 02, 2025, and continuing to June 06, 2025. (ECF No. 130)

Regarding the Motion for Sanctions filed by Plaintiff (ECF No. 90), on August 07, 2024, Magistrate Judge Gina L. Simms, issued a Memorandum Opinion and Order, granting in part and denying in part, Plaintiff's Motion for Sanctions; and setting the deadline for Plaintiff to file a motion for expenses. (ECF Nos. 131 and 132) Plaintiff did just so, and on August 21, 2024, Plaintiff filed her Motion for Award of Attorney Fees and Expenses. (ECF No. 133) However, on August 09, 2024, Defendants filed a Motion for Extension of Time to Respond to Plaintiff's Motion for Award of Expenses (ECF No. 134); and, subsequently, Plaintiff filed her Response in Opposition to Defendants Motion for Extension of Time. (ECF No. 135) Magistrate Judge Simms granted Defendants' Motion for Extension of Time to Respond to Plaintiff's Motion for Award of

Expenses. (ECF No. 136) And so, Defendants filed their Response in Opposition to Plaintiff's Motion for Award of Attorney Fees and Expenses on September 18, 2024. (ECF No. 137). Coming to a close, on February 19, 2025, Magistrate Judge Simms issued a Letter Order and Opinion Related to Discovery Sanctions, and an order granting in part and denying in part Plaintiff's Motion for Attorney Fees and Expenses. (ECF No. 141)

As the case stands this year, on January 15, 2025, this case was reassigned to Judge Adam B. Abelson. On January 24, 2025, Judge Abelson set forth a Pre-Trial Scheduling Order. (ECF No. 138) On February 18, 2025, the parties submitted a Joint Motion to take *de bene esse* depositions of three fact witnesses: Lisa Jones, Patrick Fisher, and Whitney Wilburn. (ECF No. 139). Judge Abelson granted this Joint Motion on February 19, 2025. Then, on April 07, 2025, the parties filed a Joint Motion for Extension of Time for Pretrial Filings Deadline to extend the deadline to submit the Pre-trial Order, Voir Dire, Jury Instructions, Special Verdict Forms, and Motion(s) in Limine from April 11, 2025, to April 18, 2025. (ECF No. 144) Judge Abelson also granted this Joint Motion for Extension of Time on April 08, 2025. (ECF No. 145) Lastly, on April 18, 2025, Defendants submitted both Plaintiff's and Defendants' Pre-Trial Order, Voir Dire, Jury Instructions, Special Verdict Form, and Defendants' nine Motions in Limine. (ECF Nos. 144-160)

STATEMENT OF ISSUES

Defendants have not adhered to the Federal Rules of Civil Procedure; have negated their Attestation of Compliance to federal rules and local laws; have once again engaged in unfair deposition practices for which they have already been sanctioned; have once again defied the Protective Order by submitting similar documents that the Court has already ruled are entitled to protection; and ultimately, have tested the parameters of what insufferable and contemptible actions they can attempt to get away with without consequence and under the nose of this Court.

The Defendants have shown a willful disregard for the integrity of the litigation process, and as such, the Plaintiff requests this Court to levy sanctions against the Defendants for sullying the judiciary process as the Defendants' actions described within highlight.

The central issue before this Court is whether the Defendants' actions warrant a levy of sanctions against them. Because the Defendants' misconduct is vast and varies in nature, the federal laws governing the power to, as well as the kind of sanction to impose, are likewise myriad. Therefore, to save judicial resources, Plaintiff incorporates each misconduct along with the lawful reason(s) why such conduct is sanctionable by reference, as if fully stated herein. To summarize, these more specific issues include: (1) The Federal Rules of Civil Procedure grant this Court authority to impose sanctions via Federal Rule 30(d) and Federal Rule 37 (*See* Memorandum 12-14); (2) Courts are vested with the inherent power to control the litigants and parties who come within their jurisdiction, permitting courts to impose sanctions for bad faith conduct (*See* Memorandum 14-18); (3) 28 U.S.C. § 1927 (*See* Memorandum 18); and (4) The Defendants' misconduct licenses sanctions (*See* Memorandum 19-27).

LEGAL ANALYSIS

1. Sanctions are financial or other penalties imposed by a Court on a party or attorney for violation of a court rule, for receiving a special waiver of a rule, or as a fine for contempt of court. The sanction may be paid to the court or to the opposing party.

2. The decision of when to impose sanctions and what type of sanction(s) to impose is primarily left to the discretion of the courts.

3. The foremost scenarios that provoke Motion for Sanctions are: (1) Testifying falsely in deposition; (2) Failure to timely respond to written discovery; (3) Spoliation of evidence; (4) Changing records; (5) Communicating directly with the opposing party; (6) Obstructive behavior

at deposition; (7) Abuse of process; (8) Asserting a nonjusticiable issue of law or fact; (9) Late disclosure of witnesses; and (10) unprofessional conduct toward opposing counsel and the Court.

4. Among the factors which the Court may consider (1) as militating in favor of, or against, the imposition of a particular sanction, or (2) in the case of a monetary sanction, in asserting the amount of the sanction, are the following:

i. the good faith or bad faith of the offender;

ii. the degree of willfulness, vindictiveness, negligence or frivolousness involved in the offense;

iii. the knowledge, experience, and expertise of the offender;

iv. the amount, reasonableness, and necessity of the out-of-pocket expenses, suffered by the offended person as a result of the misconduct;

v. the nature and extent of the prejudice, apart from out-of-pocket expenses incurred by the offended person as a result of the misconduct;

vi. the relative culpability of client and counsel, and the impact on their privileged relationship, of an inquiry into that area;

vii. the risk of chilling the specific type of litigation involved;

viii. the impact of the sanction on the offended party, including the offended person's need for compensation;

ix. the relative magnitude of sanction necessary to achieve the goal or goals of the sanction;

x. burdens on the court system attributable to the misconduct, including consumption of judicial time and incurrence of juror fees and other court cost;

xi. the degree to which the offended person attempted to mitigate any prejudice suffered by him or her;

xii. the degree to which the offended person's own behavior caused the expenses for which recovery is sought;

xiii. the extent to which the offender persisted in advancing a position while on notice that the position did not have evidentiary support or was not warranted by existing law or a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; and the time of, and circumstances surrounding, any voluntary withdrawal of pleading, written motion, or other paper.

5. STANDARD OF REVIEW:

i. "The imposition of sanctions for failure to provide discovery rests in the trial court's discretion; the Supreme Court has repeatedly upheld the trial court's exercise of such discretion in fashioning severe sanctions for flagrant discovery violations." (*Coulson Oil Co. v. Tully* (2003) 84 Ark. App. 241, 251 citing *Calandro v. Parkerson* (1998) 333 Ark. 603.)

ii. Bad faith conduct is sanctionable. In *Chambers vs NASCO*, the Supreme Court held that the District Court properly invoked its inherent power in assessing as a sanction for Chambers' bad faith conduct the attorney's fees and related expenses paid by NASCO. Pp. 501 U. S. 42-58. Sanctions in the form of attorney's fees and expenses totaling almost $1 million were upheld by the Supreme Court for the petitioner's (1) attempt to deprive the court of jurisdiction by acts of fraud, (2) filing false and frivolous pleadings, and (3) attempting, by other tactics of delay, oppression,

harassment, and massive expense to reduce the respondent to exhausted compliance. (*Chambers v. NASCO*, Inc., 501 U.S. 32, 46 (1991)).

6. Bad faith is "breach of faith; willful failure to respond to plain, well-understood statutory or contractual obligations; dishonesty in fact in the conduct or transaction concerned." (*Barron's Dictionary of Legal Terms, 5th Edition*).

7. The Federal Rules of Civil Procedure grant this Court authority to impose sanctions via Federal Rule 30(d) and Federal Rule 37. The Defendants' most severe misconduct revolves around abuses during Pretrial and Depositions processes. Rules that govern infractions for depositions are Rules 30(d) and 37. Each rule has its own narrow sphere of influence.

i. Rule 30: Depositions by Oral Examination

a. Rule 30(d) is best applicable when a party misbehaves in a deposition.

b. If the asking party is impeded, delayed, or frustrated by the opposing party, during the examination of a witness, an appropriate sanction is warranted — including, but not limited to, expenses and fees — for the opponent's misconduct. *See* Rule 30(d)(2).

c. Rule 30(d)(2) states: "*The court may impose an appropriate sanction — including the reasonable expenses and attorney's fees incurred by any party — on a person who impedes, delays, or frustrates the fair examination of the deponent.*"

d. Sanctions can also be awarded under Rule 30(d)(3)(C) and 37(a)(5)(A).

ii. Rule 37: Failure to Make Disclosures or Cooperate in Discovery; Sanctions

a. Rule 37 authorizes the court to impose sanctions when a litigant or attorney fails to comply with discovery rules or orders. Rule 37 must be read in conjunction

with Rule 26. The rules overlap to an extent; however, Rule 37 encompasses violations outside of written discovery.

b. Rule 37 permits the courts to impose sanctions for five specified categories of misconduct: (1) failure to comply with a court order (Rule 37(b)); (2) failure to disclose and/or make Rule 26(a) or 26(e)(1) disclosures, to supplement an earlier response, or to admit a response to a Rule 36 Request (Rule 37(c)); (3) failure to attend its own deposition, serve answers to interrogatories, or respond to a Request for Inspection (Rule 37(d)); (4) failure to preserve electronically stored information (Rule 37(e)); and (5) failure to participate in framing a discovery plan as required by Rule 26(f) (Rule 37(g)).

c. Where a party has violated an order of the court, Rule 37(b)(2) (A) empowers the court to issue "further just orders." Rule 37(b)(2)(A)(i)–(vii) contains a non-exhaustive list of seven possible sanctions, including dismissal of the action; striking pleadings; barring evidence, claims, or defenses; adverse inferences; and entering a default judgment against the wrongdoer. In addition, violation of a discovery order triggers Rule 37(b)(2)(C), requiring sanctions on the disobedient party or counsel for costs and fees caused by an unjustified failure to comply.

d. The decision of whether to impose sanctions and what sanctions to impose is left to the broad discretion of the court.

e. Type of sanctions commonly imposed are: (1) directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims; (2) prohibiting the

disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence; (3) striking pleadings in whole or in part; (4) staying further proceedings until the order is obeyed; (5) dismissing the action or proceeding in whole or in part; (6) rendering a default judgment against the disobedient party; (7) treating as contempt of court the failure to obey any order except an order to submit to a physical or mental examination; (8) may order payment of the reasonable expenses, including attorney's fees, caused by the failure; and (9) may inform the jury of the party's failure.

f. Sanctions for a party's failure to preserve electronically stored information include: (1) upon finding prejudice to another party from loss of the information, may order measures no greater than necessary to cure the prejudice; or (2) only upon finding that the party acted with the intent to deprive another party of the information's use in the litigation may: (a) presume that the lost information was unfavorable to the party; (b) instruct the jury that it may or must presume the information was unfavorable to the party; or (c) dismiss the action or enter a default judgment.

8. Courts are also vested with the inherent power to control the litigants and parties who come within their jurisdiction, permitting courts to impose sanctions for bad faith conduct.

i. The power of federal courts to curb abusive litigation practices through the use of inherent powers is well established.

ii. Inherent powers are not governed by rules or statutes. Instead, they flow from the nature of the judicial institution itself — powers that "are necessary to the exercise

of all others." *United States v. Hudson*, 7 Cranch 32, 24 L. Ed. 259 (1812). More specifically, the source of the Court's inherent powers is "governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases." *Link v. Wabash R.R.*, 370 U.S. 626, 630-631 (1962). *See* also *Brockton Sav. Bank v. Peat, Marwick, Mtichell & Co.*, 771 F.2d 5, 11 (1st Cir. 1985), cert. denied, 475 U.S. 1018 (1986). That authority extends to all matters that come before the court. There is no limitation as to the type of proceedings — criminal or civil, trial or appeal — in which sanctions may be issued. *See*, e.g., *United States v. Kouri-Perez*, 1999 U.S. App. Lexis 8811 (1st Cir. May 7, 1999) (inherent power sanction of $4,000 imposed on criminal defense counsel for violating civility order by filing motion for purpose of harassing and humiliating prosecutor; district court expressly held that the sanction was no in the nature of a contempt and thus, the appeals court ruled, was not immediately appealable (on the issue of appealability, *See* § 29(C), infra)); *United States v. Blodgett*, 709 F.2d 608, 610 (9th Cir. 1983) (inherent power sanctions imposed defense counsel in criminal appeal); *Sherk v. Texas Bankers Life & Loan Ins. Co.*, 918 F.2d 1170, 1178 (5th Cir. 1990) ("a district court has the power to impose sanctions for a frivolous bankruptcy appeal based upon either the inherent power of the judiciary or the statutory authority of 38 U.S.C. § 1927").

iii. Under their inherent power, courts may sanction an attorney who acts in bad faith, wantonly, oppressively or vexatiously. *Royal Ins. v. Lynnhaven Marine Boatel, Inc.,* 210 F. Supp. 2d 562, 567 (E.D. Va. 2002).

iv. The imposition of inherent power sanctions is appropriate only where the offender has willfully abused judicial process or otherwise conducted litigation in bad faith. *In re Itel Sec. Litig.*, 791 F.2d 672, 675 (9th Cir. 1986), cert. denied, 479 U.S. 1033 91987); *Kreager v. Solomon & Flanagan, P.A.* 775 F.2d 1541, 1542-43 (11th Cir. 1985); *Lipsig v. Nation Student Mktg. Corp.*, 663 F.2d 178, 180-81 (D.C. Cir. 1980); *Link v. Walbash R.R.*, 370 U.S. 626, 632 (1962).

v. The Supreme Court has held that federal courts have the power to impose sanctions pursuant to the court's inherent power even if the violation is subject to sanctions under existing statutes or rules.

vi. Federal Courts are empowered to "'protect the administration of justice by levying sanctions in response to abusive litigation practices.'" *Kovilic Const. Co., v. Missbrenner*, 106 F.3d 768, 772-73 (7th Cir. 1997); *Brockton Sav. Bank v. Peat, Marwick, Mitchell & Co.*, 771 F.2d 5, 11 (1st Cir. 1985), cert. denied, 475 U.S. 1018 (1986), quoting *Penthouse Int'l, Ltd. v. Playboy Enters.*, 663 F.2d 371, 386 (2d Cir. 1981).

vii. Inherent powers include the power to issue contempt sanctions; the power to impose obedience, respect and decorum, and submission to lawful court mandates; and — most significantly for present purposes — the "'well-acknowledged' inherent power of a court to levy sanctions in response to abusive litigation practices." *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 765 (1980).

viii. Inherent power sanctions are the quintessential gap filler of sanctions law. In the benchmark modern decision, *Chambers v. Nasco*, Inc., 501 U.S. 32 (1991), the Supreme Court made clear that the existence of a sanctioning scheme in statutes

and rules does not displace the court's inherent power to impose sanctions for bad faith conduct. "These other mechanisms, taken alone or together, are not substitutes for the inherent power, for that power is both broader and narrower than the other means of imposing sanctions." *Id.* at 46. Whereas rules-based sanctions "reach[] only certain individuals or conduct, the inherent power extends to a full range of litigation abuses" and, "at the very least . . . must continue to exist to fill in the interstices." *Id.*

ix. Succeeding *Chambers*, courts have employed inherent powers to sanction bad faith conduct both (1) where there is no rule or statute covering the precise conduct at issue, as is frequently the case where there is spoliation not covered by Rule 37 or deposition misconduct not covered by Rule 30(d); and (2) in extraordinary cases, where a statute or rule otherwise governs but, in the "informed discretion of the court, neither the statute nor the Rules are up to the task." *Id.*

x. When there is no governing rule, if some conduct is covered in part but not entirely (as was the case in *Chambers*), or if the conduct is particularly egregious so as to warrant a type of sanction not provided for in the governing rule, inherent power sanctions should be sought.

xi. Bad faith is a prerequisite to inherent power sanctions awarding attorneys' fees or other sanctions for misconduct in the course of litigation. *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 766, 767–78 (1980). One recent and glaring potential exception exists. Under the Second Circuit's decision in *Residential Funding Corp. v. DeGeorge Financial Corp.*, 306 F.3d 99 (2d Cir. 2002) and its progeny, the bastion of bad faith may be crumbling in the spoliation context where rule-based

and inherent power sanctions overlap. *Residential Funding* held that the negligent delay in the production of discovery alone is sufficient to warrant an adverse inference sanction. The *Residential Funding* panel relied, in part, on the District Court's inherent power, whereas spoliation inferences — whether grounded in Rule 37, or, unless and until *Residential Funding* is clarified, on the court's inherent power — require a showing of negligence only. This is critical seeing that bad faith is required for non-spoliation inherent power sanctions brought by motion in not only the Second Circuit, but elsewhere.

xii. Inherent power sanctions are as broad as the imagination and are up to the Court's discretion. It can include everything from entry of default judgment, preclusion of evidence and issues, dismissal, fee awards, contempt citations, disqualifications of attorneys, adverse inferences, to more creative sanctions such as enjoining the further filing of motions, or pre-filing orders preventing or imposing requirements on the filing of future actions, or requiring lawyers to attend continuing legal education classes, or precluding witness testimony, or an adverse inference.

9. 28 U.S.C. § 1927. A lawyer who "so multiplies the proceedings in any case unreasonably and vexatiously" is subject to sanctions under 28 U.S.C. § 1927.

i. 28 U.S. Code § 1927 states: "*Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.*"

10. The Defendants' misconduct licenses sanctions. Defendants have committed acts of misconduct in all of the following ways:

i. Abusive litigation practices, including improper deposition conduct;

ii. Violation of a Protective Order; and

iii. Submission of documents to the Court that were altered from the originals.

PLAINTIFF'S ENUMERATION OF ARGUMENTS

1. Abusive litigation practices, including improper deposition conduct. Defendants have shown through past actions, a pattern of gamesmanship, and that their misconduct has been severe enough to render sanctions. The Defendants have continued this pattern.

i. **Defendants gave Plaintiff less than 24 hours' notice that they scheduled to conduct a *de bene esse* deposition with Whitney Wilburn, a fact witness to this case.** Defendants were sanctioned by Magistrate Judge Gina Simms on August 07, 2024. (ECF No. 132) In Magistrate Judge Simms' Order she found that: *"Reviewing all of the evidence put before the Court by the parties, the undersigned finds that Defendant notified Plaintiff on Saturday February 25 that it was cancelling the February 27 depositions of Jones and Fisher; indeed, this last-minute, weekend notice did not provide Plaintiff with at notice at least one business day in advance. Such conduct strikes the undersigned as discourteous, unfair, and worthy of some sort of sanction."* Magistrate Judge Simms continued: *"To that end, Fed. R. Civ. P. 30(g) provides that "a party who, expecting a deposition to be taken, attends in person. . .may recover reasonable expenses for attending, including attorney's fees, if the noticing party failed to: (1) attend and proceed with the deposition." At least one court within the Fourth Circuit has held that an award of*

reasonable costs is an appropriate sanction for a party who noticed a deposition, and then tells the opposing party at the last minute that the deposition is being cancelled. See Pine Lakes Int'l Country Club v. Polo Ralph Lauren Corp., 127 F.R.D. 471, 472-73 (D.S.C. 1989)."

In the most recent instance, and one of the reasons bringing forth this Motion for Sanctions, Defendants dd not just ***cancel*** a deposition with less than a day's notice, but, the Defendants ***scheduled, arranged, and conducted*** on April 10, 2025, a *de bene esse* deposition of one of three fact witnesses —Whitney Wilburn, who, at her initial scheduled *de bene esse* deposition that took place on March 27, 2025, failed to appear — and gave notice to Plaintiff of such on April 09, 2025. *See* Exhibit A.

Plaintiff had no idea that such a deposition was taking place because Plaintiff asked Defendants during the scheduled March 27th deposition as to what were there plans with Miss Whitney Wilburn, to which the Defendants replied, "I do not know." Defendants then said that they would let Plaintiff know by the following day, March 28, 2025, as to their intentions so that Plaintiff would be able to stay "informed". However, Plaintiff never heard back from Defendants about Miss Wilburn until April 09, 2025, just two days before the parties' Joint Pre-Trial Order was originally due. *See* Exhibit A.

Additionally, it was well-documented that — through several emails and even through the Court several months in advance — April 09th through April 12th, Plaintiff would be unavailable due to a "non-negotiable" and "extremely important religious event." *S*ee Exhibit B. *See also* ECF No. 129. Defendants further proved

they were aware of Plaintiff's unavailability when they had previously attempted to schedule a *de bene* esse deposition for fact witness Patrick Fisher also on April 10, 2025. *See* Exhibit B.

What makes matter worse is that the Defendants said in their email reply to Plaintiff that despite knowing Plaintiff will be unavailable, that they were still going to "go ahead with the deposition". *See* Exhibit A.

Despite the strong possibility that Miss Wilburn's testimony was likely to be sanctioned due to a failure to appear after being properly noticed (*See* Exhibit A), Plaintiff — who knew that the Defendants were engaging in wanton, egregious misconduct and acting with extreme bad faith — was not going to allow Defendants to take a deposition of a fact witness who is not only named as an accessory to the allegations in Plaintiff's claim, but whose Declaration was inundated with outright lies and mistruths. Consequently, Plaintiff had to fully rearrange her schedule; start her religious activities at 5:00am so she could be complete by the 10am start of the deposition; scurry to make arrangements so that she could attend the deposition remotely; and prepare and gather as much as she could for the deposition without being afforded the opportunity of adequate, fair, and due process.

The Defendants' vexatious behavior is a disgrace to this Court and to the legal process. Pursuant to Rule 37(c)(2), Defendants' actions indubitably warrant sanctions. "The decision to award sanctions, under Rule 37 is generally considered nondispositive unless the sanction imposed is itself dispositive of a claim or defense, *i.e.,* the dismissal of a claim or defense." *Bowers v. Univ. of Virginia*, Civ. Action No. 3:06cv00041, 2008 U.S. Dist. LEXIS 44604, at *12 (W.D. Va. June 6,

2008). Accordingly, dismissal can be an appropriate form of sanctions. This Court cannot allow such conduct to remain unpunished while the Defendants continue to blatantly make a mockery of the legal system.

ii. **The Defendants engaged in gross misconduct during all three of the *de bene esse* depositions of Patrick Fisher, Whitney Wilburn, and Lisa Jones.** Each of the three fact witnesses testified that they were not represented by Defendants' Counsel, Jeremy Schneider, or anyone from the Jackson Lewis law firm. Yet, from what the behaviors exhibited on video, this would seem otherwise. The severe misconduct that occurred throughout each of the depositions, specifically while Plaintiff was deposing the witnesses was reprehensible. Everything from: constant objections to Plaintiff's questioning; interrupting, impeding, and/or inhibiting the witnesses from answering questions; stating to the Plaintiff while she was questioning the witnesses, that the witnesses had "already answered the question"; escorting witnesses, namely Patrick Fisher, to the bathroom; signaling and giving cues to the witnesses as to how or what to answer; not revealing on record, until asked by Plaintiff, who was in the room with Defendants/Counsel/witnesses; witnesses repeatedly looking at and interacting with their phones while Plaintiff questioned them; Defendants constantly asking or referencing the amount of "time" Plaintiff had to depose the witnesses; and, whenever damning answers were given, requested a break, even while Plaintiff was in line of questioning.

So severe was the misconduct that during Patrick Fisher's deposition, Plaintiff had to stop, address, and sternly admonish all in attendance, including the court reporter, that though Plaintiff is *pro se*, she is entitled to the same respect as anyone

else. So emboldened was Mister Fisher that he felt that he had the right to tell the Plaintiff how long his deposition was going to be, even using the words "full stop." To which Plaintiff again had to admonish all in attendance, as Mister Schneider was encouraging Mister Fisher's inappropriate conduct. And to someone who testified that he had been in four depositions, Mister Fisher was well-aware of how depositions are conducted and the length of time they can take. Moreover, as Plaintiff noticed that Mister Fisher was looking up at someone ***before*** he answered questions, Plaintiff was forced to ask Mister Fisher, "Who are you looking at?!? Are you being coached?!?" Absolutely improper conduct.

During the deposition of Lisa Jones, Plaintiff had asked at the top of the deposition, 'Are you being represented…?' 'Are you represented by anyone from the Jackson Lewis law firm?' Miss Jones replied, "no." However, in the middle of questioning — when Jones was giving damning answers — Jones interrupted Plaintiff and said she needed a break, attempting to stop Plaintiff while Plaintiff was literally still asking the question. Mister Schneider also interrupted Plaintiff in the middle of her line of questioning, forcing Plaintiff to stop. So obstructive and impeding were the actions of Jones and Schneider that Plaintiff agreed to a break so that she could "regroup". But, upon returning from the break, Miss Jones, under her own volition, told Plaintiff that she just contacted her lawyer, "Laura Brook". Plaintiff was absolutely dumbfounded by this nondisclosure because Plaintiff had specifically asked at the very beginning of the deposition about the possibilities of Jones being represented, but Jones did not disclose that she was. For almost twelve minutes during Plaintiff's deposition time, Plaintiff had to address this issue

because Mister Schneider continued to instigate the nondisclosure by Jones, and impeded Plaintiff from moving forward with her deposition questioning.

The number of obstructive and disruptive behaviors are so abundant that for the sake of brevity, Plaintiff is only referencing the aforementioned. Indeed, this type of conduct at a deposition is deplorable and worthy of sanctions as brought forth in Fed. R. Civ. P. 30 and Fed. R. Civ. P. 37.

2. **Violation of a Protective Order.** Defendants had already been found to have violated the Protective Order they themselves instituted, though not sanctioned. *See* ECF Nos. 65, 73, 106-113, 120, 124. Thus, it is hard to believe Defendants would make the same mistake again, but they have. *See* ECF No. 158, Exhibit 4. Defendants once again do not submit under seal pages of an employee profile, which in their entirety have already been categorized as documents containing sensitive and confidential information; should be placed under seal; and are protected by the Protective Order. But Defendants, yet again, violated this Court Order. Such a repeat of offense is grounds for sanctions even more so.

3. **Submission of documents to the Court that were altered from the originals.** Pursuant to Local Rule 106, Plaintiff is responsible for drafting the Pretrial Order. And pursuant to Honorable Judge Abelson's January 24, 2025 Pre-Trial Scheduling Order, and April 07, 2025 Order, the parties were to submit on April 18, 2025, the Pre-Trial Order, Voir Dire, Jury Instructions, Special Verdict Form, and Motions in Limine. The parties were ordered to meet and confer regarding the aforementioned, which the parties did on April 08th, April 15th, and April 17th, 2025.

The preparations of the documents were not at all without incident for the Plaintiff due to Defendants' obstructive and disruptive behavior centered around the scheduling of the three *de*

bene esse depositions — which put undue hardship upon the Plaintiff to complete the documents — and Defendants not adhering to the mutually agreed deadlines to exchange papers for review and modification. *See* Exhibit C. Plaintiff and Defendants were to submit to each other for review and modification, the Pre-Trial documents on Friday, April 11, 2025. However, while Plaintiff submitted her papers to Defendants, Defendants did not do the same, and instead told Plaintiff that they would submit their documents to Plaintiff by Tuesday, April 15, 2025 — which was the day the parties were scheduled to meet and confer to "iron out" final details. *Id.* Right on cue, Defendants did not submit their documents for review to Plaintiff until April 15th, Tuesday morning, the day of the scheduled meet and confer. It is also to be noted, that all of the documents were due to the Court for submission in three days, April 18, 2025.

Completely nauseated by Defendants prejudicial, discourteous, unfair, and bad faith conduct, Plaintiff at the onset of the teleconference on April 15, 2025, made it known to Miss Christian Yingling (Defendants' Counsel), that given the history of the conduct of the Defendants, Plaintiff must notify the Courts of Defendants' prejudicial behavior. Plaintiff told Miss Yingling that this is especially disturbing because this type of behavior has been occurring since the start of this litigation, which has resulted in sanctions against Mister Schneider and his previous team. Miss Yingling thanked Plaintiff for her "point of view". However, with that said, Plaintiff was forced to take extra time, which she did not have; to schedule another meeting with Defendants for April 17, 2025 (just one day before the documents were due to the Court); and to finalize details of the Pre-Trial documents.

The teleconference on April 17, 2025, began at 12 noon, and did not conclude until almost 8:00pm that evening. Thus, Plaintiff's entire day was gone, and she had to work tirelessly until the following evening to complete everything in time for submission; incorporate all of Defendant's

additions and modifications; and finalize all documents to be submitted to the Court. Despite Defendants' best efforts to obstruct Plaintiff, Plaintiff got the job done. *See* Exhibit D.

Plaintiff submitted in a singular email the finalized pdfs of the 11 documents to submit to the Court on April 18, 2025; the Defendants noting only one addition (an objection) to be added to Plaintiff's Exhibit List. Miss Yingling wrote: *"Before we file, I wanted to let you know that the witness list was not the most recent version. We are using the attached witness list that includes Carlos Guevara. Also, we also made the following objection to Plaintiff's Exhibit No. 51:* [picture shown of the change]." *See* Exhibit D. Miss Yingling also told Plaintiff that they would submit the files, which Plaintiff did not ask them to do, but they volunteered. *Id.*

So, with all that hard work and effort put forth by the Plaintiff towards what are the most important documents of this litigation — the documents for trial — Plaintiff of course wanted to ensure that the documents were submitted. So, Plaintiff waited until she saw and received email confirmation from the Courts Notice of Electronic Filing. Plaintiff watched in real time as she received the email confirmation of the submissions; but what would trouble Plaintiff was what she saw when she opened the emails and files.

First, Plaintiff noticed that the Defendants were not only named as the submitting party, but under "Docket Text", the Defendants put "***by*** MGM National Harbor, LLC." Not one document did the Defendants label as "by Brittney Felder". Hence, even on the documents that pertained to the Plaintiff and that Plaintiff solely put together, Defendants did not put Plaintiff as the author.

Second, and even more shocking and appalling, when Plaintiff opened each of the documents, she found that Defendants had changed and modified Plaintiff's documents without approval or even notice to the Plaintiff, down to the formatting of the Certificate of Service pages. Plaintiff was absolutely stunned to discover that Defendants' Counsel had altered ***legal*** documents, bearing

another's (the Plaintiff's) signature. *See* Exhibit D. In what kind of world is such a thing allowable? This indeed is the most disturbing, concerning, egregious, vexatious act that a party, especially an attorney-at-law can commit. Indeed, this level of misconduct deserves sanctions so severe that no one will ever do or think that they can do what the Defendants did. It is simply abhorrent.

REQUESTED RELIEF

WHEREFORE, in addition to any sanctions this court deems necessary and appropriate, Plaintiff prays for the following additional relief:

1. The Court orders Defendants to turn over for review by this Court for deposition misconduct the video and transcripts of the *de bene esse* depositions of Patrick Fisher, Whitney Wilburn, and Lisa Jones;
2. That the Defendants pay for and provide a copy to the Plaintiff of the videos and transcripts of the *de bene esse* depositions of Patrick Fisher, Whitney Wilburn, and Lisa Jones;
3. The Defendants pay for any fees and expenses Plaintiff spent preparing for and attending the two depositions of Whitney Wilburn;
4. The Court grants, if necessary, and if not already stricken by the Court, leave of Court for Plaintiff to file any Motions in Limine regarding the testimony and depositions of Patrick Fisher, Whitney Wilburn, and Lisa Jones;
5. The Court withdraws Defendants submissions of the Pre-Trial Order, Voir Dire, Jury Instructions, and Special Verdict Form, along with their attachments, and allows Plaintiff to resubmit the original documents that will include only the changes mutually agreed upon by the parties in the last email dated April 18, 2025;
6. Although *pro se*, the Court grant Plaintiff attorney fees for the time spent preparing this Motion; and

7. The Defendant pay the Court for the time the Court spent on the matters brought forth in this Motion for Sanctions.

CONCLUSION

Plaintiff's prayer is that Defendants (MGM National Harbor, LLC, and its counsel) are penalized to the extent that it will force the immediate cessation of all prejudicial, vexatious, bad faith, and repetitive misconduct and gamesmanship that the Defendants have and continue to practice and facilitate. *Pro Se* litigants and the judicial process in general are worthy of the utmost respect. It is obligatory that all parties respect the Court and its processes and give due honor to the efficiency, efficacy, speed, and purpose of litigation and the journey and proceedings within. Abuse of power, station, or position should never be tolerated.

WHEREFORE, Plaintiff respectfully asks this Honorable Court to levy sanctions pursuant to FRCP 30, FRCP 37, the Court's inherent powers, and 28 U.S.C. § 1927 against Defendants for their violation of these Federal Rules and US Code.

Respectfully submitted,

April 21, 2025

Brittney Felder
Plaintiff, *Pro Se*
6902 Forbes Boulevard,
Seabrook, Maryland 20706
Telephone: (301) 221 - 3833
Email: brittfel@verizon.net
Facsimile: (301) 577 - 6001

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of April 2025, the foregoing **Memorandum of Points and Authorities in Support of Plaintiff's Motion for Sanctions, and Exhibits,** were served upon the Defendant by electronic mail and electronically via the District Court's Electronic Document Submission System to the following:

Jeremy Schneider
(Jeremy.Schneider@jacksonlewis.com)
11790 Sunrise Valley Drive,
Suite 400
Reston, Virginia 20191

Christian Yingling
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11790 Sunrise Valley Drive,
Suite 400
Reston, Virginia 20191

Brittney Felder

No. __-___

IN THE

Supreme Court of the United States

BRITTNEY FELDER,

PETITIONER

v.

MGM NATIONAL HARBOR, LLC,

RESPONDENT

APPENDIX J

In Appendix J, please find attached the following: (1) US District Court Judge Peter J. Messitte's ruling on the motions for summary judgment; (2) Plaintiff's Memorandum in support of Plaintiff's motion for summary judgment; (3) Plaintiff's response and opposition to Defendant's motion for summary judgment; and (4) Plaintiff's memorandum in support of Plaintiff's response to Defendant's motion and opposition for summary judgment.

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

PETER J. MESSITTE
UNITED STATES DISTRICT JUDGE

6500 CHERRYWOOD LANE
GREENBELT, MARYLAND 20770
301-344-0632

MEMORANDUM

TO: Counsel of Record; *Pro se* litigant Brittney Felder

FROM: Judge Peter J. Messitte

RE: Brittney Felder v. MGM National Harbor, LLC
Civil No. PJM 18-cv-3405

DATE: June 25, 2024

* * *

The Court has received *pro se* Plaintiff Brittney Felder's Motion for Summary Judgment (ECF No. 99) and Defendant MGM National Harbor, LLC's Cross Motion for Summary Judgment (ECF No. 104).

Felder says that Lisa Jones, an MGM National Harbor employee and Felder's supervisor, referred to her by use of a derogatory term that implicated the color of Felder's skin only three days before Jones terminated her. National Harbor denies that Jones used a derogatory term and argues even if she did, Felder has not shown it was used in reference to Felder's skin color or in a derogatory manner. The Parties offer contradictory testimony regarding Felder's employment, the events leading to her termination, and hiring, firing, and disciplinary practices at National Harbor generally.

Construing the record in the light most favorable to the nonmoving party, the Court finds that genuine disputes of material fact remain. Accordingly, Felder's Motion for Summary Judgment, ECF No. 99, and National Harbor's Cross Motion for Summary Judgment, ECF No. 104, are both **DENIED**. Felder's sole remaining claim for wrongful termination based on color discrimination will be tried.

The Court will contact the parties to set a trial date. Once again, it strongly encourages Felder to seek counsel, which may help facilitate the trial if the Parties cannot come to a resolution.

Despite the informal nature of this ruling, it shall constitute an Order of the Court and Clerk is directed to docket it accordingly.

PETER J. MESSITTE
UNITED STATES DISTRICT JUDGE

cc: Court File

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

GREENBELT DIVISION

BRITTNEY FELDER,	*	
Plaintiff,	*	
vs.	*	**Civil Action No. PJM-18-03405**
MGM NATIONAL HARBOR, LLC, *et al*,	*	
Defendants.	*	

PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES

IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Brittney Felder
Plaintiff, *Pro Se*
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Email: brittfel@verizon.net
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Dated: January 02, 2024

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INTRODUCTION

This is a discrimination case. *Pro Se* Plaintiff Brittney Felder ("Felder" or "Plaintiff") brings forth in her Amended Complaint ("Complaint") discrimination claims under 42 U.S.C. § 1981 and Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. §§ 2000e to 2000e-17, as well as several state law claims. Concerning Plaintiff's discrimination claims, Plaintiff alleges that the Defendants — Plaintiff's employer — MGM National Harbor, LLC ("National Harbor" or "Defendants"), and its employees, discriminated against her on the basis of her skin color, resulting in her termination.

The Defendants in their opposition to Felder's Complaint, sought dismissal of Plaintiff's case on their belief that Felder's Complaint was nothing more of a description of a "series of petty slights and misconduct by Plaintiff and her colleagues"; and that Felder's "Complaint, as well as its...attachments hav[e] nothing whatsoever to do with her...color...". This Court agreed, and thus granted the Defendants Motion to Dismiss with prejudice.

However, to the United States Court of Appeals for the Fourth Circuit, the Plaintiff appealed the District Court's order that dismissed all of the Plaintiff's discrimination claims. The Court of Appeals three-judge panel unanimously disagreed with the opinion of this District Court, finding that if the Plaintiff's allegations are proven true, then it would demonstrate that Felder was terminated because of her color. In its Judgment, the Court of Appeals states:

> *"With respect to color-based discrimination, Felder alleged that lighter tone African Americans, including herself, were punished more frequently and more harshly than darker tone African Americans. She further alleged that her direct supervisor, a darker tone African American, predominately hired darker tone African Americans, and that MGM perpetuated a workplace in which derogatory remarks were frequently made against lighter tone African Americans. Indeed, Felder stated that her direct supervisor referred to Felder by use of a derogatory term that implicated Felder's color a mere three days before Felder was terminated. Finally, Felder repeatedly alleged that she was performing her job to at least a*

> *satisfactory level. We conclude that these allegations, if proven true, could demonstrate that Felder was terminated because of her color."*

Therefore, this case was remanded back to this Court for further proceedings.

After a more than seven-months quest for the Plaintiff to rightly and adequately receive the Defendants' responsive answers and documents to the Plaintiff's Discovery Requests, discovery finally concluded on July 21, 2023. After a very long and frustrating discovery process — where the rampant misconduct and "gamesmanship" during Discovery on the part of the Defendants was clearly evident, thereby resulting in the granting of two Motions to Compel filed by the Plaintiff, as well as a warning that sanctions would be granted if the conduct continued — the Plaintiff now comes before this Court in a motion for Summary Judgment due to the concrete findings revealed during Discovery that validate the Plaintiff's allegations.

This Motion is based on the support and grounds as set forth in Plaintiff's Amended Complaint, the Judgment of the Court of Appeals for the Fourth Circuit ("Court of Appeals Judgment"), and Plaintiff's Memorandum of Points and Authorities in Support of Plaintiff's Motion for Summary Judgment ("Memorandum").

The summary judgment evidence on which Plaintiff relies consists of the Affidavit of Brittney Felder in Support of Plaintiff's Motion for Summary Judgment ("Felder Affidavit"), the Defendants' answers to Plaintiff's Requests for Admission ("Requests for Admissions"), the Declaration of Lisa Jones ("Jones Declaration"), the Declaration of Whitney Wilburn ("Wilburn Declaration"), and other evidence and records supplied by the Defendants and Plaintiff during Discovery, which are incorporated herein by reference.

The Plaintiff asserts that the information and supporting documents are admissible and relevant evidence for Plaintiff's claims and relief, and that this evidence attests that there is no genuine

dispute as to the material facts that render Defendants liable to Plaintiff. For the reasons set out below, this Court should unequivocally grant Plaintiff's Motion for Summary Judgment.

NATURE AND STAGE OF PROCEEDINGS

This is a discrimination case remanded back to this Court on appeal on July 21, 2022, to allow for additional proceedings to occur. On August 17, 2022, Honorable Peter J. Messitte reinstated Plaintiff's claim for employment discrimination based on color. (ECF No. 36)

A Scheduling Order was then put in place by Judge Messitte, whereby the initial Discovery deadline was December 30, 2022, and the deadline to submit dispositive pretrial motions was January 30, 2023. (ECF No. 37) However, due to various substantial discovery issues that occurred because of the Defendants' noncompliance with the Federal Rules of Civil Procedure, Plaintiff was forced to file a Motion to Compel a Response to Plaintiff's First Set of Interrogatories (ECF No. 43) on December 06, 2022, and a Motion to Compel Production of Documents (ECF No. 51) on December 19, 2022.

The Defendants correspondingly filed a Motion for Extension of Time of Scheduling Order Deadlines on December 07, 2022. (ECF No. 44) Despite Plaintiff's opposition (ECF No. 45) thereto, on December 21, 2022, Judge Messitte granted Defendants' Motion to extend the scheduling deadlines by sixty (60) days — instead of the requested ninety (90) days by Defendants — thereby changing the Discovery deadline to February 28, 2023, and the deadline to file dispositive motions to March 31, 2023. (ECF No. 54)

Congruent to this Order, for no reason other than Plaintiff's accurate understanding of the law and her ability to thoroughly plead her case as a *Pro Se* litigant, Judge Messitte also ordered that the Plaintiff disclose who is assisting with her pleadings. On January 17, 2023, Plaintiff filed a response (ECF No. 60) explicitly stating that her age, race, sex, or inexperience in legal matters

does not preclude or hinder her from being able to successfully litigate her case; and as such, she relies on nothing but her faith and mental capabilities and fortitude to be successful in whatever it is she puts her mind to. Therefore, there is no one else at any time since Plaintiff filed her case until now that is assisting her. As a result of this filing, Judge Messitte on January 26, 2023, ordered that this case be referred to the Honorable Magistrate Judge Gina L. Simms for all discovery and scheduling related matters. (ECF No. 62)

On February 07, 2023, a Motion for Protective Order was filed by the Defendants (ECF No. 65). Plaintiff was ordered to respond to ECF No. 65 by February 20, 2023, which Plaintiff did, stating her opposition (ECF No. 66) to entering a protective order. On February 23, 2023, a Paperless Order (ECF No. 69) scheduling a telephonic conference with Magistrate Judge Simms for March 02, 2023, to discuss all outstanding Discovery disputes and Motions was filed. At the aforementioned Conference, Magistrate Judge Simms noted the "gamesmanship" and sanctionable actions of the Defendants and their boilerplate responses. As a result, Judge Simms filed an order ECF No. 75) granting in part and denying in part Plaintiff's ECF No. 43 and ECF No. 51 Motions to Compel as set forth; setting the date for parties to engage in a good faith meet and confer session with a court reporter as set forth; granting plaintiff's pleadings construed as request for entry of protective order; setting the deadline for a Joint Status Report ("JSR"); and revising the deadline for dispositive motions after submission of the JSR. The Plaintiff submitted her attestation (ECF No. 76) on March 08, 2023, and Defendant their attestation (ECF No. 77) on March 10, 2023.

The parties also filed a Joint Status Report (ECF No. 78) on April 21, 2023, in which the parties disclosed that all discovery disputes had been resolved; requested a 60-day extension for Defendants' to supplement their responses and documents, meaning that Discovery would close on June 23, 2023; and a JSR would also be filed on that date relating to whether the parties

proposed dispositive motions briefing schedule and views on whether the parties' would seek referral of this case for mediation. On April 24, 2023, Judge Simms through a paperless order (ECF No. 79), granted all requests.

The parties thus filed a Joint Status Report on June 23, 2023. (ECF No. 80). In receipt of this JSR, Judge Simms filed a paperless order (ECF No. 81) on June 26, 2023, in which: the parties request for a limited extension to the close of the discovery deadline was construed as a motion to extend the Scheduling Order deadlines. Upon consideration of the Motion, the Court found good cause to grant the requested relief, and the Motion was granted. As a result, Discovery now closed on Jue 30, 2023. Also, by no later than July 14, 2023, the parties were to provide a JSR related to the parties' proposed dispositive motions briefing schedule and views on whether they seek referral of this case for mediation.

Even with the multiple requests to extend the scheduling deadlines for the Defendants to finish supplementing their documents granted, the Defendant petitioned the plaintiff yet again to extend the Discovery deadline. The Plaintiff agreed to a seven-day extension for Defendants to supply the additional critical discovery documents. Therefore, in the JSR (ECF No. 82), filed on July 14, 2023, the Defendants' request was incorporated therein. On July 17, 2023, Judge Simms issued a paperless order (ECF No. 83) construing the request as a motion to extend the Scheduling Order deadlines and granted the requested relief in order for the Defendants to "supplement its production with the additional personnel profiles, emails, and video recordings/surveillance." After the seven-plus months wait for the Plaintiff to receive the Defendants' responsive answers and documents to the Plaintiff's Discovery Requests, Discovery finally closed on July 21, 2023.

Although the Defendants were granted several extensions that amounted to several months of delays, the Defendants still had not provided Plaintiff with all that she requested. Additionally,

there were still concerning behaviors that the Defendants were displaying, prompting the request of a telephonic Status Conference within the JSR filed on September 01, 2023. (ECF No. 84). On September 15, 2023, Judge Simms filed a paperless order scheduling the telephonic status hearing for October 03, 2023. (ECF No. 85) On October 03, 2023, the teleconference was held before Magistrate Judge Simms. (ECF No. 86) Based off the information divulged in the teleconference, Judge Simms found it necessary to issue an order on October 04, 2023, granting Plaintiff leave to file a motion for sanctions by October 20, 2023; affirm the October 13, 2023, deadline to file dipositive motions; and established a briefing schedule. (ECF No. 87) Lastly, on October 06, 2023, a Joint Motion to refer this case to mediation was filed. (ECF 88)

The most current state of proceedings for this case are as follows: To date, before this Court, now stands a Motion for Sanctions filed by Plaintiff (ECF No. 90); settlement negotiations through a Court-ordered Magistrate Judge (Magistrate Judge Jillyn K. Schulze) (ECF No. 92) that were to begin November 28, 2023 and last through December 01, 2023, however, were not completed until Monday, December 18, 2023, during which the Plaintiff's first and only telephone discussion with Magistrate Judge Schulze was conducted; a stay to submit Motion for Summary Judgment until two weeks after the completion of Mediation (ECF No. 89), which would make the deadline January 02, 2024; Plaintiff's Motion for Recusal of Judge Peter J. Messitte filed on January 01, 2024; and, lastly, Plaintiff's Motion for Summary Judgment filed on January 01, 2024.

SUMMARY OF STATEMENT OF ISSUES

The greatest hurdle in discrimination cases for a Plaintiff to be successful is to overcome the burden of establishing a prima facie case of discrimination. In order for the Plaintiff to successfully do so, the plaintiff must show: (1) the Plaintiff belongs to a protected class; (2) the Plaintiff was competent to perform the job or was satisfactorily performing the duties required by her position;

(3) the Plaintiff suffered an adverse employment action; and (4) the adverse action occurred under circumstances giving rise to inference of discrimination based on, in this case, the Plaintiff's color. If all such stipulations have been met, then the plaintiff has successfully plead her case, and, as a matter of law, the Court must rule in the favor of the plaintiff.

So, here, in this case, *Felder vs. MGM National Harbor, LLC*, there are only two valid questions that need to be answered, and are at the crux of this civil lawsuit:

1. **Has the Plaintiff properly plead a case that infers she was terminated due to color discrimination?**
2. **Has the Plaintiff proven her case with undisputed facts?**

If the answer to both of these vital questions is, "Yes", then this Court must, as a matter of law, rule in favor of Plaintiff's Motion for Summary Judgment.

ENUMERATION OF STATEMENT OF ISSUES

1. **Has the Plaintiff Properly Plead a Case That Infers She Was Terminated Due to Color Discrimination?** The answer to this question is undeniably, "Yes!"

Plaintiff's case has already been adjudicated. Defendants filed Motions to Dismiss Plaintiff's Complaints in their entirety (ECF Nos. 6 & 23); this Court granted the Defendants' Motions (ECF Nos. 21 & 29). However, Plaintiff appealed the decision of this Court to the United States Court of Appeals for the Fourth Circuit (ECF No. 30). The Court of Appeals three-judge panel unanimously agreed to rule in favor of Plaintiff (ECF No. 34), reinstating and remanding her case back to this Court for further proceedings on Plaintiff's color discrimination claim.

In its Judgment, the Court of Appeals stated:

> *"With respect to color-based discrimination, Felder alleged that lighter tone African Americans, including herself, were punished more frequently and more harshly than darker tone African Americans. She further alleged that her direct supervisor, a darker tone African American, predominately*

hired darker tone African Americans, and that MGM perpetuated a workplace in which derogatory remarks were frequently made against lighter tone African Americans. Indeed, Felder stated that her direct supervisor referred to Felder by use of a derogatory term that implicated Felder's color a mere three days before Felder was terminated. Finally, Felder repeatedly alleged that she was performing her job to at least a satisfactory level. We conclude that these allegations, if proven true, could demonstrate that Felder was terminated because of her color."

Therefore, unquestionably, indisputably, indubitably, prima facie, Plaintiff has successfully plead her color discrimination case. This cannot be denied and cannot be disputed. Therefore, without reservation, this aspect of Plaintiff's Motion for Summary Judgment should be and must be GRANTED.

2. **Has the Plaintiff Proven Her Case with Undisputed Facts?** The answer to this question is certainly, "Yes!"

Plaintiff's allegations fall under four umbrellas: (1) Disparate treatment in workplace discipline; (2) Disparate treatment in workplace hiring/retention practices; (3) Use of a derogatory term towards Plaintiff; and (4) Plaintiff's job performance. All of these four umbrellas, if substantiated, prima facie prove and validate Plaintiff's Complaint. And if this is so, then the Court should and must GRANT Plaintiff's Motion for Summary Judgment.

For verification, Plaintiff will list the allegations and show where in the record all allegations under the four umbrellas are confirmed to be facts, not just mere allegations. Such will be done in the next section of this Memorandum headed, "STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE". These material facts will answer four key questions that fall under the four aforementioned umbrellas.

These questions are:

i. Were lighter tone African Americans, including the Plaintiff, punished more frequently or more harshly than darker tone African Americans?

ii. Did the Plaintiff's direct supervisor, Lisa Jones, a darker tone African American, predominately hire/retain darker tone African Americans?

iii. Did Plaintiff's direct supervisor, Lisa Jones, refer to Plaintiff by use of a derogatory term that implicated the Plaintiff's color a mere three days before Plaintiff was terminated?

iv. Did Plaintiff perform her job to at least a satisfactory level?

STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE

Plaintiff's allegations can be corroborated through several means, including through the responses and documents Plaintiff provided in their entirety to the Defendants (who, upon receipt of, Bates stamped Plaintiff's documents). All of these documents are authenticated through the Plaintiff's Affidavit that is included alongside this Memorandum. However, because authenticity of documents is so important in summary judgment, Plaintiff, where as much as possible, will reference the documents submitted to her by the Defendants. The Defendants' documents are self-authenticated because they themselves provided them to the Plaintiff, which they admitted to in their Responses Nos. 28 and 29 to Plaintiff's Requests for Admission. Therefore, making any of Plaintiff's claims/allegations verified by use of any of the Defendants' own documents and responses, true statements of material facts as to which there is no genuine issue.

A. There are specific allegations that are proven to be facts that pertain more to the general background information of the case. These include the following:

1.) GENERAL BACKROUND INFO ALLEGATIONS PROVEN TO BE FACT:

i. **<u>Plaintiff is a fair-skinned (or having a lighter tone) African American, female; therefore, a member of a protected class</u>**. ***See***: Plaintiff's Amended Complaint; Plaintiff's EEOC Charge; Plaintiff's Deposition; Affidavit of Brittney Felder in Support of Plaintiff's Motion for Summary Judgment; Plaintiff's Employee Record supplied by Defendants during Discovery, where a photo of Plaintiff is on the first page of her employee profile adjacent to a photo of her darker-tone hiring manager Lisa Jones; the April 10, 2023, Meet and Confer Transcript, (Exhibit B, pgs. 421-429), where Defendants' Counsel, Jeremy Schneider, is quoted as commenting on the brightness of Plaintiff's skin color, saying she appears as if she is "in front of a bright light".

It should be duly noted that it is also proven that the Defendants lied in their answers to Plaintiff's Requests for Admission, where they stated that "based on the information available to Defendant, Defendant denies that Plaintiff is fair-skinned and further denies that Plaintiff has a visibly lighter skin tone than Lisa Jones." *See* Exhibit A, Defendants' Response to Requests for Admission Request No. 1. As the proof shows, not only did Defendants have a photo of the Plaintiff available to them at the time they answered these questions, but, they had also physically seen the Plaintiff. Defendants answered the Requests for Admissions on February 27, 2023; saw the Plaintiff via videoconference during Plaintiff's deposition on December 20, 2022; and always had access to Plaintiff's employee profile, which contained a photo of the Plaintiff. Defendants and their Counsel defrauded this Court.

ii. **<u>Plaintiff began employment with MGM National Harbor in early August 2017.</u>** ***See***: Defendants' Responses to Requests Nos. 22 and 25 of Plaintiff's Requests for

Admission (Exhibit A), where Defendants confirm this fact; and Plaintiff's personnel file provided by Defendants during Discovery.

iii. **Plaintiff was terminated September 22, 2017.** ***See***: Defendants' Responses to Request No. 21 of Plaintiff's Requests for Admission (Exhibit A), where Defendants confirm this fact.

iv. **Plaintiff was hired as Assistant Manager of Retail and Manager of the SJP Boutique located inside MGM National Harbor.** ***See***: Declaration of Whitney Wilburn provided by Defendants (Exhibit D); Declaration of Lisa Jones provided by Defendants (Exhibit D); Plaintiff's personnel file provided by Defendants during Discovery; Plaintiff's Amended Complaint; Affidavit of Brittney Felder in Support of Plaintiff's Motion for Summary Judgment; Plaintiff's Deposition conducted by Defendants; Defendants' Responses to Plaintiff's Requests for Production of Documents and Requests for Responses to Interrogatories, where all confirm this fact.

v. **Plaintiff did not seek employment with MGM National Harbor; instead, she was fervently sought after by Whitney Wilburn of SJP Corporate.** ***See***: The Declaration of Whitney Wilburn provided by Defendants (Exhibit D); Plaintiff's Amended Complaint; Affidavit of Brittney Felder in Support of Plaintiff's Motion for Summary Judgment; Plaintiff's Deposition conducted by Defendants, which all confirm this fact.

vi. **Whitney Wilburn was not Plaintiff's supervisor at any time, and thus had no authority over Plaintiff, as she was not an employee of MGM National Harbor; instead, she was a SJP Corporate Employee.** ***See***: Declaration of Whitney

Wilburn provided by Defendants during Discovery to Plaintiff (Exhibit D); Declaration of Lisa Jones provided by Defendants during Discovery to Plaintiff (Exhibit D); Plaintiff's Amended Complaint; Affidavit of Brittney Felder in Support of Plaintiff's Motion for Summary Judgment; Plaintiff's Deposition conducted by Defendants; Defendants' Responses to Plaintiff's Requests for Production of Documents; Answers to Plaintiff's Interrogatories; and Defendants' response to Request No. 27 of Requests for Admission, which all confirm this fact.

vii. **Lisa Jones was on leave of absence for the vast majority of Plaintiff's tenure, only arriving back to work days before she terminated Plaintiff.** ***See***: The Declaration of Lisa Jones provided by Defendants (Exhibit D); Lisa Jones' personnel file provided by Defendants during Discovery; Plaintiff's Amended Complaint; Affidavit of Brittney Felder in Support of Plaintiff's Motion for Summary Judgment; Plaintiff's Deposition conducted by Defendants; Defendants' Responses to Plaintiff's Requests for Production of Documents and Plaintiff's Requests for Responses to Interrogatories, which all confirm this fact.

viii. **Plaintiff was under the leadership of Patrick Fisher and Melissa Willens during the entire time Lisa Jones was on leave of absence.** ***See***: Declaration of Lisa Jones provided by Defendants (Exhibit D); Plaintiff's Amended Complaint; Affidavit of Brittney Felder in Support of Plaintiff's Motion for Summary Judgment; Plaintiff's Deposition conducted by Defendants; Defendants' Responses to Plaintiff's Requests for Production of Documents and Plaintiff's Requests for Responses to Interrogatories, which all confirm this fact.

ix. **Defendants cannot produce one iota of evidence that proves that Plaintiff was told, knew about, or agreed to a probationary period stipulation to her employment prior to or during Plaintiff's employment with MGM National Harbor.** ***See***: Plaintiff's personnel file provided by Defendants during Discovery; Plaintiff's Amended Complaint; Affidavit of Brittney Felder in Support of Plaintiff's Motion for Summary Judgment; Plaintiff's Deposition conducted by Defendants; Defendants' Responses to Plaintiff's Requests for Production of Documents and Requests for Responses to Interrogatories, which all confirm this fact.

x. **Defendants could not even produce Plaintiff's offer letter.** ***See***: Plaintiff's personnel file provided by Defendants during Discovery; Plaintiff's Amended Complaint; Affidavit of Brittney Felder in Support of Plaintiff's Motion for Summary Judgment; Plaintiff's Deposition conducted by Defendants; Defendants' Responses to Plaintiff's Requests for Production of Documents; and Requests for Answers to Plaintiff's Interrogatories, where all confirm this fact.

xi. **Confirmation of a "hostile work environment".** ***See***: Complaint of Amber Ogles (Exhibit C of this Memorandum).

B. The uncontroverted facts that prove the validity of Plaintiff's Complaint are the following:

i. **WERE LIGHTER TONE AFRICAN AMERICANS, INCLUDING THE PLAINTIFF, PUNISHED MORE FREQUENTLY OR MORE HARSHLY THAN DARKER TONE AFRICAN AMERICANS?**

FACT 1: MGM National Harbor went against its own policy when it terminated Plaintiff during her supposed "probationary period" with no warning, no notice of

what she purportedly was doing wrong, and no chance to correct the supposed behavior. Even still, this is a moot issue because Defendants still cannot definitively prove if the Handbook they supplied during Discovery, was actually implemented during Plaintiff's employment. This is so because they cannot produce proof of such in Plaintiff's personnel file, where there is supposed to be records of any handbooks and/or policies an employee has signed off on, ensuring it has been read/received by the employee. ***See***: Plaintiff's personnel file and the Handbook produced by Defendants during Discovery, which confirm this fact.

FACT 2: Plaintiff was terminated even before the possibility of her first "formal performance review". ***See***: Defendants' Responses to Requests Nos. 22 and 25 of Plaintiff's Requests for Admission (Exhibit A), where Defendants confirm this fact.

FACT 3: Plaintiff was terminated with "no negative disciplinary actions other than her termination noted within [her employee file]." ***See***: Defendants' Response to Request No. 23 of Plaintiff's Requests for Admission (Exhibit A), where Defendants confirm this fact; and Plaintiff's employee profile supplied by Defendants during Discovery to Plaintiff, which also confirms this fact.

FACT 4: Besides her termination, Plaintiff had no adverse disciplinary actions administered to her from any employee of MGM National Harbor during her employment. ***See***: Defendants' Response to Requests Nos. 23 and 25 of Plaintiff's Requests for Admission (Exhibit A), where Defendants confirm this fact; and Plaintiff's employee profile supplied by Defendants during Discovery to Plaintiff also confirms this fact.

<u>FACT 5:</u> During Plaintiff's employment with MGM National Harbor, there were two direct similarly situated employees: Lenard Knight and Diane Lemberg, who like Plaintiff, were Assistant Retail Managers. ***See*:** Defendants' Responses to Requests Nos. 9 and 13 of Plaintiff's Requests for Admission (Exhibit A), where Defendants confirm this fact.

<u>FACT 6:</u> Diane Lemberg is a White (not Hispanic) female. ***See*:** Defendants' Response to Request No. 4 of Plaintiff's Requests for Admission (Exhibit A), where Defendants confirm this fact.

<u>FACT 7:</u> Documented within Diane Lemberg's official MGM National Harbor employee file, that upon review from Lisa Jones, Lemberg received a written negative disciplinary action against her that dated from March 30, 2017, until April 30, 2017, due to unsatisfactory job performance. ***See*:** Defendants' Responses to Requests No. 10 of Plaintiff's Requests for Admission (Exhibit A), where Defendants confirm this fact; also, Diane Lemberg's personnel file provided by Defendants during Discovery to Plaintiff confirms this fact.

<u>FACT 8:</u> In response to the unsatisfactory job performance documented in March 2017 regarding Diane Lemberg, the corrective action given by Lisa Jones was thirty (30) days for Lemberg to make noticeable improvement. ***See*:** Defendants' Responses to Requests No. 11 of Plaintiff's Requests for Admission (Exhibit A), where Defendants confirm this fact; also, Diane Lemberg's personnel file provided by Defendants during Discovery to Plaintiff confirms this fact in its entirety.

<u>FACT 9:</u> In response to Request No. 11 of Plaintiff's Requests for Admission, Defendants admit that "Ms. Lemberg, who is white was disciplined in March 2017,

well after her probationary period ended, whereas Plaintiff was disciplined during her probationary period." Therefore, Defendants themselves confirm that Diane Lemberg — an Assistant Retail Manager (who held the same position as Plaintiff) — was not only, not terminated for her poor performance that was so severe it had to be documented, but she was not disciplined during her probationary period either. Yet, Plaintiff was terminated with absolutely no record, formal or informal, of misconduct or poor performance, and with having a spotless employee personnel file. ***See***: Defendants' Responses to Requests No. 11 of Plaintiff's Requests for Admission (Exhibit A), where Defendants confirm this fact; also, Diane Lemberg's personnel file provided by Defendants during Discovery confirms this fact; and Plaintiff's personnel file provided by Defendants during Discovery confirms this.

FACT 10: Diane Lemberg's employment with MGM National Harbor ended February 2019, some two years after her disciplinary action. ***See***: Defendants' Responses to Request No. 12 of Plaintiff's Requests for Admission (Exhibit A), where Defendants confirm this fact; also, Diane Lemberg's personnel file provided by Defendants during Discovery to Plaintiff confirms this fact in its entirety.

FACT 11: Lenard Knight is a dark-skinned (or having a visibly darker skin tone) African American male. ***See***: Defendants' Response to Request No. 3 of Plaintiff's Requests for Admission (Exhibit A), where Defendants confirm the fact that Mr. Knight is African American but say that they "are without sufficient information to admit or deny the remainder of the Request". The Defendants lie outright, for the Defendants at any time had access to the employee profiles, which all contain a headshot of each and every employee. The Defendants even provided the employee

profile with the photo of Mr. Knight included on the very first page of his employee profile to the Plaintiff. And Mr. Knight's headshot does indeed, without a doubt, prove that he is visibly a darker tone African American. Further, the Defendants cannot deny that the information used to answer if Mr. Knight is African American, which is in his employee profile / "personnel file" — which they proved they accessed and used to answer Plaintiff's Requests for Admission Nos. 14, 15, 16, and 17 — is the same information/file that would be used to answer if Mr. Knight is a visibly darker tone African American, since Mr. Knight's "personnel file" contains his headshot. The Defendants, once again, defrauded the Court.

FACT 12: Documented within Lenard Knight's official MGM National Harbor employee file is that Mr. Knight violated conduct standards by leveraging his position as Assistant Retail Manager to gain access to shows and events on property in December of 2016. Yet, Mr. Knight only received a verbal warning from Lisa Jones. ***See***: Defendants' Response to Request No. 14 of Plaintiff's Requests for Admission (Exhibit A), where Defendants confirm this fact; Lenard Knight's personnel file provided by Defendants during Discovery to Plaintiff also confirms this fact. It must be noted that Defendants lie outright again in their answer. Though Mr. Knight's personnel profile shows that it was Lisa Jones who was solely responsible for the disciplinary action, and that Matt Sommers was only Knight's hiring manager, the Defendants fail to answer the question and even lie. The Defendants defrauded the Court once more.

FACT 13: Lenard Knight engaged in misconduct again, yet he was not terminated. Documented within Lenard Knight's official MGM National Harbor employee file,

that upon review from Lisa Jones, Knight received a written negative disciplinary action against him that dated March 17, 2017, to March 23, 2017, due to inappropriate conduct. ***See***: Defendants' Response to Request No. 15 of Plaintiff's Requests for Admission (Exhibit A), where Defendants confirm this fact; also, Lenard Knight's personnel file provided by Defendants during Discovery to Plaintiff, confirms this fact.

FACT 14: Plaintiff has alleged that no other employee, including the other two similarly situated Assistant Managers (Lenard Knight and Diane Lemberg), were disciplined during their probationary period. Defendants confirmed this fact. ***See***: Defendants' Response to Request No. 15 of Plaintiff's Requests for Admission (Exhibit A), where Defendants state that Mr. Knight was "disciplined well after his probationary period ended"; and Lenard Knight's personnel file provided by Defendants during Discovery to Plaintiff also confirms this fact.

FACT 15: Lenard Knight engaged in even more misconduct in March 2017, yet he was not terminated; instead, he was given yet another opportunity by Lisa Jones to correct his behavior, and although Knight had been warned and disciplined several times for several offenses, he still was not terminated, only given a verbal warning by Lisa Jones that stated, "if immediate improvement is not made in all areas, further disciplinary action will result up to and including termination." ***See***: Defendants' Response to Request No. 16 of Plaintiff's Requests for Admission (Exhibit A), where Defendants confirm this fact; also, Lenard Knight's personnel file provided by Defendants during Discovery to Plaintiff confirms this fact.

FACT 16: Lisa Jones gave Lenard Knight an undisclosed, undetermined amount of time to correct his behavior, while Jones gave Diane Lemberg a predetermined thirty (30) days to improve her performance. However, neither were terminated under Lisa Jones. ***See***: Defendants' Responses to Requests Nos. 11 and 16 of Plaintiff's Requests for Admission (Exhibit A), where Defendants confirm this fact; also, Lenard Knight's personnel file provided by Defendants during Discovery to Plaintiff confirms this fact; and Diane Lemberg's personnel file provided by Defendants during Discovery to Plaintiff confirms this fact.

FACT 17: Lenard Knight's employment would not end until some two years later in June of 2018 when he was terminated. But at the time of his termination, Lisa Jones had already been terminated. ***See***: Defendants' Response to Request No. 17 of Plaintiff's Requests for Admission (Exhibit A), where Defendants confirm this fact; also, Lenard Knight's personnel file provided by Defendants during Discovery to Plaintiff confirms this fact; and Lisa Jones' personnel file provided by Defendants during Discovery to Plaintiff confirms this.

FACT 18: Jimmy Streeter is a darker tone African American male. ***See***: Defendants' Response to Request No. 5 of Plaintiff's Requests for Admission (Exhibit A), where Defendants confirm the fact that Mr. Streeter is African American but say that they "are without sufficient information to admit or deny the remainder of the Request". The Defendants lie outright, for the Defendants at any time had access to the employee profiles, which all contain a headshot of each and every employee. The Defendants even provided the employee profile with the photo of Mr. Streeter included on the very first page of his employee profile to the

Plaintiff. And Mr. Streeter's headshot does indeed, without a doubt, prove that he is visibly a darker tone African American. Further, the Defendants cannot deny that the information used in order to answer if Mr. Streeter is African American, which is his employee profile / "personnel file" — which they proved they accessed and used to answer Plaintiff's Requests for Admission Nos. 18 and 19) — is the same information/file that would be used to answer if Mr. Streeter is a visibly darker tone African American, since Mr. Streeter's "personnel file" contains his headshot. The Defendants, once again, defrauded the Court.

FACT 19: Jimmy Streeter was a sales lead, the same position Lisa Jones initially offered to Plaintiff. ***See***: Defendants' Response to Request No. 19 of Plaintiff's Requests for Admission (Exhibit A), where Defendants confirm this fact; Plaintiff's Amended Complaint; Jimmy Streeter's personnel file provided by Defendants during Discovery to Plaintiff, which also confirms this fact; and Lisa Jones' Declaration provided by Defendants during Discovery to Plaintiff (Exhibit D of this Memorandum).

FACT 20: Jimmy Streeter was known for his toxic behavior to his fellow colleagues (including fellow managers), even having formal complaints from fellow employees and managers submitted against him while under Lisa Jones' management. Yet, Jimmy Streeter had no disciplinary actions in his employee profile from Lisa Jones. ***See***: Complaint of Amber Ogles (Exhibit C), where Defendants confirm this fact; and Jimmy Streeter's personnel file provided by Defendants during Discovery to Plaintiff, which also confirms this fact.

FACT 21: The only other SJP Boutique employee who resembled Plaintiff, including being of the same/similar skin tone/color, was Robert Marshall, a mixed race African American male, who like the other darker tone African American SJP boutique employees had disciplinary actions in his employee profile, but unlike them, he was the only employee terminated by Lisa Jones. ***See*:** Robert Marshall's personnel file provided by Defendants during Discovery to Plaintiff, which confirms this fact; and, the personnel files of Nikko Reese, Demetrius White, Jichele Sutton, and Ametes Gater provided by Defendants during Discovery to Plaintiff, which also confirms this fact.

ii. DID THE PLAINTIFF'S DIRECT SUPERVISOR, LISA JONES, A DARKER TONE AFRICAN AMERICAN, PREDOMINATELY HIRE AND/OR RETAIN DARKER TONE AFRICAN AMERICANS?

FACT 1: During Plaintiff's employment at MGM National Harbor, there were only five (5) total employees in the SJP Boutique hired and/or managed by Lisa Jones, which included Nikko Reese, Demetrius White, Jichele Sutton, Ametes Gater, and Roslyn Ramseur. Out of the five (5) employees, four (4) employees (Nikko Reese, Demetrius White, Jichele Sutton, and Ametes Gater) were all darker tone African Americans. ***See*:** Defendants' Responses to Request No. 6 of Plaintiff's Requests for Admission (Exhibit A), where Defendants confirm the fact that Nikko Reese, Demetrius White, Jichele Sutton, and Ametes Gater are all African Americans but say that "based on the information available to Defendant, Defendant denies that Nikko Reese, Demetrius White, Jichele Sutton, and Ametes Gater all have a visibly darker skin tone than Plaintiff." The Defendants lie outright, for the Defendants at

any time had access to the employee profiles, which all contain a headshot of each and every employee. The Defendants even provided the employee profile with the photos of all said employees included on the very first page of their individual employee profiles to the Plaintiff. And the headshots of the four said employees does indeed, without a doubt, prove that they are visibly darker tone African Americans. Further, the Defendants cannot deny that the information used in order to answer if the employees are African American, which is in their employee profiles / "personnel files" — which they proved they accessed and used to answer Plaintiff's Requests for Admission No. 6) — is the same information/file that would be used to answer if the four said employees are visibly darker tone African Americans, since their "personnel file" contains the headshots. The Defendants, once again, defrauded the Court. ***See*:** Defendants' Responses to Requests Nos. 22 and 25 of Plaintiff's Requests for Admission (Exhibit A); and the employee personnel files produced by Defendants that confirm this fact.

FACT 2: Lisa Jones retained only darker tone African Americans in leadership positions. There are only two leadership job positions/titles that are under Lisa Jones' position/title. These are: Assistant Retail Manager and Sales Lead. During Plaintiff's employment, only four people held these positions/titles (excluding Plaintiff who was the only other Assistant Retail Manager), which meant there were two Sales Leads and two other Assistant Retail Managers.

Filling the Assistant Retail Manager positions/titles were Diane Lemberg (White female) and Lenard Knight (darker tone African American male). Filling the Sales Lead positions/titles were Amber Ogles (White female) and Jimmy

Streeter (darker tone African American male). All but Amber Ogles had negative complaints, remarks, and/or disciplinary actions. Yet, none of these were terminated by Lisa Jones, only given written or verbal warnings, or chances to correct their misconduct or poor behavior. There were no lighter tone African Americans in any of the retail leadership positions besides the Plaintiff, and she was recruited by Whitney Wilburn of SJP Corporate. So, Lisa Jones overwhelmingly hired and retained a majority of darker tone African Americans. ***See***: Defendants' Responses to Requests Nos. 9-19 of Plaintiff's Requests for Admission (Exhibit A), where Defendants confirm these facts; Plaintiff's, Lemberg's, Knight's, Ogles', and Streeter's employee profiles supplied by Defendants during Discovery that also confirm this fact.

FACT 3: Lisa Jones' only promotion was Jimmy Streeter, who she promoted from Sales Associate to Sales Lead. ***See***: Defendants' Response to Request No. 19 of Plaintiff's Requests for Admission (Exhibit A), where Defendants confirm this fact; and Jimmy Streeter's employee profile supplied by Defendants during Discovery that also confirms this fact.

FACT 4: Nikko Reese was re-hired by Lisa Jones as a Sales Associate in SJP Boutique after he was disciplined and terminated from another division in MGM National Harbor. ***See***; Nikko Reese's employee/personnel file supplied by Defendants during Discovery, which confirms this fact.

FACT 5: Jimmy Streeter applied for Plaintiff's job as Assistant Retail Manager, but Whitney Wilburn, not Lisa Jones denied his request/application via email because of his treatment towards his colleagues. ***See***: Email Communications

between Whitney Wilburn and Jimmy Streeter supplied by Defendants in their Production of Documents; and the applications and list of candidates supplied by Defendants in their Production of Documents, all of which confirm this fact.

<u>**FACT 6:**</u> While Lisa Jones was the person who negotiated Plaintiff's title/position — first offering Plaintiff a lower position of Sales Lead, which Plaintiff did not accept — it was Whitney Wilburn of SJP Corporate who pursued Plaintiff, followed-up with Plaintiff, and coerced Jones into offering Plaintiff the position of Assistant Retail Manager, which Plaintiff accepted. Wilburn was the person responsible for the hiring of the Plaintiff as an Assistant Retail Manager. ***See***: Declaration of Whitney Wilburn (Exhibit D); Declaration of Lisa Jones (Exhibit D); Plaintiff's Amended Complaint, and Plaintiff's Affidavit attached to this Memorandum, all of which confirm this fact.

<u>**FACT 7:**</u> It was Lisa Jones, and Lisa Jones alone, who was responsible for and decided to terminate Plaintiff, which she openly admits in her Declaration. ***See***: Declaration of Lisa Jones (Exhibit D), which confirms this fact.

iii. DID PLAINTIFF'S DIRECT SUPERVISOR, LISA JONES, REFER TO PLAINTIFF BY USE OF A DEROGATORY TERM THAT IMPLICATED THE PLAINTIFF'S COLOR A MERE THREE DAYS BEFORE PLAINTIFF WAS TERMINATED?

<u>**FACT 1:**</u> Three days before the SJP Boutique Event, Lisa Jones called Plaintiff to attend an impromptu meeting with only her and Jimmy Streeter in attendance. It was in this meeting, that Jones referred to Plaintiff as "Queen", which is a term darker tone African Americans would call lighter tone African Americans during

the cruel times of slavery to sarcastically, mockingly, and offensively refer to the elevated societal status lighter tone African Americans had compared to that of darker tone African Americans. ***See***: Plaintiff's Amended Complaint and Plaintiff's Affidavit attached to this Memorandum, all of which confirm this fact.

FACT 2: Lisa Jones never denied calling Plaintiff "Queen" in her Declaration, only that she "does not recall." ***See***: Declaration of Lisa Jones (Exhibit D).

iv. DID PLAINTIFF PERFORM HER JOB TO AT LEAST A SATISFACTORY LEVEL?

FACT 1: Plaintiff received a golden lion statue from her fellow managers at the Retail Department Meeting, which Plaintiff still has in the box to this very day. ***See***: Plaintiff's Amended Complaint and Plaintiff's Affidavit attached to this Memorandum, all of which confirm this fact.

FACT 2: Plaintiff received high praise from Melissa Willens of MGM Corporate for her contributions and leadership to MGM and SJP just days before Plaintiff was terminated. ***See***: Defendants' Response to Request No. 26 of Plaintiff's Requests for Admission (Exhibit A), where Defendants confirm this fact; Plaintiff's Amended Complaint; the actual email communication sent to Plaintiff by Melissa Willens, which was produced by Defendants in their Production of Documents during Discovery and attached as an Exhibit in Plaintiff's Amended Complaint.

FACT 3: Plaintiff met or exceeded all sales goals, including those set for pre-sale for the SJP Boutique Event and the actual SJP Event (where the sales rivaled those of the grand opening). ***See***: Plaintiff's Amended Complaint; Plaintiff's Affidavit; the actual sales reports and goals produced by Defendants in their Production of

Documents during Discovery; and Declaration of Whitney Wilburn, which all confirm this fact.

<u>FACT 4:</u> Sales and production of every individual sales associate dramatically increased while Plaintiff managed the store. ***See***: Plaintiff's Amended Complaint; Plaintiff's Affidavit; and the actual sales reports and goals produced by Defendants in their Production of Documents during Discovery, which all confirm this fact.

LEGAL ANALYSIS

I. Standard of Review.

"Summary judgment is appropriate when 'there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.'" *Bostic v. Schaefer*, 760 F.3d 352, 370 (4th Cir. 2014) (quoting Fed. R. Civ. P. 56(a)). "A dispute is genuine if a reasonable jury could return a verdict for the nonmoving party." *Libertarian Party of Va.*, 718 F.3d at 313 (internal quotation marks omitted). "A fact is material if it 'might affect the outcome of the suit under the governing law.'" Id. (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). A party moving for summary judgment bears the initial responsibility of informing the court of the basis for its motion, and identifying the aspects of the record which it believes demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Once the party makes this initial showing, the burden shifts to the non-moving party to demonstrate that there is in fact a genuine issue of material fact. *United States v. 107.9 Acre Parcel of Land in Warren Twp.*, 898 F.2d 396, 398 (3d Cir. 1990). "[The Courts] are required to view the facts and all justifiable inferences arising therefrom in the light most favorable to the nonmoving party…" *Id.* at 312. In doing so, the Court must not weigh evidence or make credibility determinations. *Mercantile Peninsula Bank v. French*, 499 F.3d 345, 352 (4th Cir. 2007). Ultimately, the non-

moving party must present sufficient evidence from which a reasonable jury could return a verdict in the non-moving party's favor. *Pignataro v. Port Auth. of N.Y. & N.J.*, 593 F.3d 265, 268 (3d Cir. 2010). "[C]ourts may not resolve genuine disputes of fact in favor of the party seeking summary judgment." *Tolan v. Cotton*, 134 S. Ct. 1861, 1866 (2014) (per curiam). However, and importantly, a "motion for summary judgment will not be defeated by 'the mere existence' of some disputed facts, but will be denied when there is a genuine issue of material fact." *Am. Eagle Outfitters v. Lyle & Scott Ltd.*, 584 F.3d 575, 581 (3d Cir. 2009) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48, 106 S.Ct. 2505 (1986)). An issue is genuine "only if there is a sufficient evidentiary basis on which a reasonable jury could find for the non-moving party and a factual dispute is material only if it might affect the outcome of the suit under governing law." *Kaucher v. County of Bucks*, 455 F.3d 418, 423 (3d Cir. 2006) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505 (1986)). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." *Anderson*, 477 U.S. at 248 (citing 10A C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure § 2725, pp. 93-95 (1983)).

A court's summary judgment inquiry "unavoidably asks whether reasonable jurors could find by a preponderance of the evidence that the plaintiff is entitled to a verdict." *Anderson v. Liberty Lobby*, 477 U.S. 242, 252 (1986) (internal citations omitted). "[I]n ruling on a motion for summary judgment, the judge must view the evidence presented through the prism of the substantive evidentiary burden." *Id.* at 254. "Where the material facts are undisputed and all that remains are questions of law, summary judgment may be granted." Eternal Word Television Network, Inc. v. Sec'y of U.S. Dep't of Health & Human Servs., 818 F.3d 1122, 1138 (11th Cir. 2016) (citation

omitted), vacated on other grounds, 2016 WL 11503064, at *1 (11th Cir. May 31, 2016). The Court must construe the evidence in the light most favorable to the nonmoving party and draw all reasonable inferences in that party's favor. SEC v. Monterosso, 756 F.3d 1326, 1333 (11th Cir. 2014) (per curiam). However, the non-moving party's presentation of a "mere existence of a scintilla of evidence" in support of its position is insufficient to overcome summary judgment. Anderson, 477 U.S. at 252. And a plaintiff's conclusory allegations will not create an issue of fact for trial sufficient to defeat a well-supported motion for summary judgment. *Earley v. Champion Int'l Corp.*, 907 F.2d 1077, 1081 (11th Cir. 1990) (citation omitted).

For a court to accurately determine whether there is a factual dispute for a jury, the judge must be assured that the evidence he examines at summary judgment is as authentic as that which the jury will consider. This requires an evidentiary standard for materials considered on summary judgment which "govern its deliberations and [provide] within what boundaries [the court's] ultimate decision must fall." *Id.* at 254-55. In summary judgment, the parties submit materials which create a record; it is on that record only, that the Court rules on summary judgment.

Federal Rule of Civil Procedure 56 operates under a burden shifting framework, wherein the moving party has the burden to demonstrate that "there is no genuine issue as to any material fact." Fed. R. Civ. P. 56. In so doing, the moving party need not "support its motion with affidavits or other similar materials negating the opponent's claim." Celotex Corp., 477 U.S. at Case 8:07-cv-01092-CBD Document 100 Filed 05/25/10 Page 3 of 11 4 323 (emphasis omitted). A motion for summary judgment may be granted without supporting documentation "so long as whatever is before the district court demonstrates that the standard for the entry of summary judgment, as set forth in Rule 56(c), is satisfied." *Id.* If the moving party makes its motion properly, the burden shifts to the non-moving party, whose "response must ... set out specific facts showing a genuine

issue for trial." Fed. R. Civ. P. 56(e)(2). Unlike the moving party, the "opposing party may not rely merely on allegations or denials in its own pleadings; rather, its response must – by affidavits or as otherwise provided in this rule – set out specific facts showing a genuine issue for trial." *Id.*

The opposing party must provide additional materials to successfully defend against summary judgment and those materials must include assurances to the Court that they are authentic and reliable. Federal Rule of Civil Procedure 56 provides the types of materials that may be submitted for the court's consideration, and they include: pleadings, depositions, answers to interrogatories, admissions, and any affidavits. Fed. R. Civ. P. 56; Celotex Corp., 477 U.S. at 323. Except for admissions, all of the materials Rule 56 allows in summary judgment are presented under oath. The oath, and the penalty of perjury which gives the oath its true power, gives the Court strong reason to believe that the materials supporting the motion or the opposition are authentic. The Rule 56 requirements for summary judgment "help assure the fair and prompt disposition of cases." Orsi, 999 F.2d at 91. "They also allow a district court to ascertain, through criteria designed to ensure reliability and veracity, that a party has real proof of a claim before proceeding to trial." *Id.* The rationale behind the Rule 56 requirements shines brightly in applying Rule 56. Requiring materials submitted by the moving party to be authenticated does not increase its burden. This evidentiary standard is only implicated when a moving party chooses to submit materials in support of its motion.

In summary judgment "a party seeking to admit an exhibit need only make out a prima facie case showing that this is what he or she claims it to be." Lorraine, 241 F.R.D. at 542. Under the Federal Rules of Evidence, documents are rarely admitted on their face. In summary judgment, a proper affidavit achieves this goal. This "requirement of authentication and identification also ensures that evidence is trustworthy" in summary judgment. *Id.*

II. <u>Title VII.</u> Title VII prohibits an employer from discriminating against an employee on the basis of color. 42 U.S.C. §§ 2000e-2(a)(1), 2000e-3(a). A Plaintiff may prove this violation either through direct and indirect evidence of retaliatory animus, or 11 through the burden-shifting framework of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). *Price v. Thompson*, 380 F.3d 209, 212 (4th Cir. 2004). The Fourth Circuit has also referred to these two "avenues of proof" as the "mixed-motive" framework and the "pretext" framework, respectively. *Hill v. Lockheed Martin Logistics Mgmt., Inc.*, 354 F.3d 277, 284–85 (4th Cir. 2004) (en banc). It is left to the plaintiff's discretion whether to proceed by direct and indirect evidence or by means of the McDonnell Douglas burden-shifting framework. *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 318 n.4 (4th Cir. 2005) ("In the event that a plaintiff has direct evidence of discrimination or simply prefers to proceed without the benefit of the burden-shifting framework, she is under no obligation to make out a prima facie case.").

III. <u>Plaintiff's own allegations and testimony are sufficient to support an inference of discrimination.</u> If a Defendant argues that Plaintiff's own allegations and testimony are insufficient to support an inference of discrimination. This assertion is incorrect. "In discrimination cases, the only direct evidence available very often centers on what the defendant allegedly said or did. Since the defendant will rarely admit to having said or done what is alleged, and since third-party witnesses are by no means always available, the issue frequently becomes one of assessing the credibility of the parties. At summary judgment, however, that issue is necessarily resolved in favor of the nonmovant." *Walsh v. N.Y.C. Housing Auth.*, 828 F.3d 70, 80 (2d Cir. 2016) (quoting *Danzer v. Norden Systems, Inc.*, 151 F.3d 50, 57 (2d Cir. 1998)); see also *Yang v. Navigators Grp., Inc.*, 674 F. App'x 13, 14 (2d Cir. 2016) (summary order) (holding that plaintiff's own testimony should not be excluded as self-serving because it is admissible evidence). "There is nothing in

[Rule 56] to suggest that nonmovants' affidavits alone cannot — as a matter of law — suffice to defend against a motion for summary judgment." Danzer, 151 F.3d at 57.

IV. **Plaintiff's summary judgment should not be denied based on the argument of the employer's intent.** Courts have "repeatedly expressed the need for caution about granting summary judgment to an employer in a discrimination case where the merits turn on a dispute as to the employer's intent." *Holcomb v. Iona Coll.*, 521 F.3d 130, 137 (2d Cir. 2008); accord *Zeng v. N.Y.C. Housing Auth.*, No. 18 Civ. 12008, 2022 WL 37131 (S.D.N.Y. Jan. 3, 2022); see also *MacMillan v. Millennium Broadway Hotel*, 873 F. Supp. 2d 546, 557 (S.D.N.Y. June 11, 2012) ("The issue of intent in a[n] [employment] discrimination case presents a classic jury question."). At summary judgment, a genuine dispute of material fact "is necessarily resolved in favor of the nonmovant" (or employee) even if the nonmovant only provides "self-serving" evidence. Walsh, 828 F.3d at 80. "It is the finder of fact, not the district court ruling on summary judgment, who must determine the weight and credibility to accord [Plaintiff's] evidence regarding [Defendant's] statement." *Id.* at 80.

V. **Plaintiff's summary judgment should not be denied because the Defendants only used a racial slur toward the Plaintiff a singular time.** In *Boyer-Liberto v. Fontainebleau* Corp., a former waitress's hostile work environment and retaliation claims under ***Title VII*** of the ***Civil Rights Act*** against the employer have been ruled that it should go to trial. *Boyer-Liberto v. Fontainebleau Corp.*, No. 13-1473 (4th Cir. May 7, 2015) (en banc). The Court overruled precedent in the circuit by finding a single incident can be severe enough to trigger Title VII's protection. The *en banc* Court, 12-3, vacated a May 2014 panel decision granting summary judgment for the employer. The entire Court vacated that panel's decision, making it clear that its opinion "underscore[s] the Supreme Court's pronouncement...that an isolated incident of

harassment, if extremely serious, can create a hostile work environment." The Court also held that an employee is protected from retaliation "when she reports an isolated incident of harassment that is physically threatening or humiliating, even if a hostile work environment is not engendered by that incident alone." The decision also overturns the Circuit's 2006 ruling in *Jordan v. Alternative Resources Corp*. The Court stated explicitly in *Boyer-Liberto*, "to the extent today's decision is in conflict with *Jordan v. Alternative Resources Corp.*, 458 F. 3d 332 (4th Cir. 2006), *Jordan* is hereby overruled."

CONCLUSION

For the reasons stated above, *Pro Se* Plaintiff Brittney Felder respectfully requests that her Motion for Summary Judgment be granted. As established above, there are no statement of facts as to which there is a genuine issue. Prima facie, Plaintiff has proven her allegations in her Complaint, which the United States Court of Appeals for the Fourth Circuit agrees gives inference that Plaintiff's termination was due to color-based discrimination.

WHEREFORE, for the foregoing reasons, the Plaintiff prays for entry of Summary Judgment in its favor against all Defendants for the relief set forth in its Complaint.

Respectfully submitted,

January 02, 2024

Brittney Felder
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 02nd day of January 2024, the foregoing **Plaintiff's Memorandum of Points and Authorities in Support of Plaintiff's Motion for Summary Judgment, Affidavit of Brittney Felder in Support of Plaintiff's Motion for Summary Judgment, and all Exhibits** were served upon the Defendant by electronic mail and electronically via the District Court's Electronic Document Submission System to the following:

Jeremy Schneider
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Brittney Felder

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

GREENBELT DIVISION

BRITTNEY FELDER,	*	
Plaintiff,	*	
vs.	*	**Civil Action No. PJM-18-03405**
MGM NATIONAL HARBOR, LLC, *et al*,	*	
Defendants.	*	

PLAINTIFF'S RESPONSE TO

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND

OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Pro Se Plaintiff Brittney Felder ("Felder" or "Plaintiff") respectfully submits this Response in Opposition to Defendants' Cross Motion for Summary Judgment and Defendants' Opposition to Plaintiff's Motion for Summary Judgment, pursuant to Rules 12 and 56 of the Federal Rules of Civil Procedure and Local Rule 105.3, for an order to deny Defendants' Motion and grant Plaintiff's Motion for Summary Judgment ("Plaintiff's Motion") against Defendants MGM National Harbor, LLC ("National Harbor" or "Defendants").

The reasons for this Response are set forth in Plaintiff's Memorandum in Support of Plaintiff's Opposition to Defendants' Motion for Summary Judgment and Opposition to Plaintiff's Motion for Summary Judgment ("Defendants' Motion and Opposition" or "Defendants' Motion"), which includes Plaintiff's Response to Defendants' Statement of Undisputed Material Facts and Reply to Defendants' Response to Plaintiff's Statement of Material Facts; Plaintiff's Affidavit; and any Exhibits thereto.

As shown herein, Defendants' contradictory statements; ignorance of the record of all the facts; misrepresentation of the truth; outright falsehoods and lies; and, most noteworthy, the presentation of arguments that do not apply to Plaintiff's only remaining claim of color discrimination, prove the veracity of Plaintiff's undisputed facts but disprove those of the Defendants that were set forth in their Motion and Opposition in an attempt to try to find an inkling of a base in their baseless arguments. As a matter of law, Plaintiff is entitled to judgment in her favor. A proposed order is filed concurrently herewith.

Respectfully submitted,

February 14, 2024

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of February 2024, the foregoing **Plaintiff's Response to Defendants' Motion for Summary Judgment and Opposition to Plaintiff's Motion for Summary Judgment, Plaintiff's Memorandum in Support of Plaintiff's Response to Defendants' Motion for Summary Judgment and Opposition to Plaintiff's Motion for Summary Judgment, Plaintiff's Response to Defendants' Statement of Undisputed Material Facts and Reply to Defendants' Response to Plaintiff's Statement of Material Facts, Proposed Order, Affidavit, and Exhibits** were served upon the Defendants by electronic mail and electronically via the District Court's Electronic Document Submission System to the following:

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Brittney Felder

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

GREENBELT DIVISION

BRITTNEY FELDER,	*	
Plaintiff,	*	
vs.	*	**Civil Action No. PJM-18-03405**
MGM NATIONAL HARBOR, LLC, *et al*,	*	
Defendants.	*	

PLAINTIFF'S MEMORANDUM IN SUPPORT OF PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

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Dated: February 15, 2024

INTRODUCTION

Prejudice and bias are not something we are born with; it is learned. Every man and woman, old and young, from every walk of life is born with gifts, abilities, and capabilities. No one, no color, no race, no ethnicity, no group is better than or above another. The only thing that differentiates one human from another is opportunity. The only thing that separates one human from another are humans themselves, where man has dominated man to his harm. (*New World Translation of the Holy Scriptures,* Eccl. 8:9). As a result, opportunities that give dignity and purpose to life are taken away and unfairly assigned or given to a favored group of one's choice. This type of discrimination is present both across races and within. History has proven that mankind is incapable of solving this problem in its entirety or eternally. Indeed, divine help is needed. However, while we, I, patiently wait for this to happen, as it will occur, humans are still endowed with the ability to correct their mistakes and right their wrongs, albeit not perfectly, but within the parameters to dole out measurable justice.

On the other hand, when we choose to ignore the problem, redefine the problem, or defend the problem, we become the problem. No longer can we call ourselves noble men or our actions noble of heart, for we have made ourselves a friend to the problem and an enemy to the solution. And in this case, *Felder versus MGM National Harbor, LLC*, this is exactly what is occurring, as the Defendants continue to attempt to defend the indefensible.

The Defendants basis for Summary Judgment is moot on its face. The Defendants must prove without dispute that Plaintiff has not plead a prima facie case of discrimination. There are only four ways of doing so, and that is to prove that Plaintiff: (1) does not belong to a protected class; (2) wasn't competent to perform the job or wasn't satisfactorily performing the duties required by her position; (3) didn't suffer an adverse employment action; and/or (4) the adverse action did not

occur under circumstances giving rise to inference of discrimination based on, in this case, the Plaintiff's **color** of her skin. However, if all such stipulations were met by the Plaintiff, then the Plaintiff has successfully plead her case, and, as a matter of law, the Court must rule in favor of the Plaintiff.

To further support this point, and what ***must*** not be ignored is the Ruling from The United States Court of Appeals for the Fourth Circuit. Regarding this case the three-judge panel unanimously ruled in favor of the Plaintiff, stating:

"With respect to color-based discrimination, Felder alleged that lighter tone African Americans, including herself, were punished more frequently and more harshly than darker tone African Americans. She further alleged that her direct supervisor, a darker tone African American, predominately hired darker tone African Americans, and that MGM perpetuated a workplace in which derogatory remarks were frequently made against lighter tone African Americans. Indeed, Felder stated that her direct supervisor referred to Felder by use of a derogatory term that implicated Felder's color a mere three days before Felder was terminated. Finally, Felder repeatedly alleged that she was performing her job to at least a satisfactory level. We conclude that these allegations, if proven true, could demonstrate that Felder was terminated because of her color."

Therefore, all that must be done is for Plaintiff to prove her allegations. The Defendants, try as they might, cannot and shall not disregard this ever-important fact of the ruling. And in the points below, Plaintiff will show exactly how and why Defendants arguments are baseless, indeed refutable, and lack factual and contextual support. Thereby, unequivocally, Defendants' Motion and Opposition should be denied.

ARGUMENT

Plaintiff will respond to Defendants' arguments in the exact order as put forth in Defendants' Memorandum in Support of their Motion and Opposition, page for page, paragraph to paragraph, so that the Judge can directly compare the arguments of the Defendants to those of the Plaintiff. In this way, truth will irrefutably be revealed. Come now, Plaintiff states as follows:

I. OPPOSITION AND REFUTE OF DEFENDANTS' INTRODUCTION

PAGE 1, PARAGRAPH 1: This is a discrimination case remanded back to this Court on appeal on July 21, 2022, to allow for additional proceedings to occur. Plaintiff brings forth in her Amended Complaint ("Complaint") discrimination claims under 42 U.S.C. § 1981 and Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. §§ 2000e to 2000e-17, as well as several state law claims. Concerning Plaintiff's discrimination claims, Plaintiff alleges that the Defendants — Plaintiff's employer — MGM National Harbor, LLC ("National Harbor" or "Defendants"), and its employees, discriminated against her on the basis of her skin color, resulting in her termination. On August 17, 2022, Honorable Peter J. Messitte reinstated Plaintiff's claim for employment discrimination based on color. (ECF No. 36).

Plaintiff's deposition in its full context and all the documents produced within Discovery, which the Defendants refuse to wholly acknowledge within their arguments, prove indubitably that Plaintiff's claims are supported. Defendants willfully choose to ignore one primary fact — that the Plaintiff is *pro se*, which means that she is representing herself, is giving *first person* testimony, and knows every detail and every occurrence that pertains to this case on a first-hand, personal basis. Therefore, the Defendants who willfully choose to manipulate the facts of the case to support their argument, forget that the Plaintiff can reveal, support, and tell the whole truth and nothing but the truth. This will be shown and proven as this Memorandum proceeds.

PAGE 1, PARAGRAPH 2: There is substantial evidence that certainly proves: Plaintiff was terminated because of her lighter tone skin (SUMF pgs. 7-8. Pl SUMF ¶¶ A(1)i., A(1)xi., B.i.(1)–(21)); That the Plaintiff was fired by the decision of Lisa Jones and Lisa Jones alone (Pl SUMF ¶¶ B.ii.7); That Lisa Jones chose termination as a recourse to those of only the lighter tone African Americans (Personnel files); That Lisa Jones hired and retained only African Americans of darker skin tones and did not terminate them when disciplining them (Df SUMF ¶¶

I.20-21; Pl SUMF ¶¶ B.ii.1-7); That Lisa Jones broke National Harbor's own corporate policy for discipline (Ex. C, NatlHarbor 000093); That Plaintiff received commendation from both Lisa Jones herself and MGM Corporate just days prior to her termination (Ex. A); That National Harbor never informed Plaintiff of a probationary period ***before*** she was hired and ***not until*** the day she was terminated by Lisa Jones (Ex. A, MGM Complaint, Corresponding Letter); That Plaintiff met all sales goals and preparations for the event (Ex. A, Plaintiff's Records and Notes: Felder000254–000264; Ex. A, App.V; Wilburn Declaration); That all SJP events and their arrangements are the sole duty of the Assistant Manager, which in this case was Plaintiff (Ex. C, NatlHarbor000752–000754); That MGM Corporate had sent out directives to both Lisa Jones and Whitney Wilburn for the correct operation of the SJP Boutique, which Lisa Jones and Whitney Wilburn did not heed (Ex. A, App. M, Y, R; Ex. C, NatlHarbor 000752–000754); That Whitney Wilburn did not begin to criticize and make issues with Plaintiff ***until*** Lisa Jones returned (Ex. A; Ex. C, NatlHarbor000485); That there are no negative emails, reports, or documentation against Felder prior to the return of Lisa Jones from her leave of absence (Ex. A); That Felder had a perfect, spotless, and unblemished employee profile/record (Personnel file); That Whitney Wilburn determined who was hired and/or promoted in the SJP Boutique, and Lisa Jones supported whatever decision Wilburn made (Df SUMF ¶¶ B. A(1)(vi)); That Plaintiff never defied any written directives, but rather, whenever she didn't understand something, went directly to her superiors including Patrick Fisher of MGM National Harbor and Melissa Willens of MGM Corporate who were heads over the retail department and SJP Boutique operations (Ex. A); That Plaintiff was severely mistreated by Jones (Ex. A); That Plaintiff never got into a verbal altercation with Jones (Ex. A); That Jones sought to disrupt any and all things that Plaintiff did for the betterment of the Boutique and the SJP Event (Ex. A); That Jones conducted surprise meetings

with those in cahoots with her such as Jeremy Streeter and Whitney Wilburn of SJP Corporate (Ex. A); That Whitney Wilburn (a SJP Corporate liaison) had no authority over Plaintiff (Ex. A; App. M: Felder 000130); That Melissa Willens personally sent out a directive to advise Whitney Wilburn and Lisa Jones of the chain of command for the operations of the SJP Boutique (Ex. A; App. M: Felder 000130); That Jeremy Streeter was the one present in the surprise meeting where Jones referred to Plaintiff as "queen" (Plaintiff's Deposition); That Ametes Gater was the only one present in the Boutique on the day of the Event when Jones confronted the Plaintiff and sabotaged her work without explanation (Ex. A); And, that Jones called security on the Plaintiff (Ex. A, MGM Complaint, Corresponding Letter; Defendants' Answers and Responses to Plaintiff's Requests for Admission, Interrogatories, and Production of Documents).

PAGE 1, PARAGRAPH 3: Plaintiff has indeed met the burden to establish a *prima facie* case of unlawful termination due to color. Plaintiff has proven that she was meeting National Harbor's legitimate performance expectations at the time of her termination because ***at the same time*** Lisa Jones (the offender) was attempting to wrongfully discredit the Plaintiff and sabotage her efforts, Plaintiff received commendation in which she was told by Melissa Willens of MGM Corporate how she looked forward to growing the business with the Plaintiff, showing that Plaintiff was not only meeting expectations but surpassing them to the point that MGM Corporate saw a promising future with Plaintiff.

Plaintiff has proven that she was indeed called a racial slur. The meeting Plaintiff was called this slur in was in a meeting with Jeremy Streeter who by admission of another MGM National Harbor employee, created a hostile work environment for other employees.

It has also been proven that Jones refused to terminate other employees of darker skin tones, but chose to terminate employees of lighter skin tones, one such being Robert Marshall

who is of mixed race. *See* Personnel Files supplied by Defendants during Discovery and are attached to Defendants' Cross-Motion for Summary Judgment ECF. No. 104, Ex. A, D, and E. Plaintiff has proven that other managers in the same exact position as Plaintiff of Assistant Retail Manager in the Retail Department under Lisa Jones' supervision were treated more favorably than Plaintiff. Although they had multiple legitimate written and recorded disciplinary actions against them, they were not fired, but instead given warnings; whereas Plaintiff had no such disciplinary actions against her or causes for complaint, but yet, she was terminated.

Furthermore, in the matters of this case a "similarly situated employee" is neither defined by nor does it have absolutely anything to do with a person's probationary period (or what would amount to the time that an employee was hired in comparison to another), but rather, it is if the actual *position* (i.e. Manager or similar person of authority) were similar to Plaintiff, which the other two retail employees were. And it should be noted, here is a gross example of the Defendants redefining and creating their own standards of the law and the matters of this case which they unequivocally cannot do. But, for the sake of entertaining the Defendants' moot argument, even if the Defendants' want to use the "probationary period" as a measuring stick for similarly situated employees, the fact — and through their own admission — is that the record shows that no other Manager was fired or terminated during their "probationary period". This works not in the Defendants' favor, but in the Plaintiff's, because right off the bat, *prima facie*, a disparagement in ethical and fair treatment is proven — that the Plaintiff, the only manager of lighter tone, was the only employee terminated during a purported probationary period.

PAGE 1, PARAGRAPH 4: Defendants have absolutely no evidence that shows that Plaintiff was terminated for legitimate, non-discriminatory reasons, namely poor performance, unprofessional behavior, and insubordination. Instead, what the Defendants prove is that there was

a campaign spearheaded by Lisa Jones and being carried out by Jones and her cohorts to ruin the Plaintiff. The dates of the emails used by Defendants of these so-called "reasons" prove that none of them started ***before*** Jones unexpected return from leave of absence that was just days prior to when the Plaintiff was to fully execute and see the fruits of her labor of the SJP Event.

PAGE 2, PARAGRAPH 1: Defendants' statements are just plain ignorant. Plaintiff is not just a witness to, or a party to, but the victim of. The fact that the Defendants and their Counsel — who are not giving first person accounts, who have a history of telling outright lies, and who have proven to act unethically throughout the proceedings of this case — have the audacity to characterize Plaintiff's Affidavit as a "sham" is an absolute joke and miscarriage of justice, for this is a reckless and worried attempt to try to discredit the true and proven facts of this case. This in and of itself proves that the Defendants are so threatened by the facts and evidence of this case, which is so overwhelming, that they will go to any lengths to try to place a seed of doubt anywhere they can even though the proof is stacked against them.

Moreover, the Plaintiff's deposition in no way contradicts her position or allegations of the case. The Defendants have willfully and strategically attempted to highlight only certain word portions of the Plaintiff's deposition instead of giving the whole context of the Plaintiff's answers to the Defendants' questions. If the Plaintiff misspoke a word in no way discredits the entire context or meaning of her answers, especially since the deposition was taken some five years after the occurrence of the incidents within the lawsuit. As such, a simple mistake should be reasonably expected. The question is not if the Plaintiff simply used the wrong name, but rather if the descriptions or words around it were not true, or, if the context or meaning or purpose changed or was drastically different from the Plaintiff's Complaint or Affidavit — and the answer to the question is: They were not!

The Defendants have been lawyers in the state of Maryland for a long period of time; therefore, they are well aware of the rules of this Court and the laws of this Court. In fact, Mr. Schneider is a Principal and Office Litigation Manager of the Washington, D.C. Region law firm of Jackon Lewis P.C. — a seasoned professional indeed. Yet, time and again, and here now, the Defendants act as if they know nothing of the laws and rules that their years of education and experience have taught them. Defendants say that "many of [Plaintiff's] purportedly undisputed facts do not cite to any admissible record evidence." Clearly, the Defendants have chosen to conveniently forget what is asked of a party when filing for Summary Judgment. Federal Rule of Civil Procedure 56 provides the types of materials that may be submitted for the court's consideration, and they include: pleadings, depositions, answers to interrogatories, admissions, and any affidavits. Fed. R. Civ. P. 56; Celotex Corp., 477 U.S. at 323. The Rule 56 requirements for summary judgment "help assure the fair and prompt disposition of cases." Orsi, 999 F.2d at 91. Requiring materials submitted by the moving party to be authenticated does not increase its burden. This evidentiary standard is only implicated when a moving party chooses to submit materials in support of its motion. In summary judgment "a party seeking to admit an exhibit need only make out a prima facie case showing that this is what he or she claims it to be." Lorraine, 241 F.R.D. at 542. Under the Federal Rules of Evidence, documents are rarely admitted on their face. In summary judgment, a proper affidavit achieves this goal. This "requirement of authentication and identification also ensures that evidence is trustworthy" in summary judgment. *Id.*

So to summarize, according to the law: (1) The filing party for Summary Judgment need only to cite to the records that support their Motion and can choose whether or not to submit the actual documents cited; (2) acceptable forms of support to be cited and/or attached to a Motion for Summary Judgment are affidavits (statements made under oath), declarations (statements made

subject to the penalty of perjury under 28 U.S.C. § 1746), or other materials that contest the affidavits, declarations, or records filed by the defendant(s) or that were provided by the parties during Discovery. Plaintiff cited and or attached to her Motion for Summary Judgment: Plaintiff's EEOC Charge; Plaintiff's Deposition conducted by Defendants; Plaintiff's Amended Complaint which contains exhibits such as text messages, emails, photographs, written records, notes, copies of company notes and policies, etc.; Defendants' Responses to Plaintiff's Requests for Production of Documents; Defendants' Requests for Responses to Plaintiff's Interrogatories; the Affidavit of Brittney Felder in Support of Plaintiff's Motion for Summary Judgment ("Felder Affidavit"), the Defendants' answers to Plaintiff's Requests for Admission ("Requests for Admissions"), the Declaration of Lisa Jones ("Jones Declaration"), the Declaration of Whitney Wilburn ("Wilburn Declaration"), MGM National Harbor's Corporate Policies as set forth in their Company Handbook, etc., and other evidence and records supplied by the Defendants and Plaintiff during Discovery including emails, employee records/profiles/complete personnel files that covered the entire span of an employee's tenure with MGM National Harbor. Every single last one of the aforementioned are admissible evidence and are in compliance with the law; the Defendants only wish they weren't.

So, if the Plaintiff is citing and using the opposing party's own words, responses, and documents against them in acceptable forms of exhibits and evidentiary support as outlined by the law, then Plaintiff has indisputably proven that the Plaintiff is not merely stating allegations, speculation, and legal conclusions, but the Plaintiff is stating facts. Once again, the Defendants only wish Plaintiff wasn't.

PAGE 2, PARAGRAPH 2: Plaintiff's allegations and purported "self-serving testimony" are sufficient because the proof readily available, cited, and attached to Plaintiff's

Motion of Summary Judgment and/or are on record and that were provided by the Defendants themselves turns Plaintiff's mere allegations into facts. So, Plaintiff does put forth admissible material facts that give rise to a genuine issue for the jury to decide — the Defendants only wish that she hadn't.

PAGE 2, PARAGRAPH 3: The fact that the Defendants are mad because "Plaintiff cit[ed] caselaw from outside of this Circuit" is such a sad line of reasoning for an argument, as if the Defendants' themselves have never done the same thing, or lawyers do not the same thing, or judges do not do the same thing, or Courts do not do the same thing. The issue is not the Circuit for which the caselaw was referenced, but rather if the caselaw was rightfully cited and relative — which it was. The fact that the Plaintiff can give a ruling or a published decision on a significant Court ruling is what is important, as it rightfully supports an argument, shows how Courts have ruled or are ruling on a particular issue, and sets a precedent. Clearly, the argument and caselaw used by the Plaintiff is so damning to the Defendants' argument, that they are pitifully trying to disrepute it and render it useless/unusable. And yet, while trying to disparage the use of the caselaw used by the Plaintiff, the Defendants cite no caselaw to support their stance. The caselaw may be from another Circuit, but it is not useless, unimportant, unusable, or invalid — The Defendants only wish it was.

Furthermore, who is this new "decisionmaker" the "Plaintiff wholly admits… did not discriminate her"? The Defendants state this without stating to whom they are referring. In Plaintiff's pleadings, Plaintiff has repeatedly held that Lisa Jones ***alone*** was responsible for her termination, and Lisa Jones' own Declaration stated and corroborated just so. Plaintiff has also always held that Lisa Jones was the one who directly discriminated against her and called Plaintiff a racial slur. Plaintiff has repeatedly held that Whitney Wilburn is the one responsible for

Plaintiff's hiring, and the aggressive measures put forth by Jones in the hiring process were due to the sole urging of Wilburn. Plaintiff has repeatedly held that Patrick Fisher was who Plaintiff answered to while Lisa Jones was on leave of absence. So, not only are the Defendants outright lying, but they are maliciously manipulating and changing the facts of the case to suit their own third person narrative. In fact, it is the Defendants who have repeatedly attempted to shift the role of the decisionmaker to fit their narrative, just as they are doing here. One day it's Whitney Wilburn, the next day it's Lisa Jones, the next day it's Patrick Fisher. Whichever way the wind blows should be the Defendants' mantra, for their decisions, arguments, and stances change depending on how a situation develops, which is exactly what someone does who does not or is not telling the truth. Therefore, Plaintiff is in line with the Fourth Circuit, as the Defendants argue, that the discriminatory intent was indeed harbored by the termination decisionmaker, Lisa Jones.

PAGE 2, PARAGRAPH 4: Plaintiff's argument is not just on caselaw as regards to a hostile work environment and retaliation claims. This landmark ruling in *Boyer-Liberto v. Fontainebleau Corp.* is significant because this new precedent applies to ***all*** discrimination claims under Title VII — this is the overarching principle that the Fourth Circuit's decision is setting the new precedent for, which is to determine the number of times necessary for an act of discrimination to validate a claim under the basis of discrimination. And the Court overruled precedent in the circuit by finding a ***single*** incident can be severe enough to trigger Title VII's protection. Once again, the Defendants try to manipulate the facts because the very rule of law is damning to their argument. So, even though the Defendants only used a racial slur one time towards the Plaintiff (that the Plaintiff is aware of), this singular incident ***is*** enough to trigger a discrimination claim, especially when it is uttered just a mere three days before the Plaintiff was terminated by Lisa

Jones who said the slur. Plaintiff's argument is every bit as apropos as they come — the Defendants' only wish that it wasn't.

PAGE 2, PARAGRAPH 5: For these and all the reasons discussed above and below, Plaintiff is entitled to Summary Judgment and Defendants are not.

II. PLAINTIFF'S RESPONSE TO DEFENDANTS' STATEMENT OF UNDISPUTED MATERIAL FACTS

PAGE 3, PARAGRAPH 1: In support of Plaintiff's Response to Defendants' Motion and Opposition, Plaintiff is contemporaneously submitting a separate Response to Defendants' Statement of Undisputed Material Facts. Plaintiff will not repeat those facts in this Memorandum but will cite to the relevant numbered paragraphs of Plaintiff's Statement, abbreviated as "SUMF ¶ _" and to Exhibits to the Statement as "Ex. _." Citations to Plaintiff's facts will be abbreviated as "Pl. SUMF ¶ _. Citations to Defendants' facts will be abbreviated as "Df. SUMF ¶."

III. STANDARD OF REVIEW

PAGE 3, PARAGRAPHS 2-4 AND PAGE 4, PARAGRAPH 1: The Standard of Review is as follows: Summary judgment is appropriate when 'there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.'" *Bostic v. Schaefer*, 760 F.3d 352, 370 (4th Cir. 2014) (quoting Fed. R. Civ. P. 56(a)). "A dispute is genuine if a reasonable jury could return a verdict for the nonmoving party." Libertarian Party of Va., 718 F.3d at 313 (internal quotation marks omitted). "A fact is material if it 'might affect the outcome of the suit under the governing law.'" Id. (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). A party moving for summary judgment bears the initial responsibility of informing the court of the basis for its motion, and identifying the aspects of the record which it believes

demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Once the party makes this initial showing, the burden shifts to the non-moving party to demonstrate that there is in fact a genuine issue of material fact. *United States v. 107.9 Acre Parcel of Land in Warren Twp.*, 898 F.2d 396, 398 (3d Cir. 1990). "[The Courts] are required to view the facts and all justifiable inferences arising therefrom in the light most favorable to the nonmoving party..." *Id.* at 312. In doing so, the Court must not weigh evidence or make credibility determinations. *Mercantile Peninsula Bank v. French*, 499 F.3d 345, 352 (4th Cir. 2007). Ultimately, the non-moving party must present sufficient evidence from which a reasonable jury could return a verdict in the non-moving party's favor. *Pignataro v. Port Auth. of N.Y. & N.J.*, 593 F.3d 265, 268 (3d Cir. 2010). "[C]ourts may not resolve genuine disputes of fact in favor of the party seeking summary judgment." *Tolan v. Cotton*, 134 S. Ct. 1861, 1866 (2014) (per curiam). However, and importantly, a "motion for summary judgment will not be defeated by 'the mere existence' of some disputed facts, but will be denied when there is a genuine issue of material fact." *Am. Eagle Outfitters v. Lyle & Scott Ltd.*, 584 F.3d 575, 581 (3d Cir. 2009) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48, 106 S.Ct. 2505 (1986)). An issue is genuine "only if there is a sufficient evidentiary basis on which a reasonable jury could find for the non-moving party and a factual dispute is material only if it might affect the outcome of the suit under governing law." *Kaucher v. County of Bucks*, 455 F.3d 418, 423 (3d Cir. 2006) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505 (1986)). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." Anderson, 477 U.S. at 248 (citing 10A C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure § 2725, pp. 93-95 (1983)).

A court's summary judgment inquiry "unavoidably asks whether reasonable jurors could find by a preponderance of the evidence that the plaintiff is entitled to a verdict." *Anderson v. Liberty Lobby*, 477 U.S. 242, 252 (1986) (internal citations omitted). "[I]n ruling on a motion for summary judgment, the judge must view the evidence presented through the prism of the substantive evidentiary burden." Id. at 254. "Where the material facts are undisputed and all that remains are questions of law, summary judgment may be granted." *Eternal Word Television Network, Inc. v. Sec'y of U.S. Dep't of Health & Human Servs.*, 818 F.3d 1122, 1138 (11th Cir. 2016) (citation omitted), vacated on other grounds, 2016 WL 11503064, at *1 (11th Cir. May 31, 2016). The Court must construe the evidence in the light most favorable to the nonmoving party and draw all reasonable inferences in that party's favor. *SEC v. Monterosso*, 756 F.3d 1326, 1333 (11th Cir. 2014) (per curiam). However, the non-moving party's presentation of a "mere existence of a scintilla of evidence" in support of its position is insufficient to overcome summary judgment. Anderson, 477 U.S. at 252. And a plaintiff's conclusory allegations will not create an issue of fact for trial sufficient to defeat a well-supported motion for summary judgment. *Earley v. Champion Int'l Corp.*, 907 F.2d 1077, 1081 (11th Cir. 1990) (citation omitted). For a court to accurately determine whether there is a factual dispute for a jury, the judge must be assured that the evidence he examines at summary judgment is as authentic as that which the jury will consider. This requires an evidentiary standard for materials considered on summary judgment which "govern its deliberations and [provide] within what boundaries [the court's] ultimate decision must fall." *Id.* at 254-55. In summary judgment, the parties submit materials which create a record; it is on that record only, that the Court rules on summary judgment. Federal Rule of Civil Procedure 56 operates under a burden shifting framework, wherein the moving party has the burden to demonstrate that "there is no genuine issue as to any material fact." Fed. R. Civ. P. 56. In so doing,

the moving party need not "support its motion with affidavits or other similar materials negating the opponent's claim." Celotex Corp., 477 U.S. at Case 8:07- cv-01092-CBD Document 100 Filed 05/25/10 Page 3 of 11 4 323 (emphasis omitted). A motion for summary judgment may be granted without supporting documentation "so long as whatever is before the district court demonstrates that the standard for the entry of summary judgment, as set forth in Rule 56(c), is satisfied." *Id.* If the moving party makes its motion properly, the burden shifts to the non-moving party, whose "response must ... set out specific facts showing a genuine issue for trial." Fed. R. Civ. P. 56(e)(2). Unlike the moving party, the "opposing party may not rely merely on allegations or denials in its own pleadings; rather, its response must – by affidavits or as otherwise provided in this rule – set out specific facts showing a genuine issue for trial." *Id.*

The opposing party must provide additional materials to successfully defend against summary judgment and those materials must include assurances to the Court that they are authentic and reliable. Federal Rule of Civil Procedure 56 provides the types of materials that may be submitted for the court's consideration, and they include: pleadings, depositions, answers to interrogatories, admissions, and any affidavits. Fed. R. Civ. P. 56; Celotex Corp., 477 U.S. at 323. Except for admissions, all of the materials Rule 56 allows in summary judgment are presented under oath. The oath, and the penalty of perjury which gives the oath its true power, gives the Court strong reason to believe that the materials supporting the motion or the opposition are authentic. The Rule 56 requirements for summary judgment "help assure the fair and prompt disposition of cases." Orsi, 999 F.2d at 91. "They also allow a district court to ascertain, through criteria designed to ensure reliability and veracity, that a party has real proof of a claim before proceeding to trial." *Id.* The rationale behind the Rule 56 requirements shines brightly in applying Rule 56. Requiring materials submitted by the moving party to be authenticated does not increase

its burden. This evidentiary standard is only implicated when a moving party chooses to submit materials in support of its motion.

IV. NATIONAL HARBOR TERMINATED PLAINTIFF BECAUSE OF HER SKIN COLOR

PAGE 4, PARAGRAPHS 1-2: Title VII prohibits an employer from discriminating against an employee on the basis of color. 42 U.S.C. §§ 2000e-2(a)(1), 2000e-3(a). A Plaintiff may prove this violation either through direct and indirect evidence of retaliatory animus, or through the burden-shifting framework of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). *Price v. Thompson*, 380 F.3d 209, 212 (4th Cir. 2004). The Fourth Circuit has also referred to these two "avenues of proof" as the "mixed-motive" framework and the "pretext" framework, respectively. *Hill v. Lockheed Martin Logistics Mgmt., Inc.*, 354 F.3d 277, 284–85 (4th Cir. 2004) (en banc). It is left to the plaintiff's discretion whether to proceed by direct and indirect evidence or by means of the McDonnell Douglas burden-shifting framework. *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 318 n.4 (4th Cir. 2005) ("In the event that a plaintiff has direct evidence of discrimination or simply prefers to proceed without the benefit of the burden-shifting framework, she is under no obligation to make out a prima facie case.")

Plaintiff has already met her burden, and the Court of Appeals for the Fourth Circuit agrees. Plaintiff only needed to prove her allegations, which she has done through the documents and responses provided by the Defendants themselves during the course of Discovery.

PAGE 4, PARAGRAPH 3: The Court of Appeals for the Fourth Circuit has already ruled that Plaintiff has plead a legal case of discrimination based on color.

PAGE 5, PARAGRAPHS 1-2: Further, the Court of Appeals has likewise accepted and agreed that the term "Queen" was used as and is considered a racial slur. *See also*

Ex. B. Plaintiff's allegation of the use of the racial slur is proven in Plaintiff's deposition which the Defendants quote. And the singular use of the term is because Plaintiff is only stating what was said to her directly and in-person by Jones, which her deposition proves. Jones could have used this term in private or to others to refer to the Plaintiff. However, because truth is at the foundation of Plaintiff's allegations and Complaint, the Plaintiff is solely stating the fact and what she herself can attest to.

PAGE 5, PARAGRAPHS 2-3: And as stated earlier, in the Fourth Circuit a singular incident ***is*** enough to trigger a claim for discrimination. See *Boyer-Liberto v. Fontainebleau Corp*. Moreover, termination is the most severe form of discipline a company can take towards an employee. So, the fact that Plaintiff suffered the worst kind of adverse employment action — a termination — is all that matters; this is not "mere" but the mother of all adverse employment actions.

Defendants outright lie, for Lisa Jones in her own declaration states she "does not recall" using that the racial slur "queen". This is not a denial, this is a maybe I did, maybe I didn't. And when this is the case, the law governs that when the Defendant places doubt on their own argument or cannot concretely defend or support their own argument, then the Court must side with the Plaintiff. And because the Plaintiff has proven to be truthful and honorable in all the proceedings up to and including this very moment, while the Defendants have proven to be ethically challenged, it is reasonable beyond doubt that Plaintiff is and was telling the truth. And the fact that Plaintiff has never wavered or altered in any way the how, when, and why this word was used is proof of its veracity.

And the fact that the Defendants admit during Plaintiff's deposition that one of Jones' cohorts was in the room at the same time this racial slur was uttered, gives even more reason

as to why Jones would feel even more empowered to reference the Plaintiff with a racial slur. This further negates and proves moot the Defendants' argument that Plaintiff "produced no corroborating evidence that this incident ever took place, despite another employee allegedly being present to hear it." The sheer fact that the Defendants themselves can literally and definitively state who was present at the meeting where the racial slur was uttered is not just proof, but an undeniable damning admission to their very own argument. Once again, the only party that has proven to be a liar, to misrepresent the truth, and manipulate the facts are the Defendants.

PAGES 6-8: The Defendants are willfully choosing to ignore the fact Plaintiff's case has already been adjudicated. The Court of Appeals for the Fourth Circuit has already accepted, characterized, and ruled that the term "Queen" is a "racial slur". No more needs to be said. The Defendants argument is moot and baseless on its face. The decision and ruling of the highest court of the State of Maryland is without question admissible evidence and what should, could, and would be shared with a jury. The Defendants have neither the right nor ability to negate the Court's rulings and opinions, whether they agree with it or not. The Defendants cannot and are not the judge, jury, or executioner — literally. But the Defendants wish they were.

Plaintiff's reference to the most famous pop culture and historical figures and literary works in recent times during her deposition when speaking of the use of the meaning and history of the term "Queen" between a lighter tone and darker tone Black person is to show how in modern times, our time, how this term along with colorism in the African American and Black community is just as much of a relevant issue to this very day as it was in the past. And since the Defendants want to claim ignorance to this very well-known and documented issue of colorism and refuse to educate themselves on the Black experience and culture, then allow me to do that.

While it does not start and end with the words of the famous, the issue of colorism is magnified and given a voice by such ones. So, I invite all to read and watch that of Alex Haley's aptly titled film and book, *Queen*, based off of true events of Haley's family heritage; Spike Lee's School Daze which is based partly on Lee's experience as a student at Morehouse College (a Historically Black College and University) that touches on issues of colorism, elitism, classism, political activism, social mobility, and hair texture bias within the African-American community; and Mathew Knowles book titled, *Racism: From the Eyes of A Child*, just to name a few. *See also* Ex. B. In an interview to promote his book, *Racism: From the Eyes of a Child*, Mathew Knowles revealed just how much colorism affected him and the Black community. In the interview, Knowles explains that he was taught colorism from an early age. He says: "*When I was growing up, my mother used to say, 'Don't ever bring no nappy-head Black girl to my house*'". "*In the deep South in the '50s, '60s and '70s, the shade of your blackness was considered important. So, I, unfortunately, grew up hearing that message*." Mr. Knowles went on to say that things weren't much different when he went to college at Fisk University, where Knowles said he still faced colorism. He states: "*They had a colorism issue there. I was in the last class where they'd take out a brown paper bag, and if you were darker than the bag, you could not get into Fisk*." And driving home his discussion about colorism, Knowles went on to say, "*I challenge my students at Texas Southern to think about this. When it comes to Black females, who are the people who get their music played on pop radio? Mariah Carey, Rihanna, the female rapper Nicki Minaj, my kids, and what do they all have in common?*" The interviewer then answered the question, "*They're all lighter skinned*."

It is also important to note that often times it is the ***offended***, not the offender, who often takes a derogatory term or racial slur and uses it in a positive way in order to reclaim the

power of the offensive word/term. A prime example, being that of the term "nigger". This term is defined as an ignorant person and has long been used by Caucasians as a most derogatory and inflammatory racial slur to refer to African Americans and/or Black people. However, in recent decades, Black people have used the term "nigga" to greet each other and reference one another in songs, videos, and movies in popular and urban culture. Black people did this to take the power away from the offender. However, it should be noted that to this day it is inappropriate for a Caucasian or White person to use this term even when singing or quoting a song, movie, or anything of the like because the term, while Blacks can change the symbolism of the word, they do not and cannot change its meaning, which is why if another person outside the Black race uses this term to refer to a person of color, the word "nigga" quickly reverts back to "nigger" and problems and conflict soon follow. And similarly, does it go for the term Queen, whether it be between lighter and darker tone African Americans/Black people, or, between African Americans and Caucasians when Caucasians refer to Black women as "Queens". *See also* Ex. B. How the meaning of the term "Queen" quickly changes, is highlighted in the 2018 discrimination lawsuit between Black and Latino officers and the Prince Geroge's County Maryland Police Department, where it was noted in the allegations of the Plaintiffs that White male officers referred to Black female officers as "Queen". Ex. B.

Ignorance is not innocence. So, the Defendants can claim ignorance all they want, but history speaks for itself. Furthermore, and this is what is most shameful about the Defendants' argument, is that they have a person of color, Desireé Langley, on their Counsel. The fact that her signature is cosigning these ignorant arguments is deplorable and highlights the lengths they are willing to go, the depths that the Defendants are willing to sink to, to give what doesn't even

amount to a scintilla of validity behind their arguments. Facts and history cannot be denied, because even when they are, with time, the truth is always revealed.

PAGE 8 PARAGRAPHS 1-2: The Defendant argues that Plaintiff's own allegations and testimony are insufficient to support an inference of discrimination. This assertion is incorrect. "In discrimination cases, the only direct evidence available very often centers on what the defendant allegedly said or did. Since the defendant will rarely admit to having said or done what is alleged, and since third-party witnesses are by no means always available, the issue frequently becomes one of assessing the credibility of the parties. At summary judgment, however, that issue is necessarily resolved in favor of the nonmovant." *Walsh v. N.Y.C. Housing Auth.*, 828 F.3d 70, 80 (2d Cir. 2016) (quoting *Danzer v. Norden Systems, Inc.*, 151 F.3d 50, 57 (2d Cir. 1998)); see also *Yang v. Navigators Grp., Inc.*, 674 F. App'x 13, 14 (2d Cir. 2016) (summary order) (holding that plaintiff's own testimony should not be excluded as self-serving because it is admissible evidence). "There is nothing in [Rule 56] to suggest that nonmovants' affidavits alone cannot — as a matter of law — suffice to defend against a motion for summary judgment." Danzer, 151 F.3d at 57.

The fact that: Lisa Jones terminations were only those of lighter toned African Americans; that Jones instead issued only warnings to darker tone African Americans for more serious infractions; that Jones only promotion was that of a darker tone African American; that Jones hired and retained darker tone African Americans; that Whitney Wilburn was the one who admitted in her declaration to recruiting Plaintiff, but Jones who admitted in her declaration to being the sole person responsible for Plaintiff's termination; and that Jones called Plaintiff a racial slur in a surprise meeting where the only other attendee in the room besides Plaintiff and Jones was a darker toned African American employee, unequivocally shows that Jones acted with

animus towards lighter-toned African Americans. It should also not be lost that even the most racist or prejudice of people often give the defense, "but I have a _______ friend" (fill in the blank).

For the aforementioned reasons, Plaintiff has indeed met her burden in showing that National Harbor terminated her employment "because of" her skin color and Plaintiff, not the Defendants, is entitled to summary judgment.

V. PLAINTIFF ESTABLISHED A PRIMA FACIE CASE OF COLOR DISCRIMINATION WHICH LED TO HER TERMINATION

PAGE 9, PARAGRAPHS 1-2: The Defendants state that Plaintiff does not establish a *prima facie* case of wrongful termination; but that is not at question here. That claim (Count X, Wrongful Termination) of Felder's Complaint does not remain; the only remaining Count is Count VIII, Color Discrimination. And, indeed, Plaintiff has established a *prima facie* case of color discrimination which led to her termination. The Court of Appeals for the Fourth Circuit has already ruled that Plaintiff has established a *prima facie* case of termination due to discrimination based off color. Plaintiff's only duty is to prove it with supporting evidence that was further provided through Discovery.

Defendants' Motion and Opposition is 24-pages long. Out of these 24 pages, their arguments regarding color discrimination totals 5 pages; while their arguments regarding wrongful termination, which is no longer a claim relevant in Plaintiff's Complaint, is a total of 11 pages. Defendants have erroneously based the vast majority of their arguments to support their cross-motion for summary judgment on wrongful termination, a claim that does not remain in Plaintiff's case; therefore, nullifying, on its face, one of their key premises for summary judgment.

PAGE 9, PARAGRAPH 2 – PAGE 12: Defendants also admit to the fact that Plaintiff, on its face, has demonstrated that she has met two out of the four criteria, with the

exception of, and which they attempt to dispute is that Plaintiff was performing at a satisfactory job performance and that Plaintiff cannot establish disparate treatment, and in so doing state that "Plaintiff was replaced by someone in the same protected class." However, the Defendants efforts and arguments completely fail as the record shows: **(1)** That Plaintiff had a perfect, spotless, and unblemished personnel file; **(2)** That Plaintiff received high praise and commendation from both MGM Corporate and MGM National Harbor management just days before she was terminated, including from Jones herself; **(3)** That the SJP Event was a success, with sales numbers that rivaled Opening Day of the SJP Boutique. If the Plaintiff's — who was terminated just ***hours*** before the event she had planned and worked on was to commence — job performance, which centered around the preparations of the SJP Event were so bad and so disruptive, then Plaintiff's actions would have had a drastically negative impact on the success of the SJP Event, leading up to and including the SJP Event; but the truth of the matter is that that simply did not happen. Rather, Jones and her cohorts were the ones who were trying to destroy the SJP Event, but the preparations Plaintiff had made leading up to the SJP Event were so organized and concrete, that absolutely nothing of the SJP Event was interrupted. For if this were the case, then it would be on record from not only Jones and Wilburn as to how Plaintiff ruined the SJP Event, but also complaints from Patrick Fisher, Melissa Willens, and even the SJP Corporate team (including Sarah Jessica Parker) about Plaintiff's purported "poor performance". However, there are no such records, anywhere at any time, point blank and period. The Defendants have provided absolutely no proof that Plaintiff failed to meet expectations. **(4)** And by quoting remarks from the very offender who was trying to disparage and sabotage the Plaintiff only proves how malicious, drastic, low, and far Jones and her cohorts would go. It also proves that the negative comments were ***only*** coming from Jones and her cohorts, and, that the negative comments ***only*** began when Jones returned from her leave of

absence conveniently days before the SJP Event was to commence; **(5)** The record shows that it was the Plaintiff who plead for help and assistance from Patrick Fisher and Melissa Willens in the days leading up to the SJP Event because it became ever so abundantly clear that Jones and her cohorts were up to something scandalous and malicious. It was the Plaintiff, not Jones, who asked for a scheduled meeting to occur to discuss the problems that Plaintiff saw occurring with Jones and Wilburn; **(6)** The record shows that Plaintiff asked for a scheduled meeting with Jones, Fisher, and Plaintiff. Conversely, the record shows that Jones set-up surprise meetings with Plaintiff only when Jones' cohorts were present. Jones never went to Fisher to complain about the Plaintiff, instead because of willful and malicious intent, Jones would only hold meetings with Plaintiff if Plaintiff was either by herself or in the presence of Jones' cohorts or with those who either held no power or were not in managerial positions (Ex. A); **(7)** It was Jones and Willens who defied orders and directives from their superiors, not Plaintiff. Melissa Willens of MGM Corporate had sent out corporate mandates that guided the chain of command and how store operations should run, for which Jones and Wilburn agreed to and Wilburn said she "understood". Yet, Jones and Wilburn did not adhere to these guidelines, which is why their so-called sham "negative" reports concerning the Plaintiff were only sent and communicated between Jones and Wilburn and no one else; **(8)** When Jones attempted to make it appear to Melissa Willens of MGM Corporate that Plaintiff was not meeting expectations, then Willens abruptly corrected Jones and told her that the problem did not rest with the Plaintiff. Yes, even Willens saw through Jones act, and unwarranted and uncalled for actions. Willens thus immediately took steps to protect the Plaintiff; **(9)** It was clear that Wilburn enjoyed power and authority under Jones that she should not and was not obligated to have and that was not in accordance with MGM Corporate policies nor the agreement between SJP Corporate and MGM (both Corporate and National Harbor). Wilburn became bitter

when Jones was away on leave of absence, and under the Plaintiff's supervision of the store, Wilburn could no longer engage in her wrongful practices and her abuse of power. Plaintiff, who abides by the rules, brought Wilburn's abuse of power to light to both Fisher and Willens, and as such corporate mandates and directives were issued from Melissa Willens to immediately stop Wilburn's inappropriate behavior and authority. It was from this moment on, and the record shows, that Wilburn joined forces with Jones to sabotage the Plaintiff, and ensure that Plaintiff would not be able to take part in her SJP event, for which Plaintiff, not Jones or Wilburn would be able to take the credit for, which is something Jones and Wilburn were doing (including sending pictures and photos of Felder's work and sending them to upper management and claiming them as her own, and leaving Plaintiff off of various emails that Plaintiff as the Manager should have been included on); which is why in her declaration, Wilburn says regarding Felder's termination, "it was just business" (Ex. A); **(10)** Whitney Wilburn was a third-party liaison who through MGM Corporate's policy should have had absolutely no authority or power over Plaintiff or any other employee of the SJP Boutique, as employees of the SJP Boutique were employees of MGM National Harbor, not SJP Corporate in any way, shape, or form. Therefore, the authority displayed by Wilburn was in direct violation of MGM Corporate and MGM National Harbor policy. Wilburn was only able to display such toxic behaviors and abuse of power when Jones was present, which is why the complaints against Plaintiff were made only to Jones, for Wilburn knew that she was acting inappropriately and her cause for complaint against Plaintiff was wholly baseless. This is proven when Wilburn attempts to make it appear that Plaintiff was "deliberately" not following orders; but she was informed by Jones that Plaintiff had not yet arrived to work. It further shows that when Plaintiff arrived, Plaintiff immediately abided by any orders from Jones and obliged Wilburn. Ex. A.

PAGE 11: Plaintiff does indeed admit, because this is what she has said and is in her Complaint, that Jones and Wilburn were raising issues and causing problems with the Plaintiff the week of the event that Plaintiff had never heard of before, and that was not in line with the orders from Patrick Fisher and Melissa Willens. It completely caught Plaintiff off-guard, for what was happening was atypical and unwarranted, as Plaintiff continued to truthfully state in her deposition that the Defendants' quote. It further proves and verifies and stays right in line with the stance that Plaintiff said, where these so-called "complaints" were ***only*** coming from Jones and Wilburn, no one else. And the record proves this.

So, by no way, shape, or means does Plaintiff's admissions of who was treating her badly reveal or establish that Plaintiff was not performing her job satisfactorily; it is actually to the contrary, that Jones and her cohorts were desperate, intentional, malicious, and premeditated in their actions. They were going to stop at nothing to try to destroy the Plaintiff and anything that she did or that Plaintiff could take credit for.

Further, the Defendants' note and quote how Jones' and Wilburn's "concerns" were ***not*** "performance-based", but a "preference". Therefore, in no way should a third-party liaison's ***opinion*** rule or be counted as superior to an ***actual*** employee of MGM National Harbor. Moreover, Melissa Willens had already stated so in her directives to Wilburn and Jones, which they refused to honor and oblige. Plaintiff did not have to take orders from Wilburn, nor was she supposed to or expected to as the MGM Corporate directives from Melissa Willens established. However, the record shows that Plaintiff did everything in her power to appease Wilburn without breaking rules or company policies or what Fisher and Willens had put in place.

It is also very much disputed that the SJP store was both owned and operated by SJP Corporate. Melissa Willens' email regarding the clarification of the operations of the SJP

Boutique to an SJP Corporate employee on its face, disputes this fact. Ex. A. So therefore, SJP Corporate had no significant oversight into the operations of the store, including the merchandise displays. Rather, as long as the overall brand of SJP was maintained, then the what, who, and how was freely up to the managers of the MGM Corporate and MGM National Harbor team, as MGM not only employed the employees who worked at the SJP Boutique, but they also purchased and managed all inventory within the store, as Willens directives fully stated and confirmed to both Wilburn and Jones.

The above proves that the only person(s) who were not meeting the standards or performing to a satisfactory level were Jones and Wilburn themselves. Wilburn, though, is not a factor because she was not an MGM National Harbor employee, manager, or executive. So, the blame is solely on Jones herself. Willens only helped to fuel Jones' fire as they worked in tandem against the Plaintiff. Jones never wanted to hire Plaintiff, which is indicative of the several months it took for Plaintiff to even begin her employment with MGM National Harbor. It was Wilburn who sped the process up and forced Jones to implore aggressive measures to hire Plaintiff. Ex.A, App.1. In a nutshell, Plaintiff's spotless personnel file, her golden lion statue she received during the team meeting, Willens high praise a mere three days before Plaintiff was terminated, and the praise form Jones herself, verify, validáte, and corroborate that Plaintiff not only was meeting expectations, but exceeding them, even in the face of unjustified persecution. Ex. A.

Plaintiff is therefore entitled to summary judgment and Defendants are not.

PAGES 12-13: Defendants have misapplied and misinterpreted the requirements for the Plaintiff to successfully overcome the burden of establishing a *prima facie* case of discrimination based on color. The requirements are: (1) the Plaintiff belongs to a protected class; (2) the Plaintiff was competent to perform the job or was satisfactorily performing the duties

required by her position; (3) the Plaintiff suffered an adverse employment action; and (4) the adverse action occurred under circumstances giving rise to inference of discrimination based on, in this case, the Plaintiff's color. If all such stipulations have been met, then the plaintiff has successfully plead her case, and, as a matter of law, the Court must rule in the favor of the plaintiff. This is a discrimination case brought forth under 42 U.S.C. § 1981 and Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. §§ 2000e to 2000e-17. The Court of Appeals for the Fourth Circuit has expressed and validated all of the aforementioned needed for the success of Plaintiff's case. The. Buck. Stops. There. The Defendants are desperate and are reaching by attempting to add requirements needed for the Plaintiff's case to have success. They simply cannot do this, especially when the determining factors have already been established by the highest Court in Maryland. This case has already been adjudicated. All that is left is the proof. That. Is. All.

Therefore, what Plaintiff seeks to show is if the adverse action suffered gives rise to the inference of discrimination **based on *color***. To do so, Plaintiff would need to show that she was treated differently from other employees of a different color than her, even more specifically, those who are similarly situated in terms of her ***job title or position***, **not** how long or when the Plaintiff suffered the adverse employment action such as during a purported probationary period that Plaintiff was not even told she was under, as the Defendants are wrongfully trying to manipulate the standards of what is needed and what is required of the Plaintiff to show for the success of her case. The probationary period does not matter and is a moot issue in terms of this ***color-based*** discrimination lawsuit. However, for the sake of entertaining the Defendants' argument, what the record shows is that no other manager or employee of the retail department (including that of the SJP Boutique) under Lisa Jones was terminated during their probationary period. To further note and what the record verifies, is that every other manager was either White

or darker tone African Americans, none of whom were terminated by Lisa Jones during their probationary period. So on the one hand, you have the Plaintiff who has an immaculate and proven reputation and a pristine personnel file, who the Defendants admit was not able to even have a review because she was not employed long enough, but yet, she was terminated by Lisa Jones; whereas, you have two other managers (White and a darker tone African American) who committed serious and multiple infractions that were serious enough for them to be recorded and documented in their personnel file, and yet, were only given verbal warnings by Lisa Jones. So, the Defendants state that Plaintiff must show disparate treatment between her and other similarly situated employees. Is that not disparate treatment *prima facie*? The Defendants again fail to support their argument, while at the same time verifying and giving credence to Plaintiff's argument.

PAGES 14-15: Defendants lie and damn their very own argument. In trying to defend their misapplied argument of what is considered a "similarly situated employee", the Defendants in paragraph 2, state: "none of the above-identified conduct is similar to Ms. Felder's. Ms. Felder was terminated during her probationary period for poor performance, unprofessional conduct, and insubordination."

Yet, the Defendants in paragraph 1 of page 14 state regarding discipline about Ms. Lemberg (one of the similarly situated managers), "Ms. Lemburg received a written warning for **poor performance** in April of 2017, more than five months after she was first hired and more than two months after the expiration of her probationary period".

Continuing paragraph 1 of page 14, for Mr. Knight (the second similarly situated manager), Defendants state, "Mr. Knight received a written warning for not receiving authorization to host an after-hours meeting in April of 2017, approximately five months after he was first hired

and approximately two months after the expiration of his probationary period." The exact definition of insubordination is "defiance of authority; refusal to obey orders". Mr. Knight defied authority and refused to obey orders.

Then, on page 15, paragraph 1, the Defendants state: "None of this conduct compares to what Ms. Lemburg and Mr. Knight were disciplined for—generalized poor performance and minor violations of National Harbor policy."

The Defendants arguments are so pitiful that it is almost laughable because it is so sad to see how a person can literally take truth and warp it to fit their own convoluted perception of reality or to form their own narrative. To lie outright is shameful and shows a deep lack of integrity and shows that the Defendants are so guilty and have perpetuated their arguments around so many lies and unethical means that they cannot even recognize the folly in their own defenses. And what makes this worse is that these are seasoned professionals who are accustomed and who have been around the law for many years.

PAGE 14, PARAGRAPH 2: Still present before this Court is a Motion for Sanctions that Plaintiff has put forth against the Defendants. One of the reasons is for spoliation of evidence, particularly video and security footage. The Defendants' own words have overwhelmingly proved them to be outright liars. But this is why video footage is so very critical because it would put the nail in the coffin.

The Defendants outright lie and wrongly accuse Plaintiff of behaviors that are outside of her character and have never been displayed, such as poor performance, unprofessional conduct, and insubordination, engaging in a verbal altercation with Jones, and that Plaintiff's "misconduct during this altercation was so severe that security had to escort her off the premises."

The Defendants are outright lying. These are not just falsehoods or misrepresentations of the facts — these are outright lies. And here, the Defendants are also proving to be manipulators.

One of the primary reasons the Defendants gave in their Response to Plaintiff's Motion for Sanctions as to why is they did not preserve the video footage was that in order for them to preserve footage for more than 14 days, a serious incident would have to occur. The Defendants then say that nothing of significance occurred and thus no incident report was made, so they recorded over the security footage and video surveillance.

But now, here, the Defendants state: "Ms. Felder's misconduct during this altercation was so severe that security had to escort her off the premises. SUMF ¶ 18".

Once again, the Defendants prove that cheaters never win, and every liar's lie will catch up to them. President Abraham Lincoln is quoted as saying: *"You can fool some of the people all of the time, and all of the people some of the time, but you cannot fool all of the people all of the time."* The Defendants seemed to forget this. And their lies, deception, and lack of integrity are undeniable and are coming to light more and more and more.

The fact that the Defendants have to tell lies to support their arguments nullifies their arguments. Truly nothing has or can damn the Defendants more than the Defendants themselves. In summary judgment where a party's goal is to establish undisputed matters or material facts, one of the worst and kill switch things that a party can do is dispute their own facts. This is exactly what the Defendants have done.

As such, Plaintiff, not the Defendants is entitled to summary judgment.

PAGE 16, PARAGRAPH 2: For all the reasons discussed above and in Plaintiff's Motion for Summary Judgment, there is an abundance of evidence that National Harbor terminated Plaintiff's employment "because of" the color of her skin. Those same undisputed facts give an

inference of discrimination. Plaintiff has met her burden to establish an inference of color discrimination.

PAGE 16, PARAGRAPH 3 - PAGE 17: Defendants wholly misrepresent the truth. Plaintiff has ***never*** directly held the position Wilburn discriminated against her. Plaintiff has repeatedly held that Wilburn was a third-party liaison who was the main reason for the recruitment/hiring of the Plaintiff, which Wilburn admitted in her declaration.

In Plaintiff's deposition, the Defendants on page 12 of their Statement of Undisputed Facts, ask the Plaintiff "Would it be fair to say that Ms. Jones and Ms. Wilburn, you believe are the people who discriminated against you?" To which Plaintiff answered, "Yes." However, the Defendants are asking questions that were based on Plaintiff's Amended Complaint, in which Plaintiff's Complaint named several other Counts/claims that shared the same group of facts. The only relevant Count remaining in this case is color. The Defendants do not make that distinction. So, when they ask if Plaintiff was discriminated against by Jones and Wilburn, Plaintiff says "yes", because Wilburn was attacking the Plaintiff, calling her names such as "dictator" amongst other things, as the Defendants note, reference, and quote earlier on page 12 (the same page as the aforementioned question) of their Statement of Undisputed Facts.

The Defendants are wrong. The Plaintiff has never said that Wilburn discriminated her based off of color.

Conversely, Plaintiff ***has*** said that it was Lisa Jones who discriminated against her on the basis of color. Plaintiff has repeatedly held that at it was only at the sole urging of Wilburn, Jones aggressively and desperately recruited Plaintiff, which the Plaintiff stated in her deposition which the Defendants quote on page three of their Statement of Undisputed facts. But more so,

Wilburn confirms that she was the one who directly recruited me in her declaration, which Defendants quote on page 5 of their Statement of Undisputed Facts.

Thus, the reason why Plaintiff was hired despite the animus that Jones had towards people of lighter tones is simple — Wilburn wanted the Plaintiff and demanded she be hired. As Wilburn herself has held "I [Whitney Wilburn] recruited Brittney." *See* Wilburn's Declaration and/or Page 5 of Defendants Statement of Undisputed Facts.

PAGE 17, PARAGRAPHS 1-3: Plaintiff's case is different in the fact that the primary recruiter who was responsible for the hiring of Plaintiff was not Jones, but Wilburn, through her own admission. The primary and sole person who recommended and forced the termination of Plaintiff was solely Jones. Furthermore, Jones was on leave of absence until a few days before the SJP Event when Jones returned to work to sabotage the Plaintiff and terminate her. So, while on paper it appears that Jones was the hirer and firer, this was not the case. Jones was simply pushing the paperwork. Jones did not even train the Plaintiff or was even present during Plaintiff's onboarding. This, she tasked to Ms. Lemberg (the other Assistant Retail Manager).

This is proof of animus and that Jones never truly wanted Plaintiff to work at MGM National Harbor, for if she did, she would have been there to personally train the Plaintiff and support the Plaintiff as the Plaintiff prepared for the first-of-its-kind SJP Boutique Event; but Jones was not. Instead, she decided to rear her head only at the very end when Plaintiff had all the arrangements in place for the SJP Boutique Event. Only to then sabotage and then terminate the Plaintiff.

Defendants tell another outright lie. It was not Fisher who made the ultimate decision to terminate Plaintiff's employment, it was Jones, as she admits in her declaration. Jones terminated the Plaintiff. Jones was the only person, not Fisher, not Wilburn who was present at the

meeting where Jones terminated Plaintiff. So indubitably, "the discriminatory intent [that] ordinarily must be harbored by the decisionmaker", was just so — as it was Jones who discriminated against the Plaintiff on the basis of her color; it was Jones who called plaintiff the racial slur that referenced Plaintiff's color; and it was Jones that terminated the Plaintiff.

PAGE 18: Plaintiff's Wilburn is ***not*** a party in this lawsuit, she is a witness. Wilburn is ***not*** an employee of MGM National Harbor. However, the Defendants repeatedly try to make Wilburn a part of this discrimination case based on color, and she simply is not. It is evident that the Defendants are doing this as a self-serving tactic because Wilburn, like the Plaintiff, is a "light-skinned African American" female, as the Defendants refer to her in their Memorandum in Support of their Motion and Opposition on pages 17 and 18.

The Defendants literally place the photos of the MGM National Harbor employees side-by-side on pages 9 and 10 of Defendants Statement of Undisputed Facts. Here, it is clear of the distinction of skin tones. It also verifies that every single characterization that Plaintiff described was true. That the majority of the employees if they were not White, were darker-toned African Americans. And the only lighter-toned African American manager under Jones was the Plaintiff.

The Defendants also attempt to manipulate the relevant parties and facts by including people who have nothing to do with Plaintiff's case, who were not there when Plaintiff was employed with MGM National Harbor, and/or who Plaintiff does not even know. These ones being, Matt Sommers, Teresa Warr, and Natahcia Scott.

Defendants also show the photos of Plaintiff and Jones side-by side, and it is without question that Jones is darker than the Plaintiff and the Plaintiff is significantly lighter than Jones. It also shows that the overwhelming majority of the African American employees were

Jones' complexion or darker. And in a color discrimination case, this irrefutable difference in tones between the Plaintiff and Jones and all relevant others is pivotal as this is a discrimination case based on ***color*** **not** ***race*** as the Defendants conveniently continue to mix-up in their arguments.

Prejudice and bias are shown in multiple ways. In employment, one of the key means an employer can show bias and prejudice is when an employer hires or retains only a certain type or group of people, or promotes only those from within the chosen group. And in this case, the record and photos speak for themselves. And of the only other two lighter-tone African Americans — Ms. Ramseur and Mr. Marshall — under Jones, Ramseur had her position as brand ambassador, which Wilburn designated her as, taken away from her by Jones; and Marshall's employment was terminated by Jones.

Accordingly, many circumstances give rise to an inference of discrimination. As such, Plaintiff is entitled to summary judgment, and Defendants are not.

PAGE 19: Repeatedly, Defendants have held that they do not understand the term lighter tone or darker tone, light-skinned or dark-skinned. *See* Defendants Responses to Plaintiff's Requests for Admissions. Yet, all of a sudden, in trying to defend their argument that Plaintiff has not met her burden to show that she was replaced by someone outside her protected class, they can characterize an employee as "light-skinned". *See* page 19 of their Motion and Opposition.

However, in so doing, the Defendants make fatal points to their arguments not only here, but to their prior ones also: **(1)** They admit that Mr. Streeter, a darker toned African American male applied for Plaintiff's position but was "explicitly rejected for the position by Ms. Wilburn." *See* Page 19, last paragraph of Defendants Motion and Opposition. This proves that Jones allowed ***Wilburn*** to be the ultimate hiring decision maker. This therefore negates ***all*** their prior arguments that pertained to the issue as to who was the ultimate decisionmaker when it came to hiring the

Plaintiff; **(2)** Defendants again are trying to base arguments on wrongful termination versus color discrimination, which is what this case and the remaining Count is about — Count VIII, color discrimination. Therefore, the standards and the caselaw that the Defendants put forth are moot because they are not applicable to Plaintiff's remaining Count of color discrimination. Indeed, the Defendants are proving themselves to be so desperate that they are turning to criteria and legal matters that do not apply. **(3)** Defendants have forgotten that they have included the employee photos in their Motion and Opposition. However, it is noteworthy that they did not include the photo of Taisha Williams. But, this doesn't matter because their argument on its face is moot, as they themselves damned their very own argument. Defendants first say that "Plaintiff has not met her burden to show that she was replaced by someone outside her protected class". Then, they say, "Plaintiff was replaced by a light-skinned African American woman named Taisha Williams." Lastly, the Defendants' say, "Plaintiff has produced zero evidence that National Harbor replaced her with another light-skinned African American in an effort to cover up any prior discrimination." *Id.* Defendants literally contradict themselves to the point that their argument makes absolutely no sense and disputes itself.

Accordingly, Defendants' arguments fail on their face, and as such, Plaintiff is entitled to summary judgment, and Defendants are not.

VI. PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT SHOULD BE GRANTED

PAGE 23, PARAGRAPH 1: There's a popular urban saying that goes "You're not about this life." And, well, the Defendants are not about this life. Plaintiff was born into, lived, breathed, and spent every waking moment in the skin her DNA determined. So how dare the Defendants tell her, and ones like her, or attempt to define to her, or ones like her. what is a part

of the very culture that her deoxyribonucleic acid and her heritage has built. How dare the Defendants attempt to put an unknown random source from the thoughts and words of those not from the African American or Black culture to define a derogatory term to reference a lighter tone Black woman. How dare the Defendants speak on an experience that they know nothing about, that the Defendants think is defined by the words of a random website rather than the tangible, living, experience of those who have walked in the shoes of that experience since the day they were born.

The Defendants presentation of the definition of the racial slur "queen" is not only arrogant, self-righteous, privileged, and ignorant, but it is utterly stupid. And since the Defendants want to define something, let us define the word stupid, which means "having or showing a great lack of intelligence or common sense" (Oxford English Dictionary); given to unintelligent decisions or acts (Merriam-Webster Dictionary); acting in an unintelligent or careless manner (*Id.*); marked by or resulting from unreasoned thinking or acting (*Id.*).

And the audacity to equate a racial slur to a white, 1970s Rock band... Really?!? The boldness of such ignorance is reprehensible. A word has meaning. Just as a white person cannot tell a Black person how to feel about the use of the word "nigger" or "mulatto"; or a man cannot tell a woman how to feel about the word "bitch"; then how dare the Defendants think they can tell a fair-skinned, lighter tone Black American woman how to feel when she is derogatorily called "queen" by a darker tone Black woman who uttered the word while looking her up and down with curled lips and rolled eyes.

Accordingly, Plaintiff is entitled to summary judgment, while Defendants are not.

VII. NATIONAL HARBOR HAS NO LEGITIMATE, NON-DISCRIMINATORY REASONS FOR TERMINATING PLAINTIFF'S EMPLOYMENT AND THERE IS AN ABUNDANCE OF EVIDENCE OF PRETEXT

PAGES 20-24: Every single last argument that the Defendants put forth has either been fully disputed or the Defendants themselves have nullified them. MGM National Harbor has not in any manner successfully produced a legitimate, nondiscriminatory reason for Plaintiff's termination, and the inference of discrimination has been highlighted now more than ever.

It is proven without a shadow of doubt that Jones and her cohorts deliberately and maliciously sought to attack, disparage, humiliate, sabotage, and terminate Plaintiff. Jones never wanted to hire Plaintiff, and immediately sought to have Plaintiff terminated at a point where no other employee on record had been disciplined or terminated. Plaintiff's description of her work ethic and reputation have been proven not through her own words, but through the tangible evidence of not only her personnel file, but through emails, and declarations, as well. It is further proven that it was actually Jones and her cohorts that did not adhere to MGM Corporate or MGM National Harbor policies. It was proven that Plaintiff was solely recruited by Whitney Wilburn. It was also proven that Jones gave Wilburn the power to be the decisionmaker when it came to hiring. It is also proven that Jones, and Jones alone, was directly responsible for the termination of the Plaintiff. It was also proven that Jones hired, retained, and promoted only darker-tone African Americans. It was also proven that Jones terminated only lighter-tone African Americans, while she would issue warnings to darker-tone African Americans. It was proven that Plaintiff was treated and disciplined differently than the two other managers, one being White and the other a darker-toned African American. It was proven that Jones uttered the racial slur during a meeting where one of her cohorts was present (who is a darker tone African American). It was proven that

another employee described the work environment under Jones and her cohorts a hostile environment." It was proven that negative comments about Plaintiff were only made by and between Jones and her cohorts. It was proven that when Jones tried to wrongfully blame something on Plaintiff and report it to MGM Corporate's Melissa Willens, Melissa Willens immediately shut Jones down and corrected her. It is proven that Defendants said that Plaintiff was not hired long enough for a performance review; but despite that, it did not stop Plaintiff from being honored by her peers with a golden lion statue, that she received high and glowing praise from Willens of MGM Corporate who said she looked forward to growing the business with Plaintiff. It has been proven that Plaintiff was never informed of a probationary period until the day she was terminated. It was proven that the Plaintiff did nothing to disrupt the operations of the store or the SJP Event. It was proven that the SJP Event had numbers that rivaled the Boutique's grand opening. It was proven that Plaintiff's allegations are not just claims, but they are facts. It was proven that the Defendants have lied several times to manipulate the facts to fit their narrative. It was proven that the colorism is a prominent and prevalent issue that affects people of color, especially the Black community. It was proven that the term "queen" is accepted and has been used as a racial slur to refer to lighter tone African Americans. It was proven that an employer's intent is not enough to deny summary judgment. It was proven that a singular act of discrimination is enough to trigger protections under Title VII.

Accordingly, Plaintiff is entitled to summary judgment, and Defendants are not.

CONCLUSION

For the reasons stated above, *Pro Se* Plaintiff Brittney Felder respectfully requests that her Motion for Summary Judgment be granted, and Defendants Motion for Summary Judgment be

denied. **WHEREFORE**, for the foregoing reasons, the Plaintiff prays for entry of Summary Judgment in its favor against all Defendants for the relief set forth in its Complaint.

Respectfully submitted,

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