
APPENDIX

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APPENDIX A

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

No. 25-11255

EFRAIN AREIZAGA,
Plaintiff-Appellant,
vs.

TFORCE FREIGHT INC., UNITED PARCEL SERVICES, INC.,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS.
Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:22-CV-703

ON PETITION FOR REHEARING EN BANC

Before Clement, Southwick, and Oldham, *Circuit
Judges*

Per Curiam:

Treating the petition for rehearing en banc as a petition for panel rehearing (5th Cir. R.40 I.O.P), the petition for panel rehearing is DENIED. Because no member of the panel or judges in regular active service requested that the court be polled on rehearing en banc (Fed. R. App. P. 40 and 5th Cir. R. 40), the petition for rehearing en banc is DENIED.

Court of Appeals

Fifth Circuit

FILED

July 14, 2026

Lyle W. Cayce

Clerk

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 25-11255

EFRAIN AREIZAGA,
Plaintiff-Appellant,
vs.

TFORCE FREIGHT INC., UNITED PARCEL SERVICES, INC.,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS.
Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:22-CV-703

JUDGMENT

Before Clement, Southwick, and Oldham, *Circuit
Judges*

This cause was considered on the record on appeal
and the briefs on file.

IT IS ORDERED and ADJUDGED that the judg-
ment of the District Court is AFFIRMED.

United States Court of Appeals
Fifth Circuit
FILED
May 11, 2026
Lyle W. Cayce
Clerk

APPENDIX C

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF TEXAS FORT
WORTH DIVISION**

EFRAIN AREIZAGA

vs.

ACTION NO. 4:22-CV-703-Y

TFORCE FREIGHT, INC., ET AL.

FINAL JUDGMENT

In accordance with the orders issued on March 2, 2023; September 13, 2023; March 15, 2024; March 22, 2024; and the order issued this same day, all claims are hereby **DISMISSED WITH PREJUDICE** to their refiling. All costs of Court under 28 U.S.C. § 1920 shall be borne by plaintiff Efrain Areizaga.

SIGNED October 14, 2025.

/s/ Terry R. Means

**TERRY R. MEANS
UNITED STATES DISTRICT JUDGE**

APPENDIX D

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF TEXAS FORT
WORTH DIVISION**

EFRAIN AREIZAGA

vs.

ACTION NO. 4:22-CV-703-Y

TFORCE FREIGHT, INC., ET AL.

**ORDER RULING ON CROSS MOTIONS FOR
SUMMARY JUDGMENT**

Pending before the Court is the Motion for Summary Judgment (doc. 108) filed by defendant TForce Freight, Inc. ("Tforce"). Also pending before the Court is the Motion for Partial Summary Judgment (doc. 110) filed by plaintiff Efrain Areizaga, who is proceeding herein pro se. After review of these motions, the Court concludes that TForce's motion should be granted, and Areizaga's motion should be denied.

I. Factual Background

Areizaga was previously employed by TForce's predecessor in interest, UPS Freight, as a "part-time union clerk" assigned to "the evening shift." (Areizaga's More Definite Statement (doc. 94) at 6 (Ex. 1), ¶ II(1).) On

August 21, 2017, while still employed, Areizaga submitted a written grievance to Jeff Cheyne, the operations manager at UPS Freight, regarding alleged discrimination Areizaga witnessed being suffered by his co-worker, Jennifer Blankenship, at the hands of supervisor Clint Shirley. (*Id.* at 6-10.) Areizaga alleges that he was terminated from his employment by Cheyne the next day, on August 22, 2017. (Areizaga's Am. Compl. (doc. 45) 5, ¶III(18).) Although Areizaga originally pursued numerous claims against several different defendants in this case, the only remaining claim is his claim against TForce for retaliatory termination in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et. seq.* (*Id.* at 14-15.) Both parties seek summary judgment on this claim.

II. Summary – Judgment Standard

When the record establishes “that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law,” summary judgment is appropriate. Fed. R. Civ. P. 56(a). “[A dispute] is ‘genuine’ if it is real and substantial, as opposed to merely formal, pretended, or a sham.” *Bazan v. Hidalgo Cnty.*, 246 F.3d 481, 489 (5th Cir. 2001) (citation omitted). A fact is “material” if it “might affect the outcome of the suit under governing law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

To demonstrate that a particular fact cannot be genuinely in dispute, a defendant movant must (a) cite to particular parts of materials in the record (e.g., affidavits, depositions, etc.), or (b) show either that (1)

the plaintiff cannot produce admissible evidence to support that particular fact, or (2) if the plaintiff has cited any materials in response, show that those materials do not establish the presence of a genuine dispute as to that fact. Fed. R. Civ. P. 56(c)(1). Similarly, a plaintiff movant must (a) cite to particular parts of materials in the record (e.g., affidavits, depositions, etc.), and (b) if the defendant has cited any materials in response, show that those materials do not establish the presence of a genuine dispute as to that fact. Fed. R. Civ. P. 56(c)(1). Although the Court is **required** to consider only the cited materials, it **may** consider other materials in the record. *See* Fed. R. Civ. P. 56(c)(3). Nevertheless, Rule 56 "does not impose on the district court a duty to sift through the record in search of evidence to support a party's opposition to summary judgment." *Skotak v. Tenneco Resins, Inc.*, 953 F.2d 909, 915-16 & n.7 (5th Cir.), *cert. denied*, 506 U.S. 825 (1992). Instead, parties should "identify specific evidence in the record, and . . . articulate the 'precise manner' in which that evidence support[s] their claim." *Forsyth v. Barr*, 19 F.3d 1527, 1537 (5th Cir. 1994).

In evaluating whether summary judgment is appropriate, the Court "views the evidence in the light most favorable to the nonmovant, drawing all reasonable inferences in the nonmovant's favor." *Sanders-Burns v. City of Plano*, 594 F.3d 366, 380 (5th Cir. 2010) (citation omitted) (internal quotation marks omitted). "After the nonmovant has been given the opportunity to raise a genuine factual [dispute], if no reasonable juror could find for

the non-movant, summary judgment will be granted." *Byers v. Dallas Morning News, Inc.*, 209 F.3d 419, 424 (5th Cir. 2000) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986)).

III. Analysis

Areizaga has not presented direct evidence of retaliation. As a result, he must present sufficient circumstantial evidence of retaliation to demonstrate a genuine issue of material fact under the burden-shifting analysis introduced in *McDonnell Douglas Corporation v. Green*, 411 U.S. 792 (1973). See *Saketkoo v. Adm'rs of Tulane Educ. Fund*, 31 F. 4th 990, 998, 999 (5th Cir. 2022). That analysis requires that Areizaga first present evidence demonstrating, prima facie, that: "(1) he participated in an activity protected by Title VII; (2) his employer took an adverse employment action against him; and (3) a causal connection exists between the protected activity and the adverse employment action." *McCoy v. City of Shreveport*, 492 F.3d 551, 556-57 (5th Cir. 2007). "The burden then shifts to the employer to articulate a legitimate, nondiscriminatory reason for its employment action." *Id.* at 557. "[T]he plaintiff then bears the ultimate burden of proving that the employer's proffered reason is not true but instead is a pretext for the real discriminatory or retaliatory purpose." *Id.*

Title VII's anti-retaliation provision makes it "an unlawful employment practice for an employer to discriminate against any of his employees . . . because he

has opposed any practice made an unlawful employment practice by this subchapter." 42 U.S.C.A. §2000e-3(a) (West 2025) ("the opposition clause"). "[A]ny practice made an unlawful employment practice by this subchapter" means discrimination in employment on the grounds of "race, color, religion, sex, or national origin." 42 U.S.C.A. §2000e-2 (West 2025). "Title VII protects an employee only from 'retaliation for complaining about the types of discrimination it prohibits.'" *O'Daniel v. Indus. Serv. Sols.*, 992 F.3d 299, 307 (5th Cir. 2019) (quoting *Miller v. Am. Family Mut. Ins. Co.*, 203 F.3d 997, 1007 (7th Cir. 2000)), *abrogated in part on other grounds by Bostock v. Clayton Cnty.*, 590 U.S. 644 (2020).

"[P]rotected opposition must at least alert an employer to the employee's reasonable belief that unlawful discrimination is at issue." *Brown v. UPS, Inc.*, 406 F. App'x 837, 840 (5th Cir. 2010); *see also Armstrong v. K&B La. Corp.*, 488 F. App'x 779, 782 (5th Cir. 2012) (per curiam) ("For his actions to have satisfied the opposition clause, [the plaintiff] must have had an objectively reasonable belief that [the defendant] was engaged in employment practices barred by Title VII"). "[C]omplaining about unfair treatment without specifying why the treatment is unfair . . . is not a protected activity." *Tratree v. BP N. Am. Pipelines, Inc.*, 277 F. App'x 290, 295 (5th Cir. 2008). A plaintiff "reporting employment discrimination need not show that the discrimination rose to the level of a Title VII violation, but must at least show a reasonable belief that it did." *E.E.O.C. v. Rite Way Serv., Inc.*, 819 F.3d 235, 237 (5th Cir. 1989); *but see Royal v. CCC&R Tres Arboles, L.L.C.*, 736 F.3d 396, 401 n.2 (5th Cir. 2013) (observing that "our precedent

is in tension with the plain text of the statute, which appears to require that the employer's practice *actually be unlawful* under Title VII"). Thus, a retaliation plaintiff must have reported to his employer a reasonable belief that his employer engaged in discrimination prohibited by Title VII.

Areizaga has wholly failed to present any evidence tending to demonstrate that he reasonably believed Shirley's treatment of Blankenship, a dock worker for UPS Freight, constituted sex discrimination under Title VII or that he reported the basis for that belief to his employer. His August 21, 2017 written grievance states that Shirley had targeted Blankenship for termination "because of her gender and her physical limitations in repeatedly handling hand freight, which on occasions may exceed several hundred pieces and range up to 80 lbs. or more." (Areizaga's More Definite Statement (doc. 94) at 6, Ex. 1, ¶ I.) The grievance further states that after Areizaga communicated to Shirley the request of Blankenship "for reasonable accommodations regarding her inability to handle hand freight, because of chest pains and a prior small stroke," Shirley "continued to excessively give her hand freight trailers for unloading to force her resignation." (*Id.*) Areizaga contends that after he informed Shirley that he "was going to file a discrimination complaint against him[,] . . . he responded with an unlawful retaliation termination threat." (*Id.*) Areizaga's grievance further states that he "personally witness[ed] the sex discrimination and harassment" suffered by Blankenship and that "it was obvious to all employees working at the dock that [Blankenship] was having extreme physical problems handling the hand freight."

(*Id.* at 6, ¶ II(3); 7, ¶II(7).) Thus, although Areizaga's written grievance included the words "sex discrimination," the facts reported as the basis for his grievance focused on Blankenship's health history and physical limitations.

But discrimination based on disability is not protected by Title VII. And Areizaga wholly fails, in both his written grievance and in this proceeding, to present any basis for his belief that Shirley had engaged in sex discrimination under Title VII. Areizaga failed to present any evidence tending to demonstrate that Shirley treated men more favorably than he did Blankenship, that Blankenship was ultimately replaced by a man, or that other female dockworkers were similarly unable to handle UPS Freight's hand-freight requirements. Consequently, Areizaga has failed to demonstrate a genuine issue of fact as to whether his belief that Blankenship suffered sex discrimination was objectively reasonable. For this reason, he has failed to satisfy the first prong of his prima-facie case of Title VII retaliation. *See Armstrong*, 488 F. App'x at 782 (concluding that the plaintiff's "prima facie case failed for lack of any objectively reasonable belief that [the defendant] was violating Title VII. He adduces no objective evidence that any pharmacists under his management disdained working for a black supervisor so strongly as to require [the defendant] to remedy the situation[; . . . none of the complained of pharmacists ever said anything racist to [the plaintiff] or told him that the pharmacist did not want to work for him[; and t]he regional vice-president who ultimately fired him [admittedly] was not a racist and did not tolerate racism"); *see also O'Daniel*, 922 F.3d 299, 308 n.1 (Haynes, J., concurring) ("without any facts to support a discrimination claim there is

nothing to support a *reasonable* belief"); *Byers v. Dallas Morning News, Inc.*, 209 F.3d 419, 428-29 (5th Cir. 2000) (concluding that the evidence the plaintiff presented demonstrated that his belief that his employer was discriminating against him based on race was objectively unreasonable); *Freeman v. Delta Health Ctr., Inc.*, No. 4:23-CV-139-DMB-JMV, 2024 WL 3366387, at *8 (N. D. Miss. July 10, 2024) (concluding that retaliation plaintiff had failed to "allege facts sufficient to support an objectively reasonable belief by her that [her employer's statement] was unlawful under Title VII"). As a result, summary judgment in TForce's favor is appropriate.

IV. Conclusion

For the foregoing reasons, TForce's Motion for Summary Judgment (doc. 108) is GRANTED, and Areizaga's Motion for Partial Summary Judgment (doc. 110) is DENIED.

SIGNED October 14, 2025.

/s/ Terry R. Means

TERRY R. MEANS

UNITED STATES DISTRICT JUDGE

APPENDIX E

EFRAIN AREIZAGA

vs.

ACTION NO. 4:22-CV-703-Y

TFORCE FREIGHT, INC., ET AL.

**ORDER GRANTING MOTION FOR EXTENSION
OF TIME TO FILE ANSWER**

Pending before the Court is the Motion for Extension of Time to File Answer to Plaintiff's Second Amended Complaint and More Definite Statement (doc. 97), which was filed by defendant TForce Freight, Inc. ("TForce"). After review of the motion, the related briefs, the record in this case, and the applicable law, the Court concludes that the motion should be, and it is hereby, GRANTED.

TForce's responsive pleading was due on May 13, 2024. *See* Fed. R. Civ. P. 12(a)(4)(B). The Court concludes that TForce's motion adequately demonstrates excusable neglect for its failure to timely file its responsive pleading. Consequently, TForce's Answer to Plaintiff's Second Amended Complaint and More Definite Statement is DEEMED filed this same day, and the clerk of the Court is DIRECTED to file a copy of the answer, which was attached as an exhibit to the motion for extension. *Cf.* N.D. Tex. L. Civ. R. 15.1(b). Plaintiff's request for clerk's entry of default against TForce (doc. 95) is DENIED.

SIGNED July 11, 2024.

/s/ Terry R. Means

TERRY R. MEANS

UNITED STATES DISTRICT JUDGE

APPENDIX F

EFRAIN AREIZAGA

vs.

ACTION NO. 4:22-CV-703-Y

TFORCE FREIGHT, INC., ET AL.

ORDER TO SHOW CAUSE

As ordered by the Court, Plaintiff filed his more definite statement on April 29, 2024 (doc. 94). Thus, defendant TForce Freight Inc. ("TForce") was required to serve its responsive pleading fourteen days thereafter. *See* FED. R. CIV. P. 12(a)(4)(B). As of the date of this order, TForce has not filed a responsive pleading. As a result, Plaintiff has requested that the clerk enter TForce's default (doc. 95).

It is, therefore, **ORDERED** that no later than **June 24, 2024**, TForce shall show cause as to why Plaintiff's request for entry of default should not be granted. TForce's showing shall include the filing of its responsive pleading.

SIGNED May 29, 2024.

/s/ Terry R. Means

TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

APPENDIX G**EFRAIN AREIZAGA**

vs.

ACTION NO. 4:22-CV-703-Y**TFORCE FREIGHT, INC., ET AL.****ORDER DENYING MOTION TO DISMISS AND
REQUIRING MORE DEFINITE STATEMENT**

Pending before the Court is the Rule 12(b)(6) Motion to Dismiss Plaintiff's Second Amended Complaint (doc. 61), which was filed by defendant TForce Freight Inc. ("TForce"). Plaintiff Efrain Areizaga, who is proceeding herein pro se, alleges in his Second Amended Complaint that TForce terminated him in retaliation for his complaint about a supervisor's alleged discrimination against another employee on the basis of her sex. After review of the motion, Areizaga's response, Areizaga's Second Amended Complaint, and the applicable law, the Court concludes that the motion should be, and it is hereby, DENIED.

TForce contends in its motion that Areizaga must plead sufficient facts in his complaint to demonstrate, prima facie, a claim of retaliation. Further, TForce contends that Areizaga must allege facts showing that TForce's anticipated legitimate, nondiscriminatory reason for his termination was pretextual. TForce requires, however, too much.

"[A] plaintiff is not required to plead a *prima facie* case." *Cicalese v. Univ. of Tex. Med. Branch*, 456 F. Supp. 3d 859, 866 (S.D. Tex. 2020) (citing *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 511-12 (2002)). "The *prima facie* case under *McDonnell Douglas* . . . is an evidentiary standard, not a pleading requirement." *Swierkiewicz*, 534 U.S. at 510. Requiring such a

heightened pleading standard in employment discrimination cases conflicts with Federal Rule of Civil Procedure 8(a)(2), which provides that a complaint must include only a short and plain statement of the claim showing that the pleader is entitled to relief. Such a statement must simply give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests.

Id. at 512.

Areizaga's Second Amended Complaint is largely sufficient to put TForce on notice of his claim and the grounds upon which it is based. As noted by TForce, however, Areizaga's factual allegations are sparse regarding the alleged grievance he filed against his supervisor complaining that he harassed a co-worker on account of her sex¹. Areizaga suggests in his response

¹ TForce also contends that Areizaga's complaint fails to sufficiently allege a causal connection between the alleged filing of his grievance and his termination. Areizaga alleges, however, that he was terminated one day after he filed his grievance. "A causal link between the adverse employment action and the protected activity can be satisfied 'simply by showing close enough timing between [the] protected activity and [the] adverse employment action.'" *Blanchard v. Tulane Univ.*, 636 F. Supp. 3d 642,

brief that the Court should permit him leave to amend if his complaint is found to be deficient. TForce has not responded to this request, and it appears that Areizaga could cure this pleading deficiency with more specific allegations. *See Martinez v. Cornerstone Church*, No. 5-20-CV-1293-FB-RBF, 2021 WL 2949475, *3 (W.D. Tex. 2021) (requiring pro-se plaintiff to file a more definite statement of his claims to "identify the protected activity or activities that form the basis of his retaliation claim, including when and to whom he allegedly complained of discrimination and the content of any such complaint").

Consequently, the Court will require that, if Areizaga desires to pursue his claim against TForce, he shall file, no later than **April 29, 2024**, a pleading entitled "Plaintiff's More Definite Statement" that answers the following questions:

- (1) What was the name of the person Tforce to whom Areizaga submitted his grievance?
- (2) What was that person's job title, if known?
- (3) What that grievance submitted orally or in writing?
- (4) What was the content/substance of that grievance?
- (5) What was Tforce's response to the grievance?

Areizaga must respond to these questions by writing the answers in paragraphs numbered to correspond to the number of each question. Additionally, Areizaga's More Definite Statement **must** include the following affirmation, which must be followed by

660 (E.D. La. 2022) (quoting *Abbood v. Tex. Health and Human Servs. Comm'n*, 783 F. Appx. 459, 463 (5th Cir. 2019)).

Ariezaga's signature: "I declare under penalty of perjury that all answers and assertions in this More Definite Statement are true and correct." Before affixing his signature, Ariezaga must carefully consider whether he can truthfully declare that all of his answers contained in the More Definite Statement are true and correct. **Failure to timely and completely comply with this order may result in the dismissal of Ariezaga's claims for lack of prosecution without further notice.** See FED. R. CIV. P. 41(b); *Hickerson v. Christian*, 283 F. App'x 251, 253 (5th Cir. 2008) ("A district court may sua sponte dismiss an action for failure to prosecute under Rule 41(b)"); see also *Link v. Wabash R. Co.*, 370 U.S. 626, 633 (1962) ("[A] District Court may dismiss a complaint for failure to prosecute even without affording notice of its intention to do so or providing an adversary hearing before acting").

SIGNED April 9, 2024.

/s/ Terry R. Means

TERRY R. MEANS

UNITED STATES DISTRICT JUDGE

APPENDIX H**EFRAIN AREIZAGA**

vs.

ACTION NO. 4:22-CV-703-Y**TFORCE FREIGHT, INC., ET AL.****ORDER GRANTING MOTION FOR RULING AND
DENYING MOTION TO RECONSIDER**

Pending before the Court is the Expedited Motion for a Ruling on Plaintiff's Motion for Reconsideration (doc. 57), which was filed by plaintiff Efrain Areizaga, who is proceeding herein pro se. Areizaga's Expedited Motion for Reconsideration, which seeks reconsideration of the Court's March 2 Order Partially Granting Dispositive Motions and Granting Leave to Amend (doc. 44), was filed three days prior to Areizaga's filing of his Notice of Interlocutory Appeal. As a result of the interlocutory appeal, this case was stayed and administratively closed pending appeal. This case was recently reopened after the appellate court dismissed the interlocutory appeal for lack of jurisdiction. As a result, Areizaga's Motion for a Ruling on his Motion for Reconsideration (doc. 57) is GRANTED. Nevertheless, Areizaga's Motion for Reconsideration (doc. 46) is DENIED. The Court discerns no error in its March 2 order of partial dismissal.

The Court agrees with Areizaga, however, that its March 2 order did not specifically address any claim he

might have against the local union under 42 U.S.C. § 1985 for conspiracy to interfere with civil rights. This is because the Court did not believe Areizaga had raised such a claim in his then pending amended complaint (doc. 18). Areizaga's amended complaint mentioned the statute only once on page two, where he lists the statutes allegedly supporting his claims. His amended complaint does not, however, specifically refer to that statute again. On page twenty-nine, Areizaga refers to "conspiracy to retaliate and interfere with Plaintiff's civil rights," but he does not specifically assert that claim against only the local union. Furthermore, Areizaga includes therein allegations that the defendants' "committed acts of fraud and concealment of the fraud," which the Court understood to be in pursuit of his conspiracy-to-defraud claim. That claim was dismissed in the Court's order.

In any event, the statute of limitations on a § 1985 claim is the same as for Areizaga's now dismissed § 1981 claim: two years. *See Helton v. Clements*, 832 F.2d 332, 334 (5th Cir. 1987) (concluding that a § 1985 claim is "deemed analogous to Texas tort actions, and therefore, the applicable limitations period is . . . two years"). For the same reasons that the Court concluded that Areizaga's 1981 claim was time barred, any claim under § 1985 is similarly time barred.

Finally, Areizaga has again titled his motion as "expedited," although no reason has been given justifying expedited relief. Areizaga is directed to refrain from seeking expedited relief from the Court absent some clear necessity for shortening the

briefing deadlines contained in the Court's local rules and the Court's normal period for consideration, and those reasons must be set out in any future motion requesting expedited consideration. The fact that there may be "no just reason for delay," (Pl.'s Expedited Motion for a Ruling (doc. 57) 1), does not mean that expedition is required or appropriate. Failure to adequately explain any future request for expedited relief may result in the unfiling of the noncompliant motion.

SIGNED September 13, 2023.

/s/ Terry R. Means

TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

APPENDIX I

EFRAIN AREIZAGA

vs.

ACTION NO. 4:22-CV-703-Y

TFORCE FREIGHT, INC., ET AL.

**ORDER PARTIALLY GRANTING DISPOSITIVE
MOTIONS AND GRANTING LEAVE TO AMEND**

Pending before the Court are the following motions:

- (1) the Motion to Dismiss for Failure to State a Claim (doc. 22) filed by defendant TForce Freight, Inc. ("TForce");
- (2) the Motion to Dismiss Plaintiff's Amended Complaint (doc. 24) filed by defendant International Brotherhood of Teamsters, Local 745 ("Local 745");
- (3) the Motion for Leave of Court to Amend Complaint (doc. 33) filed by plaintiff Efrain Areizaga, who is appearing herein pro se;
- (4) the Motion for Judgment on the Pleadings (doc. 34) filed by TForce;
- (5) the Motion for Judgment on the Pleadings (doc. 36) filed by defendant United Parcel Service, Inc. ("UPS");² and

²The Court did not receive either a paper copy of or an electronic proposed order with TForce's and UPS's motions. Counsel are reminded of this Court's requirement that a paper copy of every motion be transmitted to chambers upon electronic filing of the motion. See N.D. TEX. L. CIV. R. 5.1(b); ECF Admin. Procedures

(6) the Amended Motion for Leave to File Amended Complaint (doc. 41) filed by Areizaga.

After review of these motions, the related briefs, and the applicable law, the Court concludes that the dispositive motions should be and hereby are **PARTIALLY GRANTED**, but that Areizaga should be permitted to file an amended complaint, as set out in this order.

It is clear from Areizaga's currently pending and proposed amended complaints that all of his claims arise from his October 23, 2017 termination from employment with TForce. Areizaga filed and pursued various grievances against TForce arising out of that termination, which were heard and determined that same year. In addition to asserting claims against TForce, Areizaga asserts claims against both, his local union and UPS, contending that UPS is an alter ego of TForce. Areizaga's complaint in this action was not filed, however, until August 15, 2022. Defendants therefore contend, *inter alia*, that all of Areizaga's claims are barred by the applicable statutes of limitations.

It is not clear on the face of Areizaga's complaint, however, that his retaliation claims brought under Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. §2000e, *et seq.*, are time barred. Defendants contend that Areizaga's Title VII claims are untimely because

Manual at 3, ¶ II(C). Counsel are also reminded that all motions require an electronic proposed order (emailed to means_orders@txnd.uscourts.gov). See N.D. TEX. L. CIV. R. 7.1(c); ECF Admin. Procedures Manual at 3, II(F). Providing these items generally expedites the Court's consideration of the motion to which they pertain; continued failure to provide them will result in their being unfiled.

he failed to file a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC"). See 42 U.S.C. § 2000e-5 (requiring that plaintiff file charge of discrimination no later than "three hundred days after the alleged unlawful employment practice occurred"). Defendants fail, however, to specifically discuss in their motions Areizaga's allegations in paragraphs forty-six through fifty-three of his amended complaint. In those paragraphs, Areizaga contends that on June 4, 2018, he "filed a discrimination complaint with the U.S. Department of Labor, Office of Federal Contract Compliance Programs (OFCCP) complaint # 100207766 for allegations of discrimination based on veteran status and retaliation" and that this complaint was subsequently "transfer[ed] to the EEOC for further investigation," with the EEOC finally issuing a right-to-sue letter on May 17, 2022."³ (Pl.'s Am. Compl. (doc. 18) at 14-16, ¶¶ 46, 51,

³ Local 345's motion contends that Areizaga's Title VII claims against it are barred because he failed to file a charge of discrimination against Local 345. In support, Local 345 cites "Pl.[s] Amended Complaint, pp. 38-40." (Local 345's Br. in Support of Mot. to Dismiss (doc. 25) 6.) Areizaga's amended complaint does not, however, have pages 38-40. Instead, it ends at page 33. The last exhibit to the amended complaint, which falls at what would be pages thirty-nine and forty if numbered, is the EEOC's notice of right to sue, but it is unclear from that notice against whom Areizaga filed his charge of discrimination. The charge is not included with the complaint, nor have any of the defendants submitted it for the Court's review. Thus, the Court cannot dismiss Areizaga's Title VII claims against Local 345 on the grounds urged in its motion.

Nevertheless, it is clear that Title VII claims can only be properly asserted against one's employer. See *McCoy v. City of Shreveport*, 492 F.3d 551, 556 (5th Cir. 2007) (Title VII retaliation plaintiff must prove that he "was discharged or suffered some adverse employment action by the employer"); *Tolar v. Bradley*

53.) As a result, the Court cannot yet determine that Areizaga's Title VII claims are barred by the applicable statute of limitations. *See Granger v. Aaron's Inc.*, 636 F.3d 708, 713 (5th Cir. 2011) (affirming district court's determination that equitable tolling applied where attorney timely but erroneously filed claim with the OFCCP instead of EEOC).

Defendants are nevertheless correct that the face of Areizaga's complaint demonstrates that his other claims are either time barred or unavailing. Areizaga's claim under 42 U.S.C. § 1981 was required to be filed within two years after his cause of action accrued, which was on October 23, 2017, the date of his termination. *See Jones v. Alcoa*, 339 F.3d 359, 364 (5th Cir. 2003) (holding that the most closely related state statute of limitations applies to a claim brought under § 1981, which in Texas is the two-year personal-injury statute of limitations; furthermore, a § 1981 cause of action accrues "when the plaintiff knows or reasonably should know that the [challenged] discriminatory act has occurred"); *see also Johnson v. Ry. Express Agency, Inc.*, 421 U.S. 454, 462-466 (holding that the statute of limitations on a § 1981 claim is not tolled during the pendency of a timely filed administrative complaint with the EEOC under Title VII). Thus, since

Arant Boulton Commings, LLP, 997 F.3d 1280, 1289 (11th Cir. 2021) ("Title VII prohibits employers from retaliating against an employee 'because he has opposed any practice made an unlawful employment practice by [Title VII], or because he has made a charge . . . under [Title VII].'). In filing the amended complaint permitted by this order, Areizaga should take care to name only the proper defendants to his Title VII claim. If, as appears clear, Local 345 was not Areizaga's employer, it should not be named as a defendant in the second amended complaint permitted by this order.

Areizaga's complaint was not filed until August 15, 2022, his § 1981 claim was filed well after expiration of the applicable limitations period.

Areizaga's fraud claims are also time barred. In Texas, the statute of limitations for fraud claims is four years. See TEX. CIV. PRAC. & REM. CODE ANN. § 16.004(a)(4) (West 2002); *Jackson v. Speer*, 974 F.2d 676, 679 (5th Cir. 1992). Areizaga's fraud claims arise from his contention that the October 23, 2017 notice of termination of his employment for job abandonment was false. Because Areizaga knew of the alleged fraud at least by the October 23, 2017 notice of termination, he was required to file his fraud claims no later than October 23, 2021. Given that his complaint was not filed until August 2022, those claims are also time barred.

For similar reasons, Areizaga's conspiracy-to-defraud claim is also time barred. In Texas, "civil conspiracy is a derivative claim that takes the limitations period of the underlying tort that is the object of the conspiracy." *Agar Corp. Inc. v. Electro Circuits Int'l, LLC*, 580 S.W.3d 136, 148 (Tex. 2019). Areizaga contends that Defendants "colluded to injure[] the plaintiff, with a common unlawful purpose to defraud the plaintiff using unlawful means to conceal said acts as described in this complaint." (Pl.'s Am. Compl. (doc. 18) 29, ¶118.) The only concealment alleged, however, is the contention in the October 23, 2017 termination letter that Areizaga abandoned his job, which falsity Defendants allegedly perpetuated in Areizaga's grievance proceedings. Thus, these claims arose in 2017 and are therefore also barred by the four-year statute of limitations for fraud.

Areizaga further contends that Local 745 "breached the state tort of fiduciary duty by colluding with TForce Freight to defraud the plaintiff from his monetary rights." (Pl.'s Am. Compl. (doc. 18) 23, ¶ 78.) This claim is actually one for breach of the duty of fair representation under the National Labor Relations Act ("NLRA"). *See Miranda v. Nat'l Postal Mail*, 219 F. App'x 340, 343 (5th Cir. 2007) (citing *Richardson v. United Steelworkers of Am.*, 864 F.2d 1162, 1166 (5th Cir. 1989)) ("the duty allegedly breached by the [d]efendants arises from their status as [Plaintiff's] collective bargaining representatives, thus compelling the conclusion that [Plaintiff's state-law breach-of-fiduciary-duty] claims are . . . properly characterized as duty[-]of[-]fair[-]representation claims"). As a result, the claim is subject to a six-month statute of limitations. *See id.* at 345. Areizaga's allegations indicate that the last time the union represented him was at the November 16, 2017 hearing on his grievances. (Pl.'s Am. Compl. (doc. 18) 13, ¶ 40.) Consequently, his breach-of-fiduciary-duty claim against the union is also time barred.⁴

⁴ To the extent Areizaga instead attempts to assert a claim under section 501 of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. § 501, his claim fails to state a viable claim for relief. Initially, his claim fails because he is not suing "[t]he officers, agents, shop stewards, and other representatives of a labor organization" for a breach of the duties imposed by that section. *See* 29 U.S.C.A. § 501(a) (West 2018). Furthermore, he has failed to allege that he complied with the requirements of section 501(b). *See id.* § 501(b) (requiring that union first fail to file suit after being requested to do so and that individual member plaintiff seek leave of Court to file suit on a showing of good cause).

Areizaga also asserts a breach-of-fiduciary-duty claim against TForce. "In Texas, employers generally do not owe fiduciary duties to their employees." *Meadows v. Hartford Life Ins. Co.*, 492 F.3d 634, 640 (5th Cir. 2007). So Areizaga instead couches this claim in terms of inducement, alleging that TForce "knowingly induced, aided, and participated in . . . Local 745[s] . . . breach of their fiduciary duty to Plaintiff." (Pl.'s Am. Compl. [doc. 18] 23, § 80.) "[T]here are Texas appellate courts that have recognized claims for 'inducing or aiding' breach of fiduciary duties." *Taylor v. Frishberg*, No. 4:09-cv-3674, 2012 WL 868718, at *5, n.4 (S.D. Tex. March 13, 2012) (citing cases); *see also Floyd v. Hefner*, 556 F.Supp.2d 617, (S.D. Tex. 2008) (same). Nevertheless, "the statute of limitations [on the inducement claim] would likely be the same as the underlying tort." *Cao v. BSI Fin. Servs. Inc.*, No. H-17-321, 2017 WL 5157625, at *5 (S.D. Tex. Oct. 19, 2017) (citing *Thomas v. Barton Lodge II, Ltd*, 174 F.3d 636, 647 (5th Cir. 1999). Texas's statute of limitations for breach of fiduciary duty is, however, four years.⁵ *See* TEX. CIV. PRAC. & REM. CODE ANN. § 16.004(a)(5) (West 2002). As a result, Areizaga's claim that TForce induced the union to breach its fiduciary duty when it represented him during the 2017 grievance proceedings is also time barred.

⁵ Because the inducement claim is time barred under either the Texas two-year period or the six-month period applicable to the breach-of-fiduciary-duty/breach-of-the-duty-of-fair-representation claim against the union under the NLRA, the Court need not decide which applies.

Areizaga's proposed negligence and gross-negligence claims against UPS and TForce based upon TForce's alleged "false statements of material facts to the OFCCP and the EEOC" are also time barred. (Pl.'s Proposed Second Am. Compl. (doc. 33-2) 22, ¶ 67). It is clear that these claims arose, at the latest, "on November 16, 2017, [when] TForce . . . made a false statement of material fact, when [it] falsely presented to the grievance panel that [Areizaga] had abandoned his position." (*Id.* at 14, ¶ 44.) The statute of limitations for negligence and gross-negligence claims in Texas is two years. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 16.003(a) (West 2017); *RTC v. Acton*, 844 F. Supp. 307, 316 (N.D. Tex. 1994) (Fitzwater, J.). The Court thus finds that those claims were first asserted well after the expiration of the limitations period.

Furthermore, to the extent Areizaga attempts to assert a claim under the Norris La-Guardia Act ("NLGA"), 29 U.S.C. § 106, it fails. "The Norris-LaGuardia Act, 29 U.S.C. §§ 101-115, was adopted in 1932 to curb federal courts in their use of injunctions against strikes and other economic weapons in labor disputes." *New Orleans S.S. Aaa'n v. Gen. Longshore Workers*, 626 F.2d 455, 464 (5th Cir. 1980). The NLGA simply does not provide Areizaga with a private right of action against his employer or union. Similarly, Areizaga invokes several provisions of the Texas Penal Code, but Areizaga has no standing to bring a claim under the penal code. *See Smith v. HSBC Bank*, 669 F. App'x 224, 225 (5th Cir. 2016) ("Smith, as a private party, ha[s] no standing to bring a claim . . . under the Texas Penal Code"). And Areizaga's attempt to state a claim under the False Statement

Accountability Act of 1996 ("FSSA"), Pub. L. No. 104-292, 110 Stat. 3459, fails for similar reasons. See *Thomas v. Abebe*, 833 F. App'x 551, 555 (5th Cir. 2020) (holding that plaintiff did not have a private cause of action under 18 U.S.C. § 1001, which was amended by the FSAA).

Consequently, the Court concludes that all of Areizaga's claims for breach of fiduciary duty, fraud, negligence, and gross negligence, including any claims under the Texas Penal Code, the False Statement Accountability Act of 1996, the Norris La-Guardia Act, the National Labor Relations Act, and the Labor-Management Reporting and Disclosure Act of 1959, are hereby **DISMISSED WITH PREJUDICE** to their re-filing. Areizaga is, however, granted leave to file an amended complaint limited to his claims for retaliation under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.* Because Areizaga's proposed amendments filed with his motions for leave assert claims dismissed by this order, his proposed amendments will not be filed.

Rather, no later than **March 27, 2023**, Areizaga shall file an amended complaint of **no more** than twenty pages that is limited to allegations supporting his Title VII retaliation claims. Areizaga shall not include in his amended complaint allegations regarding any of the matters dismissed by way of this order.

SIGNED March 2, 2023.

/s/ Terry R. Means

TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

APPENDIX J

EFRAIN AREIZAGA

vs.

ACTION NO. 4:22-CV-703-Y

TFORCE FREIGHT, INC., ET AL.

EFRAIN AREIZAGA'S TESTIMONY
DECLARATION IN SUPPORT OF PLAINTIFF'S
MOTION FOR PARTIAL SUMMARY JUDGMENT
ON PLAINTIFF'S RETALIATORY CLAIMS
AGAINST DEFENDANT TFORCE FREIGHT

1. I am EFRAIN AREIZAGA, (the plaintiff in the above-mentioned case), a Hispanic male and citizen of Tarrant County in the state of Texas. In the five-year period preceding the filing of this action I resided at 4241 Rufe Snow Drive, Apt. 1423, North Richland Hills, TX 76180. I currently reside at 536 Denise Street, Saginaw, Texas 76179.

2. I am over 21 years of age, and I have personal knowledge of the facts set forth in this declaration. If called as witness, I am competent to testify to all matters set forth herein.

3. I was hired by JEFF CHEYNE, TForce Freight terminal service manager as a part-time dock clerk in the evenings from 5:00 pm to approximately 12:00 am., and I was a member of the International Brotherhood of Teamsters (IBT) Union local 745.

4. On August 21, 2017, I filed a grievance against CLINT SHIRLEY, the current dock supervisor, who was harassing JENNIFER BLANKENSHIP, a dock worker, because of her sex and physical limitations as I personally (see attached Exhibit #6, Doc. 94, pages 6-10). I served a copy of the grievance to (IBT) Union local 745. I observed that that JENNIFER BLANKENSHIP was having some medical issues that included chest pain, and she stated that she had a prior small stroke. I communicated to CLINT SHIRLEY, dock supervisor, that JENNIFER BLANKENSHIP was in physical distress and that she can't handle the hand freight, which can on occasions exceed several hundred pieces and can weigh up to 80 pounds or more. CLINT SHIRLEY continued to discriminate & harass JENNIFER BLANKENSHIP by continually giving her the hand freight trailers knowing that she was physically limited and continued to be in obvious physical distress. On one occasion I handed JENNIFER BLANKENSHIP a HOT TRAILER (for unloading without a forklift). HOT means that it was a priority trailer and should have been completed first, but CLINT SHIRLEY ripped the paperwork from her hands and gave her another hand-freight trailer. CLINT SHIRLEY later admitted to me that he wanted her to quit.

5. On August 22, 2017, I came into work for my evening shift at the TForce Freight terminal, when the I received a phone call from JEFF CHENEY, the service center manager, stating that a new employee was taking my position and will start work tomorrow on the day shift and that a senior clerk will take over the evening shift. He continued to state that human resources did not approve the second evening shift

and that tonight was plaintiff's last day of work. JEFF CHENEY then asked me to hand the phone over to KENNETH CORNWELL, TForce Freight driver and chief steward for Teamsters union. A few minutes later KENNETH CORNWELL and ANTHONY BROWN (daytime shift dock supervisor) confiscated my employee badge and escorted me off the property. I was terminated without any notice in violation of the IBT union's collective bargaining agreement (CBA) section 7.2 which states that "except in cases where an employee can be suspended or discharged without a warning letter, an employee subject to suspension or discharge shall be allowed to remain on the job, without loss of pay, unless and until the suspension or discharge is sustained under the grievance procedure."

6. On August 22, 2017, I returned to TForce Freight terminal and filed my second grievance for wrongful termination without notice (article 6) and for retaliatory discrimination (article 28) pursuant to the National Master TForce Freight Bargaining Agreement (CBA). I and gave a copy to the on-duty steward, KENNETH CORNWELL and left a copy for TForce Freight (see attached Exhibit #7, Doc. 94, pages 11-16).

7. On October 16, 2017, I received a USPS certified letter (7016 2710 0000 1649 9199) dated October 10, 2017, from JEFF CHEYNE it stated as follows:

"You have been absent without authorization since 8/22/17. You need to report to work by 10/19/17 for the 0930-1600 shift. If you do not report to work by 10/19/17 for the 0930-1600 shift, the Company will consider you as having

voluntarily quit your position at UPS Freight.”

On the bottom left of the letter copies were sent to RONALD GODBEY, regional director of operations, JEFF CHEYNE, service center manager, ROBERT CURRIE TForce Freight Labor Manager, IBT local 745 and me (Exhibit #2, Doc. 45, page 21). There was no such position available for me to return to, because JEFF CHEYNE had already hired someone for my position before I was terminated on 8/22/17 (see paragraph #5 above). This was a false narrative and pretext to my termination of a non-existing position was made almost two months (55 days) after my termination. Exhibit #2 is a true copy of the business document obtained from Tforce Freight via certified mail.

8. On October 19, 2017, on my way to work I called NICK HANDCOX, the daytime TForce Freight clerk & union steward, I informed him that I was on my way to work the day-time shift. NICK HANDCOX, stated to me “not to come into the office because someone else was already working my shift and that there was no position for me at the TForce Freight”. I still showed up at the TForce Freight terminal and I handed NICK HANDCOX, my third grievance for the false narrative of job abandonment and I left a copy for TForce Freight (see attached Exhibit #8, Doc, 94, pages 17-23). NICK HANDCOX & the new TForce Freight assistant service center manager at that time (name unknown) became verbally aggressive towards me. I left the facility to avoid any physical altercations.

9. Sometime on or after October 25, 2017, I obtained a copy of my termination letter from ROD CUEVAS, IBT local 745 trustee, business

representative. The termination letter was marked as received by IBT local 745 on October 25, 2017. My termination letter dated October 23, 2017, from JEFF CHEYNE, who again fired me a non-employee at the time for a non-existing position after I showed up to work on October 19, 2017. The letter stated as follows:

“On October 10, 2017, you were sent a 48 hour letter to report to work, but you have failed to do so. Due to your job abandonment your employment is terminated. This is an official notice of termination as outlined under article 6 of the current labor agreement between UPS Freight and IBT local 745.”

On the bottom left of the letter copies were sent to RONALD GODBEY, regional director of operations, JEFF CHEYNE, service center manager, ROBERT CURRIE, labor manager, IBT local 745 and me (Exhibit #3, Doc. 45, page 22). I did not receive this termination letter. Tforce Freight continued with their false narrative by falsely stating that I was terminated due to job abandonment for a non-existing position. A little over 2 months (64 days) after my previous termination on 8/22/17. This termination letter Exhibit #3 is a true copy of the original business document obtained from IBT local representative.

While discussing the termination letter with BRENT TAYLOR, Secretary treasurer & business manager, insisted that I wasn't terminated on August 22, 2017, because TForce Freight did not provide a notice of termination and that plaintiff's termination letter on October 23, 2017, was the notice required to proceed with my grievance hearing. BRENT TAYLOR

and ROD CUEVAS advised me that my claims of retaliation will not be decided by the grievance panel and that I was required to fill out a 4th grievance cover sheet as to include the notice of termination on October 23, 2017, so that IBT local 745 can pursue my claims concerning contractual disputes issues only before the grievance panel on November 16, 2017.

Due to the implied threat by BRENT TAYLOR, I had no other choice but to fill out the 4th grievance cover sheet as directed by ROD CUEVAS and BRENT TAYLOR, so that the union can pursue my grievances (pursuant to article 7.1. - Where the grievance procedure can be invoked only by union or employer representatives).

10. On October 27, 2017, prior to the pre-grievance hearing, I emailed ROD CUEVAS and instructed him to argue these issues for wrongful termination hearing as follows:

- 1) I was instructed that Aug. 22 was my last day by manager.
- 2) I was escorted off the property and my badge was confiscated.
- 3) I wasn't working for two months.
- 4) another employee was hired for my position.

Based in the facts above and since there was no notice of termination. This constitutes a *de facto* termination. A termination without notice, which is a wrongful termination and a contractual violation."

See Exhibit #10, Doc. 45, page 22, attached hereto. This Exhibit is a true copy of my email to ROD CUEVAS.

11. On October 30, I attended a pre-grievance hearing with IBT local 745 representative ROD CUEVAS, convened at the TForce Freight terminal located in Ft. Worth, Texas. Present in the pre-hearing was JEFF CHEYNE, service center manager, JASON FOLMER, union city steward, NICK HANDCOX, union clerk steward, ROBERT CURRIE, TForce Freight labor manager. No agreement was reached, but the following admissions were made during the pre-grievance hearing:

JEFF CHEYNE admitted that no notice was provided at the time of termination on 8/22/17 where the plaintiff was relieved of his duties. In addition, JEFF CHEYNE admitted talking to the plaintiff about the new evening clerk position but denied offering the plaintiff the position.

ROBERT CURRIE admitted that the plaintiff was improperly discharged.

ROD CUEVAS informed me that the grievance hearing was set for November 16, 2017, in Tampa, Florida, which made it impossible for me to attend the grievance hearing. ROD CUEVAS told me not to worry that the union would take care of it.

12. My grievances were heard on November 16, 2017, by the Southern Region Teamster TForce Freight Grievance committee before

S.R.T.U.P.S.F.G.C committee hearing in Tampa, Florida. ROBERT CURRIE, TForce Freight labor manager, and KRIS TAYLOR, IBT local 745 assistant business representatives were present at the hearing. The committee hearing for plaintiff's grievance case #17-11-001F decision "was based on the presented claim of the union was denied."

13. As a result of the grievance committee's decision to deny my grievance claims presented by KRIS TAYLOR, IBT local 745 assistant business representative, on behalf of IBT local 745 union, and ROBERT CURRIE, TForce Freight labor manager, I was injured by loss of pay for 3 months, from 8/22/17 to 11/16/17, in the amount of \$3,685.71 (per article 7.2) and the customary x3 for the contractual violation which equaled to \$11,057.14 for a grand total of \$14,742.85.

I was unaware that Tforce freight and IBT local 745 conspired to submit false documents which contained a false narrative of job abandonment, for a non-existing position, to the grievance panel to defraud me of my pay and job. This conduct by Tforce Freight and IBT local 745 was intentional with the specific intent with malice to harm me, and deny me of my pay, job and benefits.

14. On June 4, 2018, I filed a discrimination complaint with the U.S. Department of Labor, Office of Federal Contract Compliance Programs (OFCCP) complaint # 100207766 for allegations of discrimination based on veteran status and for discriminatory retaliation to recover my pay, benefits and job

On or about February 6, 2019, TForce Freight responded to my complaint of discrimination via their attorneys Amber M. Rogers, Jayde Ashford Brown from the law firm Of Hunton Andrews Kurth LLP located at 1445 Ross Avenue, Suite 3700, Dallas, TX 75202 with the same false narrative that they used in my grievance hearing on November 16, 2017, with the specific intent with malice to deny me of my pay, job recovery and benefits.

Hector M. Melendez Jr., J.D., compliance officer for the OFCCP reviewed UPS Freight's response and made the following statement in an email to me stating that:

"In summary, USPF's main argument is they terminated your employment for job abandonment. They did not mention or acknowledge any termination on 8/22/17, as you allege. However, they do claim, as you do, that 8/22/17 was your last day of work. What I find hard to believe is their position that despite knowing there was no available position for you (they had hired someone for the AM shift and the PM shift senior employee/clerk was taking over the position you had held), they somehow expected you to show up for work after 8/22/17. Moreover, I find it hard to believe, for 49 days, they did not contact or notify you at all; they waited 49 days to send you a 48-hour notice to return to work. Had they immediately terminated you for either insubordination (for argument with Clint Shirley) or

for not being able to take the AM shift after being displaced, this case would be very different. UPSF's actions/delays seem very peculiar to me. In any case, I intend to get to the bottom of this."

See Exhibit #4, Doc. 45, page 24 attached hereto. This Exhibit is a true copy of a government document emailed to me by the compliance officer Hector M. Melendez.

15. On May 21, 2019, the U.S. Department of Labor OFCCP mailed me a Notification of results of investigation, finding that Tforce Freight was a federal contractor, notification of no violations and transfer to EEOC for further investigation. The findings state as follows:

"Based on the findings of this investigation, there was insufficient evidence that the contractor violated its obligations under the nondiscrimination and affirmative action provisions of the VEVRAA. However, OFCCP finds that the complainant may have a *prima facie* case to support his claim that the contractor wrongfully terminated his employment in retaliation for filing a grievance and the contractor's defense is pretextual".

On May 31, 2019, the U.S. Department of Labor OFCCP transfer my retaliation discrimination case over to EEOC pursuant to a Memorandum of Understanding (MOU) which was developed between EEOC and OFCCP which EEOC assumes jurisdiction over individual complaints which include allegations of

discrimination of an individual nature of the basis of race, color, religion, sex, national origin, or age (41 CFR60-742.5(d)).

16. On March 24, 2021, TForce Freight responded to plaintiff's EEOC complaint no. 450-2019004874 via their attorney Michael B. Guillian with the law firm of BurnsBarton PLC, located at 2201 E. Camelback Road, suite 360, Phoenix, AZ 85016. UPS & TForce Freight responds as follows:

"... UPS terminated Areizaga's employment as a result of his express inability to transfer to an open morning shift position after he was displaced from an evening shift position by an employee with higher seniority."

See Exhibit #5, Doc. 45, page 25 attached hereto. This Exhibit is a true copy of the original government document obtained from the EEOC. This is Tforce Freight's pretext to my first termination on 8/22/2017 and a contradiction to the false narrative of job abandonment made by Tforce Freight in my grievance hearing and administrative review before the U.S. Department of Labor OFCCP as stated in the paragraphs above. This pretext comes a little over 3 ½ years (1,310 days) after my first termination, which is late and copies the alternate possible narrative as stated above by Hector M. Melendez Jr., J.D., compliance officer who states:

... Had they immediately terminated you for either insubordination (for argument with Clint Shirley) or for not being able to take the AM shift after being

displaced, this case would be very different...

17. On 5/17/2022, the EEOC issued a determination and notice of rights and made no findings regarding whether the investigation would establish any violation of the statute, they provided me with a notice of right to sue and file a law within 90 days of receipt of the notice. I viewed and/or received this notice on or after 5/25/2022.

18. As a result of defendant's intentional acts of repeated retaliation, unlawful conduct, false statements of material facts. I have suffered injuries including mental anguish, fear, anxiety, isolation insomnia, causing pain, suffering, weight gain and exacerbating my high blood pressure. As a result, I gained weight, and I was diagnosed with diabetes II and umbilical hernia surgery in March of 2021. I have also suffered economical by defendant's repeatedly interfering, impeding my all my efforts to recover my employment benefits to include my job, pay, back pay, forward pay damages in the following protected activities; (1) wrongful termination for filing a complaint against a supervisor for harassing a female employee because of her sex and physical disabilities, (2) by conspiring with IBT local 745 to submit false statements of material facts by falsely claiming that I abandoned my position in a grievance hearing across state lines in Florida before a grievance committee with the specific intent to deny my rights to my testimony of retaliation (same elements as the contractual violations) in an official proceeding under the federal jurisdiction, and defraud me of my pay of \$14,742.85 and deny me from getting back my job, (3) by submitting a false

statement of material facts of job abandonment to the U.S. Department of Labor OFCCP to an investigator in a federal administrative proceeding with intent to hinder my testimony of retaliation, impede, oppose my rights to testify and recover my pay and job as state in item #2 above, (4) by submitting a contradicting pretext to my first termination on 8/22/17 to the EEOC investigators in a federal administrative proceeding. This contradicting pretext comes a little over 3 ½ years (1,310 days) after my first termination with the intent to harm me, oppose, hinder my retaliation testimony before the EEOC oppose my rights to recover my pay and job as state in item #2 above.

I, EFRAIN AREIZAGA. declare & certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge and recollections. Executed on August 27,2025.

Respectfully submitted
Efrain Areizaga, *Pro Se*

By: /s/ Efrain Areizaga
Efrain Areizaga, *Pro Se*
6245 Rufe Snow Drive, 280
Watauga, TX 76148
Telephone: (469) 297-0216
efrainareizaga@gmail.com

APPENDIX K

Date: August 21, 2017

To: Jeff Cheyne, Operations Manager UPS
Freight Ft. Worth

Nick, Union Clerk Steward Ft. Worth

From: Efrain Areizaga, Union Clerk Part-time UPS
Freight, Ft. Worth

Re: Unlawful Retaliation by UPS Supervisor Clint
Shirley

**I. SUMMARY OF CONTRACTUAL &
STATUTORY VIOLATION**

CLINT SHIRLEY, upon assuming dock supervisory duties at the UPS Freight facility in Ft. Worth has unlawfully and specifically targeted for termination, JENNIFER BLANKENSHIP, a female dock worker because of her gender and her physical limitations in repeatedly handling hand freight, which on occasions may exceed several hundred pieces and range up to 80 lbs. or more. After I communicated to CLINT SHIRLEY, JENNIFER's request for reasonable accommodations regarding her inability to handle hand freight, because of chest pains and a prior small stroke, CLINT SHIRLEY continue to excessively give her hand freight trailers for unloading to force her resignation. Moreover, on August 18, 2017 during an argument with CLINT SHIRLEY about JENNIFER BLANKENSHIP's resignation & 2 week notice and request to only work a 4 hour shifts. I informed CLINT SHIRLEY that I was going to file a discrimination complaint against him and he responded with an

unlawful retaliation termination threat. CLINT SHIRLEY has violated the following contractual and statutory clauses; Article 6 section 1 – without just cause & Article 28 prohibiting discrimination of the UPS Freight Agreement, American with Disabilities Act of 1990 (ADA), 42 U.S.C. §12101, Discriminatory provisions and the retaliatory provisions of Title VII of the Civil Rights Act of 1964 as amended by the Civil Rights Act of 1991 (CRA '91), Pub.L. No. 102-166, 105 Stat. 1071, prohibiting discrimination in employment on the basis of race, color, religion, gender, or national origin (42 U.S.C. §2000e-5).

II. STATEMENT OF FACTS

1. I am currently part-time union clerk working with UPS Freight in Ft. Worth, Texas during the evening shift.
2. After my position was bided by another senior clerk, I was looking at only couple of weeks of employment with UPS until the Operations Manager JEFF CHEYNE offered me (two weeks ago) the same position in the evenings pending the approval of a second clerk position by Human Resources.
3. As a part-time union clerk with UPS Freight in Ft. Worth, I worked at all times besides UPS Supervisor CLINT SHIRLEY and I have personally witness the sex discrimination and harassment against dock employee JENNIFER BLANKENSHIP. At all times CLINT SHIRLEY disrespected and mistreated JENNIFER BLANKENSHIP.

5. A couple of weeks after CLINT SHIRLEY assumed dock supervision, I communicated to CLINT SHIRLEY, that JENNIFER BLANKENSHIP had some medical issues that that included chest pain and a prior small stroke, after I personally observed that she was having extreme difficulties handling hand freight. Hand freight, can on occasions exceed several hundred pieces and can range up to 80 lbs. or more.

6. CLINT SHIRLEY continued to give JENNIFER BLANKENSHIP excessive hand freight trailers for unloading and up to including bypassing a hot trailer priority assignment that I had personally given to JENNIFER BLANKENSHIP for a hand freight trailer assignment.

7. At all times during CLINT SHIRLEY's supervision of JENNIFER BLANKENSHIP, it was obvious to all employees working at the dock that JENNIFER BLANKENSHIP was having extreme physical problems handling the hand freight.

8. On Friday August 18, 2017 during the evening shift, JENNIFER BLANKENSHIP approached the dock stand and repeatedly attempted to get CLINT SHIRLEY's attention, but he refused to even acknowledge her presence. I then turned around and asked her if I can help her and she stated that she had turned in her resignation in to JEFF CHENEY giving her two week notice with the request to only work 4 hours per day. I then asked her if he read her letter of resignation and she replied "yes" and I then asked her what was his reply, she stated "that was fine." I then stated that it looks like he approved it, but that she would need to clarify with JEFF CHENEY first, but

that it was late and she would need to talk to CLINT SHIRLEY.

9. CLINT SHIRLEY then turned around stated that he was unaware of the 4 hour shift and the he would have to talk to JEFF about it first. After CLINT talked to JEFF on the phone, he turned around and stated that it was none of my business. I then stated that he made it my business when he completely ignored her. CLINT SHIRLEY then raised his voice at me stating to turn around and TCON. I then stated that I was respectful to him and that he should not continue to disrespect me. CLINT SHIRLEY then moved towards me and in my face started yelling that personnel issues are not my business and to turn around and TCON. I then stood up and yelled at him to not raise his voice at me. At that point in time, part-time supervisor THOMAS FOX got in between us to avoid any further confrontations.

10. A couple of minutes later, CLINT SHIRLEY continued with the same rhetoric and I stated that I was filing a complaint against him for his treatment of JENNIFER BLANKENSHIP. CLINT SHIRLEY then stated that "I don't care ... your days here are numbered!"

11. At all time CLINT SHIRLEY was aware that I was referring to his sexual discrimination treatment of JENNIFER BLANKENSHIP and his efforts to have her terminated.

12. Later during this shift, I personally heard CLINT SHIRLEY discussing these personnel issues with driver RICHARD MOORE sometime before 10:00 pm. (August 18th), as I have personally witness

him talking with other non-steward employees about personnel issues on other occasions. Making me realize that CLINT SHIRLEY's threat of termination was specifically done with the intent to intimidate me and prevent me from testifying on behalf of JENNIFER BLANKENSHIP.

III. ARGUMENT AND AUTHORITIES

It is common knowledge that retaliation is against the law: that is, employers may not take any adverse action against an employee for complaining about discriminatory employment practices, or for participating in an investigation of discrimination claims. CLINT SHIRLEY's threat of termination was specifically designed to prevent me from providing testimony of sex discrimination on behalf of JENNIFER BLANKENSHIP.

Title VII anti-retaliation provision protects a person who volunteers to testify on behalf of a coworker even if the person is never actually called to testify, *see Jute v. Hamilton Sundstrand Corp.*, 420 F.3d 166 (2d Cir. 2005). The plaintiff engaged in protected opposition merely by reporting racial harassment, *see Green v. Franklin Nat'l Bank of Minneapolis*, 459 F.3d 903 (8th Cir. 2006). Under Title VII of the Civil Rights Act of 1964, "it shall be an unlawful practice for an employer to discriminate against any of his employees...because he has opposed any practice, made an unlawful employment practice by this subchapter, or because he has participated in any manner in an investigation, proceeding, or hearing under this title." 42 USC §2000e-3(a). Last term, the U.S. Supreme Court unanimously affirmed the importance of this anti-

retaliation provision and in particular held that the clause protects employees who voice disapproval of discrimination when questioned in the course of an employer initiated internal investigation, *Crawford v. Metro. Govt' of Nashville & Davidson County, Tenn.*, 129 S. Ct. 846 (2009).

The EEOC defines "adverse employment action" very broadly, so as to include any "adverse treatment that is reasonably likely to deter protected activity." See EEOC Guidance 8-15. The most expansive definition of "adverse employment action" has been adopted by the Ninth Circuit Court of Appeals, and has been followed by the First, Seventh, Tenth, Eleventh, and D.C. Circuits. Under this definition, which mirrors the EEOC's definition, an action constitutes an adverse employment action if it is reasonably likely to deter employees from engaging in protected activity. Thus, in these jurisdictions, a far broader array of personnel actions may constitute adverse employment actions, including lateral transfers, denial of flex time, negative job references and evaluations, and co-worker harassment. See e.g., *Wyatt v. City of Boston*, 35 F.3d 13 (1st Cir. 1994); *Knox v. Indiana*, 93 F.3d 1327 (7th Cir. 1996); *Ray v. Henderson*, 217 F.3d 1234 (9th Cir. 2000); *Berry v. Stevinson Chevrolet*, 74 F.3d 980 (10th Cir. 1996); *Passer v. Am. Chem. Soc'y*, 935 F.2d 322 (D.C. Cir. 1991).

A supervisor's statement that the plaintiff could be fired for filing his EEOC charge would dissuade a reasonable worker and thus constituted an adverse action. The court further found that "unchecked retaliatory harassment" by the plaintiff's supervisor could by itself constitute an adverse action because it was

sufficiently severe, see *Rivera v. Rochester Genesee Reg'l Transp. Auth.*, 743 F.3d 11 (2nd Cir. 2014).

Retaliation is a tool of power that discourages individuals from asserting their civil rights and that undermines the laws against discrimination. Two of the biggest failures of employers are not training supervisors not to retaliate and not holding supervisors accountable when they retaliate. For an employer, a retaliatory action sends a dangerous message to the workforce that it tolerates discrimination and undercuts an employer's chances for affirmative defenses.

This desire to punish the individual for engaging in protected activity and to deter others from acting similarly, is what makes it retaliation, see *Brisette v. Franklin County Sheriff's Office*, 235 F.Supp. 2d 63 (2003).

IV. REMEDIES

Remedies are governed by the contractual agreement, between UPS and the Teamster Union and/or by arbitration.

V. CONCLUSION AND PRAYER

It is clear that CLINT SHIRLEY discriminated against JENNIFER BLANKENSHIP because of her gender and physical/medical inability to handle hand freight. Discrimination can be confirmed by interviewing JENNIFER BLANKENSHIP and by making a comparison of all dock workers handling hand freight by sex. The numbers don't lie.

It is also clear that CLINT SHIRLEY had a duty to provide JENNIFER BLANKENSHIP with reasonable accommodations if she indeed qualified for the same. CLINT SHIRLEY's failure to even address the reasonable accommodation issue specifically when JENNIFER BLANKENSHIP was clearly in visible physical distress while handling hand freight was a violation of the ADA.

Moreover, CLINT SHIRLEY's termination threat against me after I verbally told him that I was filing a discrimination complaint against him was in violation of the retaliation provisions of Title VII of the Civil Rights Act of 1964 as amended by the Civil Rights Act of 1991.

In addition, CLINT SHIRLEY's failure to keep this matter confidential prior to investigation, by disclosing the issues to a non-steward employee is a dereliction of duty and hinders the fair administration of justice.

Therefore, for the reasons set forth above I pray that the Teamster's Union & UPS Freight;

- a. Provide me with adequate compensation for contractual and statutory violations of the retaliation provisions of the civil rights act.
- b. Provide me with statutory employment protection against any and all unlawful adverse employment actions by UPS Freight up to and including termination.
- c. Adopt, communicate and enforce a policy prohibiting retaliation: Encourage employees who lodge discrimination

complaints to come forward immediately if they believe they are being retaliated against. Promptly investigate and resolve complaints of retaliation. Tell the complaining employee that retaliation will not be tolerated, and urge him to inform the company immediately if he believes he is being retaliated against.

- d. Keep discrimination complaints confidential to the greatest extent possible: The smaller the universe of people who know about a complaint, the smaller the group who might be accused of impermissibly retaliating against the complaining employee. Thus, while it is usually not possible to keep a discrimination complaint completely confidential (because to do so would make it impossible to investigate that complaint), it is important to disclose the complaint only on a "need to know basis," and with an accompanying admonition that (a) the complaint is confidential, and (b) retaliation is prohibited.
- e. Grant me all further relief to which I am justly entitled.

By: /s/ Efrain Areizaga

Efrain Areizaga

4241 Rufe Snow Drive, Unit# 1423

North Richland Hills, TX 76180

Tel.: (469) 297-0616

APPENDIX L

EFRAIN AREIZAGA

vs.

ACTION NO. 4:22-CV-703-Y

TFORCE FREIGHT, INC., ET AL.

**DEFENDANT TFORCE FREIGHT, INC.'S
OBJECTIONS AND RESPONSES TO PLAINTIFF'S
FIRST REQUEST FOR ADMISSIONS**

TO: Plaintiff, Efrain Areizaga, Pro Se, 6245 Rufe
Snow Drive, 280, Watauga, Texas 76148.

COMES NOW, Defendant TFORCE FREIGHT (“De-
fendant”), pursuant to Federal Rule of Civil Procedure
36, serves the following Objections and Responses to
Plaintiffs First Request for Admissions as follows:

PLAINTIFF'S FIRST REQUESTS FOR ADMISSIONS

REQUEST #1

Admit that Plaintiffs replacement for his clerk position
with TForce Freight, was hired prior to Plaintiffs termi-
nation on August 22, 2017.

RESPONSE: Deny.

REQUEST #2

Admit that Plaintiff was terminated by JEFF CHEYNE, TForce Freight Terminal Service Manager on August 22, 2017.

RESPONSE: Deny.

REQUEST #3

Admit that Plaintiff did not receive any monetary compensation for hours worked after his termination on August 22, 2017.

RESPONSE: Deny.

REQUEST #4

Admit to the genuineness of “document 45 — Page ID 427 — Letter from JEFF CHEYNE to Plaintiff, dated October 10, 2017,” submitted to defendant as Doc. #1 in plaintiffs amended complaint Doc. 45 in this case

RESPONSE: ADMIT.

REQUEST #5

Admit to the genuineness of “document 45 — Page ID 428 — Letter from JEFF CHEYNE to Plaintiff, dated October 23, 2017,” submitted to defendant as Doc. #2 in plaintiffs amended complaint Doc. 45 in this case.

RESPONSE: ADMIT.

REQUEST #6

Admit that TForce Freight submitted a position statement to HECTOR M. MELENDEZ JR., compliance officer for the U.S. Labor Department of Labor office of Federal Contract Compliance programs, claiming that the

plaintiff was terminated for abandonment of his position.

RESPONSE: ADMIT.

REQUEST #7

Admit to the genuineness of “document 45 – Page ID 431 – Letter from defendant’s law firm Burns Barton to Quida Black, EEOC Investigator, dated March 23, 2021,” submitted to defendant as Doc. #5 in plaintiff’s amended complaint Doc. 45 in this case.

RESPONSE: Defendant admits that page 25 of Doc. 45 in this case is a genuine copy of the first page of a letter sent by a law firm representing UPS Ground Freight, Inc.⁶ to Quida Black, EEOC Investigator dated March 24, 2021. Otherwise, denied.

REQUEST #8

Admit to that defendant TForce Freight stated that “... UPS (defendant) terminated Areizaga’s employment as a result of his expressed inability to transfer to an open morning shift position after he was displaced from an evening position by an employee with higher seniority.” In the first paragraph of document 45 – Page ID 431 – Letter from defendant’s law firm Burns Barton to Quida Black, EEOC Investigator, dated March 23, 2021,” submitted to defendant as Doc. #5 in plaintiff’s amended complaint Doc. 45 in this case.

⁶ UPS Freight is now Tforce Freight after UPS sold the company to TFI International on April 30, 2021, for \$800 million .

RESPONSE: Defendant admits that the letter by a law firm representing UPS Ground Freight, Inc. to Quida Black, EEOC Investigator dated March 24, 2021, which reflected at page 25 of Doc. 45 in this case, states as follows: “UPS terminated Areizaga’s employment as a result of his expressed inability to transfer to an open morning shift position after he was displaced from an evening position by an employee with higher seniority.” Otherwise, denied.

Respectfully submitted,
Lewis Brisbois, Bisgaard & Smith LLP

/s/ John M. Lynch

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2100 Ross Ave., Ste. 2000

Dallas, TX 75201

Telephone: 214-722-7100

Facsimile: 214-722-7111

Attorney for Defendant TForce

Freight Inc.

CERTIFICATE OF SERVICE

This shall verify that a true and correct copy of the above and foregoing document has been sent to all counsel

record and the pro se Plaintiff according to the Federal Rules of Civil Procedure on the April 22, 2025.

Via email and Regular HS Mail

Efrain Areizaga, Pro Se

6245 Rufe Snow Drive, 280

Watauga, TX 76148

efrainareizaga@gmail.com

/s/ John M. Lynch

John M. Lynch

APPENDIX M

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF TEXAS FORT
WORTH DIVISION**

EFRAIN AREIZAGA

vs.

ACTION NO. 4:22-CV-703-Y

TFORCE FREIGHT, INC., ET AL.

**PLAINTIFF'S REPLY TO TFORCE FREIGHT
RESPONSE TO PLAINTIFF'S REQUEST FOR
DEFAULT AND TO ORDER TO SHOW CAUSE**

Now comes EFRAIN AREIZAGA, Plaintiff replies to defendant's response to plaintiff's request for an entry of default and Order to show cause (Doc. 98). Defendant's responses failed to meet the excusable neglect requirement established by law due to their willful failure to file an answer pleading in a timely manner. In addition, defendant's willfully fails to comply with an order to show cause (Doc. 96) by failing to file a responsive pleading in good faith. Defendant's proposed responsive pleading fails to comply with the established principles of law and was done in bad faith as an instrument to delay and obstruct the fundamental fairness of these proceedings. Defendant's proposed answer pleadings denials absent any material

facts with denial of their own business records, will intentionally delay the trial for the next four to five years. In addition, it provides the Court with clear and convincing evidence that the defendant had no intentions of filing an answer pleading in a timely manner.

Moreover, the Plaintiff is prejudiced by the delay and defendant's failure to provide a single complete factual response/answer to Plaintiff's amended pleading, thereby preventing the Plaintiff to adequately address the issues at trial. This constitutes an unfair surprise infringing on Plaintiff's constitutional rights.

I. CASE BACKGROUND AND SUMMARY

The defendant has willfully and intentionally engaged in discriminatory retaliation actions against the Plaintiff and has unlawfully obstructed every effort plaintiff has made to address his constitutional rights in every administrative proceeding spanning over the last 8 years. The defendant continues with their willful and unlawful misconduct in these proceedings by disobeying the order to show cause, by their bad faith denials of Plaintiff's factual allegations in their proposed answer pleadings, which can be verified by defendant's business records or defendant's business records attached to the complaint.

The Plaintiff filed his original complaint on August 15, 2022 (Doc. 1) and Plaintiff's amended complaint filed on March 27, 2023 (Doc. 45), both complaints have the same factual allegations and the same Title VII cause of action.

On April 9, 2024, the Court denied the defendant's motion to dismiss Plaintiff's amended complaint (see order Doc. 93). The time to file an answer pleading is determined by this order which was 14 days after plaintiff filing of plaintiff's more definite statement required which was due no later than April 29, 2024 (Doc. 93). This would require the defendant to file their answer pleading no later than May 13, 2024. So, this would give the defendant **637 days** from plaintiff's original complaint to review defendant's business records and admit plaintiff's factual allegations in his amended complaint.

The following factual allegations on Plaintiff's amended complaint which can be answered by defendant's business records and/or verified with attached defendant's business records (defendant denied all of these factual allegations):

- (a) On August 21, 2017, the plaintiff filed a grievance against CLINT SHIRLEY, the current dock supervisor, who was harassing JENNIFER BLANKENSHIP, a dock worker, because of her sex and physical limitations as personally witnessed by the plaintiff (see Doc. 45, paragraph 22 & Doc. 94 pages 6 to 10).
- (b) On August 22, 2017, the Plaintiff was unlawfully terminated without cause and without the grievance procedure required by the Collective Bargaining Agreement, since the defendant had already hired plaintiff's replacement the day before his termination (see Amended Complaint, Doc. 45, paragraph 23 – can be verified with business records).

(c) On October 16, 2017, the plaintiff received a USPS certified letter (#7016 2710 0000 1649 9199) dated October 10, 2017, from JEFF CHEYNE, the terminal service center manager and it stated as follows (TForce Freight's business record):

"You have been absent without authorization since 8/22/17. You need to report to work by 10/19/17 for the 0930-1600 shift. If you do not report to work by 10/19/17 for the 0930-1600 shift, the Company will consider you as having voluntarily quit your position at UPS Freight."

On the bottom left of the letter copies were sent to RONALD GODBEY, regional director of operations, JEFF CHEYNE, service center manager, ROBERT CURRIE TForce Freight Labor Manager, IBT local 745 and the plaintiff (see Amended Complaint, Doc. 45, paragraph 27).

(d) On October 18, 2017, the plaintiff filed a grievance against the defendant for the false narrative of job abandonment letter (see paragraph above) and warned the defendant that use of this false narrative in the grievance procedure will in violation of 18 U.S.C. § 1001 – under the false statement accountability act of 1996 and 18 U.S. C. § 1341 Mail fraud (a RICO predicate act) (see Doc. 94 page 19 to page 20). In addition, the defendant as a Federal Contractor with the U.S. Government, also had a mandatory duty to disclose all misconducts regarding the violations of any title 18 violations

as stated in the paragraph above, or they run the risk of suspension and debarment from all contracts with the federal government (see Doc. 94 page 22 – defendant’s business record).

(e) Sometime on or after October 25, 2017, the Plaintiff obtained a copy of Plaintiff’s termination letter from ROD CUEVAS, IBT local 745 trustee and business representative. The termination by defendant Tforce Freight documented as received by IBT local 745 on October 25, 2017, and marked as exhibit #4 as evidence in plaintiff’s grievance complaint (letter incorporated by reference as the document #2 attached hereto – defendant’s business document). Plaintiff’s termination letter dated October 23, 2017, from JEFF CHEYNE, service center manager, who again fired the plaintiff a non-employee at the time, for showing up to a non-existing dock clerk position on October 19, 2017, located at the TForce Freight terminal in Ft. Worth. The letter stated as follows:

“On October 10, 2017 you were sent a 48 hour letter to report to work, but you have failed to do so. Due to your job abandonment your employment is terminated. This is an official notice of termination as outlined under article 6 of the current labor agreement between UPS Freight and IBT local 745.”

On the bottom left of the letter copies were sent to RONALD GODBEY, regional director of operations, JEFF CHEYNE, service center manager, ROBERT CURRIE, labor manager, IBT

local 745 and the plaintiff (see Doc. 45 paragraph 29 – Tforce Freight business record).

(f) On November 16, 2017, the defendant willfully filed the false narrative document of job abandonment to the grievance committee (see Doc. 45 paragraph 34).

(g) On February 6, 2019, the defendant willfully filed a false narrative document of job abandonment to the federal administrative agency – Office of Contract Compliance of the Labor Department (see Doc. 45 paragraph 37).

(h) On March 24, 2021, TForce Freight responded to plaintiff's EEOC complaint case no. 450-2019004874 via their attorney Michael B. Guillian with the law firm of BurnsBarton PLC. TForce Freight responds as follows (letter page 1 paragraph 1, incorporated by reference as document #5 attached hereto – defendant's business record):

"... UPS terminated Areizaga's employment as a result of his express inability to transfer to an open morning shift position after he was displaced from an evening shift position by an employee with higher seniority." (see Doc. 45 paragraph 41).

(i) On January 25, 2021, UPS announced it had reached an agreement to sell UPS Freight to TFI International for \$800 million. As part of the agreement UPS assumes managerial control over TForce Freight by providing TForce Freight with the following: freight volume, UPS's Ground with Freight pricing solutions,

UPS's technology platforms for rating, shipping and visibility for the next 5 years. In addition, UPS assumes TForce Freight's liability via contractual agreement where TForce Freight subcontracts with UPS under the federal Government Contracts pursuant to the requirements of the Federal Acquisition Regulation (FAR) (see Doc. 45, paragraph 45).

II. ARGUMENTS AND AUTHORITIES

A. Plaintiff's request for Default complies with the Federal Rules of Civil Procedure (FRCP) and Court's local rules for the Northern District of Texas (LR).

On May 22, 2024, the Plaintiff filed a request to the Clerk to enter a default (Doc. 95) for defendant's will failure to file a timely answer on May 13, 2024, pursuant to the Federal Rules of Civil Procedure 55(a). This is the Clerk's ministerial duty as required by the Federal Rules of Civil Procedure. The request for default to the clerk is not a motion within the Court's local rules for the Northern District of Texas, because the Clerk of Court cannot render or decide legal issues. Therefore, the Plaintiff is not required to confer with the Defendant for an entry of default by the Clerk pursuant to motion practice in LR 7.1.

Local Civil Rules of the United States District Court for the Northern District of Texas Rule LR 1.1(a) defines the word "Court" means the district judges of the United States Court for the Northern District of Texas, as a collective body. LR 7.1 states

that “Unless specifically controlled by another local rule or otherwise directed by the *presiding judge*, motion practice is controlled by subsection (h) of this rule. This rule applies to the “Court” as per LR 1.1(a) and not the Clerk of Court. Plaintiff’s request for default was addressed to the Clerk pursuant to FRCP 55(a) which states that “When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and failure is shown by affidavit or otherwise, *the Clerk must enter the party’s default*. This is a ministerial duty that the FRCP imposes on the Clerk of Court. FRCP 55(a) is a rule where the defendant failed to comply in a timely manner. It’s a yes only rule with a verifiable affidavit. It’s not a debatable rule for use in motion practice pursuant to LR 7.1, like FRCP 55(b)(2). Moreover, FRCP 55(a) as written, does not allow for motion practice since the Clerk of Court cannot decide legal issues and the FRCP supersedes LR 7.1.

On August 15, 2022, this Court instructed the plaintiff to provide a copy of any document electronically file (Doc. 5) and plaintiff provided a copy of plaintiff’s request for a default to the Clerk to this Court. Since this case has been litigated for almost 2 years without an answer pleading, the Clerk in the abundance of caution conferred with the Court regarding legal issues of “Excusable Negligence.” Only the Court can resolve legal issues, before the Court can order the Clerk to enter a default against the defendant.

On May 29, 2024, the Court issued an Order to Show Cause to the Defendant why Plaintiff’s request for entry of a default should not be granted (see Doc. 96). LR 55.3 states that “before the clerk is required

to enter a default, the party requesting such an entry must ... submit a proposed form of entry of default ...” The plaintiff cannot file a form to the clerk in this case until the Court instructs the Clerk to enter a default, and these instructions will be in the form of a Court Order. Plaintiff has complied with LR 55.3 by providing a “proposed Court Order” for the Court to instruct the Clerk to enter a default against TForce Freight for a plaintiff’s discriminatory retaliation claim. Proposed order attached to this reply in compliance with LR 7.1(c) and LR 55.3.

Moreover, LR 55.3 does not state when the plaintiff must file a “Form Entry of Default. This rule is specific for defendants that fail to make any filings in the case.

B. Defendant willfully failed to timely file an answer pleading, failed to provide excusable negligence, failed to provide a meritorious defense and the plaintiff is prejudiced by the defendant’s willful and intentional misconduct.

FRCP 55(a) states that “When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and failure is shown by affidavit or otherwise, the Clerk must enter the party’s default.” Defendant states that a default should not be entered because they have previously defended the case. But the law does not support this argument, since the defendant failed to file an answer pleading in a timely manner, defendant has also failed to defend. The defendant is therefore required to provide “excusable negligence,” before the Court allows the defendant to file an answer pleading.

The defendant continues to litigate in bad faith by misrepresenting to the Court that defendant's failure to file an answer pleading was a technical error caused by "Plaintiff's filing of a more definitive statement as an "Affidavit" rather than an amended complaint, which cause TForce Freight's counsel to fail to identify the filing as part of an amended complaint and calendar appropriate response deadline (Doc. 98, page 7, paragraph 2).

Plaintiff's filing of a more definitive statement does not set defendant's time to file an answer pleading. It was the Court's Order entered on April 9, 2024, denying defendant's motion to dismiss and requiring plaintiff to file a more definitive statement no later than April 29, 2024 (Doc. 93) which automatically set defendant's deadline to file an answer pleading on May 13, 2024. Therefore, the defendant fails to provide excusable negligence required by law and chose to misrepresent the law in their response.

This is a clear violation of FRCP 11(b) (1) presented for the improper purpose to cause unnecessary delay, harass, and increase the cost of litigation. Under certain circumstances, ... an isolated factual misrepresentation may serve as the basis of FRCP 11 sanctions, see *Jenkins v. Methodist Hosp.*, 478 F.3d 255, 265 (5th Cir. 2007).

In addition, the defendant failed to act expeditiously to correct their willful negligence as evidence by their failure to even respond to plaintiff's request for a default filed on May 22, 2024 (Doc. 95).

Defendant's responsive pleading fails to comply with the established principles of law and was done in

bad faith as an instrument to delay and obstruct the fundamental fairness of these proceedings. FRCP 8(b)(2) a denial must fairly respond to the substance of the allegation. FRCP 8(e) states that pleadings must be construed to do justice. The defendant failed to fairly respond to the substance of the allegation in their proposed answer pleading. Defendant's proposed answer pleading, which is void of any facts & substance, failed to admit their own business records and factual allegations that can be verified by their own business record. In addition, defendant failed to state a legitimate non-retaliatory reason for their decisions in plaintiff's retaliation claim. Defendant's proposed answer pleading violates FRCP 8(e) because it cannot be construed to do justice.

The Court's order to show cause gave the defendant 26 days to prepare an answer pleading, but defendant's proposed answer pleading was a last-minute filing which was poorly done, and extremely difficult to decipher which factual allegation were actually denied. The proposed answer pleading itself provides the Court with sufficient evidence to enter a **default** against the defendant for their willful failure to file a timely answer pleading and their failure to comply with this Court's Order to Show Cause by filing a proposed void of facts and substance pursuant to the FRCP 8(b)(2) & violated FRCP (e) where pleadings are construed to do justice.

Defendant's proposed answer pleadings denials will intentionally delay the trial for the next five years. The factual allegations on Plaintiff's amended complaint as stated above in subsections (a) thru (i) can easily be answered by defendant's business

records and the denials of the factual allegations with attached defendant's business record constitutes a material false statement of fact in violation of 18 U.S.C. § 1001 – under the false statement accountability act of 1996, and an attempted obstruction of an official proceeding under 18 U.S.C. § 1512 (c)(2). In addition, the defendant denied the sale of UPS Freight to TFI International for \$800 million. And that as part of the agreement UPS assumes managerial control over TForce Freight by providing freight volume, UPS's Ground with Freight pricing solutions, UPS's technology platforms for rating, shipping and visibility for the next 5 years. These facts are found in news reports see https://tfiintl.com/wp-content/uploads/2021/01/2021.01_TFI-International-Agrees-to-Acquire-UPSF_vF.pdf. The reason for the denial was to protect UPS from misleading the Court with their denial of the same fact in their answer pleading (Doc. 28, paragraph 45), to admit to this factual allegation will require the Court to reverse its order to dismissing defendant UPS from this litigation. Denial of this factual allegation constitutes a materially false statement of fact in violation of 18 U.S.C. § 1001 – under the false statement accountability act of 1996, and an obstruction of an official proceeding under 18 U.S.C. § 1512 (c)(2).

Since the plaintiff has established a prima facie case of retaliation in his amended complaint, the burden shifts to the employer/defendant to state a legitimate non-retaliatory reason for its decision, see *Lemaire v. La. Dep't of Transp. & Dev.*, 480 F.3d 383, 388 (5th Cir. 2007), *Davis v. Fort Bend Cnty*, 765 F.3d 480 (5th Cir. 2014). The defendant has failed to provide in their proposed answer pleading any legitimate non-

retaliatory reason for their decisions. Therefore, the defendant has failed to provide a meritorious defense in their answer pleading.

The Plaintiff is also prejudiced by the delay and defendant's failure to provide a single complete factual response/answer to Plaintiff's amended pleading, thereby preventing the Plaintiff to adequately prepare and address these issues at trial. This constitutes an unfair surprise infringing on Plaintiff's constitutional rights.

Willful failure in this context is reviewed under an excusable neglect standard, see *Beall v. Cockrell*, 174 F. Supp. 2d 512, 517 (N.D. Tex. 2001). In evaluating whether good cause exists, Courts consider the following factors: (1) whether the default was willful, including whether defendant acted expeditiously to correct the default; (2) whether setting the default aside would prejudice the adversary; and (3) whether a meritorious defense has been presented, see *Effjohn Int'l Cruise Holding, Inc. v A&L Sales, Inc.*, 346 F.3d 552, 563 (5th Cir. 2003), *Lacy v. Sitel Corp.*, 227 F.3d 290, 292 (5th Cir. 2000), *In re Dierschke*, 975 F.2d 181, 183-184 (5th Cir. 1992), *Pioneer Inv. Servs. Co. v. Brunswick Assoc. Ltd. P'ship*, 507 U.S. 380, 394-95, 113 S.Ct. 1489 (1993). Therefore, pursuant to the factors and analysis above, the Court should enter a default against defendant TForce Freight.

C. The defendant TForce Freight had no Intentions to File an Answer Pleading.

As evidence by the poorly written proposed answer pleading void of facts, substance and the required burden shift where the defendant failed to provide a meritorious defense to retaliation by stating a legitimate non-discriminatory reason for their decision, defendant was not prepared to answer plaintiff's factual allegations in plaintiff's amended complaint. Moreover, if the defendant would admit plaintiff's factual allegations in paragraphs above (a) to (h), the plaintiff can move straight to summary judgment for this Title VII claim of discriminatory retaliation and go to trial on the damages.

Defendant had no intentions to answer plaintiff's amended complaint is because they would be required to admit to their unlawful conduct when they filed their false pretext in several administrative proceedings which were: (1) Teamster's grievance committee, (2) the Labor Department – Office of Contract Compliance, (3) the EEOC. These false statements were all in violation of 18 U.S.C. § 1001 – under the false statement accountability act of 1996 within the jurisdiction of the Executive branch.

Denying a material facts in the answer pleading would be in violation of 18 U.S.C. § 1001 (1996). Where pleadings are not addressed to the judge/court, but to the opposing party and is an administrative matter, see 18 U.S.C. § 1001(b) representations to a judge or magistrate is a judicial function exception to avoid the chilling of advocacy. Only those misrepresentations falling within a court's administrative or housekeeping function can give rise to liability under 18 U.S.C. § 1001.

18 U.S.C. § 1001 – under the false statement accountability act of 1996 – Whoever, in any matter within the jurisdiction of the *executive*, legislative, or *Judicial branch* of the Government of the United States, knowingly and willfully: (1) falsifies, conceals, or covers up by any trick, scheme, or devices a material fact; (2) makes any materially false, fictitious, or fraudulent statement or representation; or (3) makes or uses and false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statements or entry; shall be fined under this title or imprisoned not more than 5 years, or both.

In addition, the false statement filed in the two Federal administrative agencies above constitutes an obstruction of justice in a official proceeding under 18 U.S.C. § 1512 (c)(2). Since, the defendant a corporation has no 5th Amendment right, under the U.S. Constitution, to self-incrimination, the answer pleading can be use against them in other proceedings as evidence in state, federal and administrative proceedings. They can be used in proceedings to suspend and debar the defendant for failure to provide mandatory disclosure of their Title 18 violations, as stated herein, and can be suspended or debarred for up to 3 years from contracting with the Federal Government pursuant to FAR 52,203-13(b).

To prove obstruction of an official proceeding in violation of 18 U.S.C. § 1512(c)(2), the government must establish that the defendant impaired the availability or integrity for use in an official proceeding of records, documents, objects, or other things used in an official proceeding, or attempted to do so, see *Fischer v.*

United States, No. 23-5572 U.S. Supreme Court (2024).

If the Court allows the defendant to file the proposed answer pleading, defendant will be in violation of 18 U.S.C. § 1001 & 18 U.S.C. § 1512(c)(2).

D. A Default Judgment is Warranted by the Court.

Default is a two-step process where the plaintiff is first seeking an entry of a default under FRCP 55(a) and will later file a motion for default judgment under FRCP 55 (b)(2), where the defendant will be provided with a written notice at least 7 days prior to the hearing where the Court will (A) conduct an accounting; (B) determine the amount of damages; (C) establish the truth of any allegations by evidence; or (D) investigate any other matter.

A claim has facial plausibility when the plaintiff pleads factual content that allows the Court to draw the reasonable inference that the defendant is liable for the misconduct alleged, see *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009). This Court's order on April 9, 2024, stated that "Areizaga's second amended complaint is largely sufficient to put TForce on notice of his claim and the grounds upon which it is based (Doc. 93). In addition, the Court allowed the plaintiff to file "Plaintiff's More Definite Statement" providing all the grievance the plaintiff files against the defendant. Therefore, the plaintiff has provided a well pleaded complaint that can be used in motion for default judgment.

Under rule FRCP 55 (b)(2) the Court applies the 5th Circuit *McDonnell Douglas* framework in a Title VII retaliation case in this case, requires the plaintiff first, to demonstrate a prima facie case of retaliation. To set out a prima facie case of Title VII retaliation, a plaintiff must show: (1) that plaintiff engage in activity protected by Title VII, (2) that an adverse employment action occurred, and (3) that a causal link existed between the protected activity and the adverse action, see *Ikossi-Anatasiou v. Bd. Of Supervisors of La. State Univ.*, 579 F.3d 546, 551 (5th Cir. 2009), *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817 (1973). The plaintiff amended complaint provides the Court with the factual content that provides a prima facie case that allows the Court to draw the reasonable inference that the defendant is liable for the misconduct alleged.

If the employee establishes a prima facie case, the burden shifts to the employer to state a legitimate, non-retaliatory reason for its decision, see *Lemaire v. La. Dep't of Transp. & Dev.*, 480 F.3d 383, 388 (5th Cir. 2007), *Davis v. Fort Bend Cnty*, 765 F.3d 480 (5th Cir. 2014).

As demonstrated above the defendant has failed to provide an excusable negligent reason for failing to file a timely answer pleading. A party is entitled to entry of a default by the Clerk of the Court if the opposing party fails to plead or otherwise defend as required by law, FRCP 55(a). Under FRCP 55(a) a default must be entered before the court may enter a default judgment, see *New York Life Ins. Co. v. Brown*, 84 F.3d 137, 41 (5th Cir. 1996).

Defendant's proposed answer pleading fails to state a legitimate non-retaliatory reason for its decision. Defendant's responsive pleading fails to comply with the established principles of law and was done in bad faith as an instrument to delay and obstruct the fundamental fairness of these proceedings. FRCP 8(b)(2) a denial must fairly respond to the substance of the allegation. FRCP 8(e) states that pleadings must be construed to do justice. The defendant failed to fairly respond to the substance of the allegation in their proposed answer pleading. Defendant's proposed answer pleading, which is void of any facts & substance, failed to admit their own business records and factual allegations that can be verified by their own business record, and failed to state a legitimate non-retaliatory reason for their decisions in plaintiff's retaliation claim. Defendant's proposed answer pleading violates FRCP 8(e) because it cannot be construed to do justice.

The Plaintiff is also prejudiced by the delay and defendant's failure to provide a single complete factual response/answer to Plaintiff's amended pleading, thereby preventing the Plaintiff to adequately prepare and address these issues at trial. This constitutes an unfair surprise infringing on Plaintiff's constitutional rights.

The defendant mis-states the law stating that "a default judgment would not be appropriate to award plaintiff damages based on the current record." A motion for default judgment similar to a motion for summary judgment allows the plaintiff to provide affidavits for evidentiary support of cost and damages under FRCP 55 (b)(2), the Court will (A) conduct an

accounting; (B) determine the amount of damages; (C) establish the truth of any allegations by evidence; or (D) investigate any other matter. The Court has the discretion to make any conclusions of law to support his findings and allow any damages that are fair and just.

Since defendants' default was willful, the pleading provides a sufficient basis for a default judgment and under FRCP 55 (b)(2), the Court will (A) conduct an accounting; (B) determine the amount of damages; (C) establish the truth of any allegations by evidence; or (D) investigate any other matter. Therefore, a default judgment against the defendant is warranted.

E. CONCLUSION

Defendant Tforce Freight failed to provide an excusable negligent reason for their failure to file a timely answer pleading and this failure was willful. Plaintiff is prejudice by the delay and the bad faith proposed answer pleading that not only will cause more delay, but it's lack of any facts will prevent the plaintiff from preparing for trial. This constitutes an unfair surprise infringing on Plaintiff's constitutional rights.

WHEREFORE, Plaintiff prays that the Court:

- a. Enter a finding that the defendant failure to file a timely answer pleading.
- b. Enter a finding that the defendant failed to an excusable negligence reason for their failure to file a timely answer pleading.

- c. Enter an order finding that the default was willful.
- d. Enter a finding that defendant's proposed answer pleading itself provides the Court with sufficient evidence to enter a ***default*** against the defendant's failure to comply with this Court's Order to Show Cause by filing a proposed void of facts and substance pursuant to the FRCP 8(b)(2) & violated FRCP (e) where pleadings are construed to do justice.
- e. Enter a finding that plaintiff is prejudiced by the delay and defendant's failure to file an answer pleading in good faith.
- f. Enter an order instructing the Clerk of Court to enter a default against the TForce Freight on plaintiff's Title VII claim of discriminatory retaliation.
- g. For an order granting such other and further relief as the Court may be deem necessary, appropriate, just and fair.

Dated; July 7, 2024.

Respectfully submitted
Efrain Areizaga, *Pro Se*

By: /s/ Efrain Areizaga

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CERTIFICATE OF SERVICE

Plaintiff certifies that a true and correct copy of this document has been filed with the court's CM/ECF system on July 7, 2024, which provides notification of such filing to all parties and counsels of record pursuant to the Federal Rules of Civil Procedures and the Court's local rules.

Respectfully submitted
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