

**IN THE UNITED STATES OF THE SUPREME
COURT**

Case NUMBER

DIANA YAZMIN LUGO

PETITIONER, Pro se Plaintiff

Versus

**BIRMINGHAM JEFFERSON COUNTY TRANSIT
AUTHORITY**

**On Petition For Writ Of Certiorari from the
Eleventh Circuit Court of Appeals**

**APPENDIX OF THE PETITION FOR WRIT OF
CERTIORARI**

Diana Yazmin Lugo

Petitioner, Pro Se

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Volume 3

**Constitutional and Statutory Provisions
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all persons within the United States have the same legal rights as white citizens in matters involving: Making and enforcing contracts, Suing and being sued, giving evidence, Receiving the full and equal benefit of all laws, Being subject to the same penalties and obligations. The statute prohibits racial discrimination by both private and state actors in these protected activities. It ensures that individuals cannot be denied contractual or legal rights because of race.

Title VII of the Civil Rights Act 1964: Title VII of the Civil Rights Act of 1964, codified at 42 U.S.C. § 2000e et seq., is a federal civil-rights statute that prohibits employment discrimination based on: Race, Color, Religion, Sex (including pregnancy, sexual orientation, and gender identity, National origin. It makes it unlawful for employers to discriminate in hiring, firing, compensation, promotion, training, or any term, condition, or privilege of employment. Title VII also prohibits retaliation against individuals who oppose discriminatory practices or participate in investigations or proceedings.

Title VII, 42 U.S.C. § 2000e-2(a)(1): Anti-discrimination provision of Title VII of

the Civil Rights Act of 1964. It makes it unlawful for an employer: "to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin."

In short, § 2000e-2(a)(1) prohibits employment discrimination in any aspect of the employment relationship based on race, color, religion, sex, or national origin.

Title VII retaliation, 42 U.S.C. § 2000e3(a): It is unlawful "to discriminate against any individual... because he has opposed any practice made unlawful by this subchapter or because he has made a charge, testified, assisted, or participated in any manner" in a Title VII proceeding.

ADA retaliation, 42 U.S.C. § 12203(a): It is unlawful to "discriminate against any individual because such individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner" in an ADA proceeding

Section 504, 29 U.S.C. § 794: Section 504 forbids disability discrimination in any

program or employers receiving federal funds, guaranteeing equal access and equal treatment for qualified individuals with disabilities.

Seventh Amendment: Preservation Clause/Right to a civil Jury Trial. Judges cannot weigh evidence at summary judgment (*Anderson*). Judges cannot resolve factual disputes (*Tolan*). Judges must credit evidence favorable to the non-movant (*Reeves*). Improper summary judgment invades the jury's constitutional role. Removing a case from the jury through misapplication of Rule 56 is a Seventh Amendment violation that also constitutes a Fifth Amendment Due Process violation.

Fourteenth Amendment-Due Process Clause, Equal Protection Clause, States may not deprive individuals of life, liberty, or property without fair procedures and constitutionally adequate justification.

Equal Protection Clause: States must treat individuals equally and may not enforce discriminatory or arbitrary classifications.

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-11476

DIANA Y. LUGO,

Plaintiff-Appellant,

versus

BIRMINGHAM JEFFERSON COUNTY TRANSIT
AUTHORITY,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Alabama
D.C. Docket No. 2:22-cv-00362-ACA

JUDGMENT

It is hereby ordered, adjudged, and decreed that the opinion issued
on this date in this appeal is entered as the judgment of this Court.

Entered: June 8, 2026

For the Court: DAVID J. SMITH, Clerk of Court

ISSUED AS MANDATE: August 4, 2026

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-11476

DIANA Y. LUGO,

Plaintiff-Appellant,

versus

BIRMINGHAM JEFFERSON COUNTY TRANSIT
AUTHORITY,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Alabama
D.C. Docket No. 2:22-cv-00362-ACA

ON PETITION FOR REHEARING AND PETITION FOR
REHEARING EN BANC

Before NEWSOM, GRANT, and BRASHER, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in
regular active service on the Court having requested that the Court

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Order of the Court

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be polled on rehearing en banc. FRAP 40. The Petition for Panel Rehearing also is DENIED. FRAP 40.

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-11476
Non-Argument Calendar

DIANA Y. LUGO,

Plaintiff-Appellant,

versus

BIRMINGHAM-JEFFERSON COUNTY TRANSIT
AUTHORITY,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Alabama
D.C. Docket No. 2:22-cv-00362-ACA

Before NEWSOM, GRANT, and BRASHER, Circuit Judges.

PER CURIAM:

Diana Lugo appeals the district court's order granting her employer's motion for summary judgment on her discrimination and retaliation claims. We affirm.

I.

Between 2019 and 2021, Diana Lugo worked as a customer service representative in the paratransit group of the Birmingham-Jefferson County Transit Authority—the public transit operator for Birmingham, Alabama. In that role, she scheduled rides so that customers with disabilities could get to and from their medical appointments and other places on time.

Lugo's performance was shaky at the start. In October 2019, she was written up after she failed to schedule a ride, forcing a customer to miss a physical therapy appointment. Lugo's supervisor admonished her to "confirm her trip times with her customers at the close of each call." But the admonishment was apparently not enough. A few days later, Lugo scheduled a customer's requested 4:00 pm ride for 4:00 am, and another customer's requested 12:00 pm ride for 10:00 am. She was again let off with warnings.

Many months went by without another mishap. Lugo's performance reviews from 2020 reflect "good" ratings from her supervisor, but not without reminders to be "less defensive" and "more receptive to correction." In August 2020, Lugo applied for an open leadership position in her group. But she was passed over for Alicia Pebbles—a more senior employee.

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Things went downhill from there. In February 2021, Lugo was instructed to return to the office “until further notice” due to connectivity problems with remote work. A month later, Lugo was written up for abruptly hanging up on a customer who had complained that it was “difficult for him to understand” what she had been saying. Lugo was then put on a performance improvement plan, tailored to boost her “customer service skills” and “ability to follow directives and take responsibility for error[s]/mistakes.” Under the plan, failure to meet these and other goals could lead to “further disciplinary actions including suspension and or termination.”

Six weeks in, Lugo had failed to “meet expectations” on almost all of her goals. Her evaluation recounts incidents in which she “blamed the customer for being rude” and disobeyed orders from more senior employees. As her supervisor put it: Lugo’s “biggest deficiency is her inability to take ownership of her mistakes or errors” and her tendency “to do things her way instead of adhering to the instructions given to her by her supervisor.” She was fired shortly after this poor review.

Proceeding pro se, Lugo filed this lawsuit, alleging race and national origin discrimination under Title VII and § 1981, as well as retaliation under Title VII, § 1981, the Americans with Disabilities Act, and the Rehabilitation Act. She claims that she was terminated not because of her poor performance, but because she is Hispanic and a native of Colombia. Additionally, Lugo claims that she faced

retaliation “for being a tireless advocate for the rights of disabled customers.”

After lengthy discovery, the district court granted the employer’s motion for summary judgment. On Lugo’s disparate treatment claims, the court concluded that the record lacked sufficient evidence to allow a reasonable jury to infer that Lugo’s race or national origin was the but-for cause of any adverse action. On her retaliation claims, the court concluded that she failed to present sufficient evidence of any protected activity or retaliatory motive. After the court denied her motion for reconsideration, Lugo appealed.

II.

We review the district court’s grant of summary judgment de novo. *See McCreight v. AuburnBank*, 117 F.4th 1322, 1329 (11th Cir. 2024). A movant is entitled to summary judgment if he can show that there is “no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a).

The denial of a motion for reconsideration ordinarily does not entail a separate analysis: “we review the original disposition itself under whatever standard of review we would normally use.” *ECB USA, Inc. v. Chubb Ins. Co. of N.J.*, 113 F.4th 1312, 1318 (11th Cir. 2024).

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III.

While Lugo seeks relief under a bevy of different statutes, this case involves two sets of claims: disparate treatment and retaliation. We will address each in turn.

Before we do, however, we pause to note that Lugo's submissions to this Court fall short. While we do not expect pro se litigants to possess "the knowledge of a lawyer," they must still present an intelligible explanation as to why they should prevail. *Gunn v. Newsome*, 881 F.2d 949, 962 (11th Cir. 1989); *see also Loren v. Sasser*, 309 F.3d 1296, 1304 (11th Cir. 2002); Fed. R. App. P. 28(a)(8)(A). Lugo's opening brief is fifty pages long and her reply brief is thirty—well in excess of what the Rules allow. *See* Fed. R. App. P. 32(a)(7)(A). But neither makes her arguments clear or provides much in the way of citations, whether to case law or the record. But giving Lugo the absolute benefit of the doubt, we will proceed to the merits of her appeal.

A.

Title VII bars discrimination "against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1). Section 1981 likewise prohibits "intentional race discrimination" in the context of employment contracts. *Jenkins v. Nell*, 26 F.4th 1243, 1249 (11th Cir. 2022) (quotation omitted); *see* 42 U.S.C. § 1981. Claims under § 1981 involve the "same analytical framework" as those under Title VII. *Bryant v. Jones*, 575 F.3d 1281, 1296 n.20 (11th Cir. 2009).

In employment discrimination cases, a wide variety of circumstantial evidence may be used to defeat a motion for summary judgment—whatever “would allow a jury to infer intentional discrimination by the decisionmaker.” *Tynes v. Fla. Dep’t of Juv. Just.*, 88 F.4th 939, 946 (11th Cir. 2023) (quotation omitted). For instance, a plaintiff may point to “suspicious timing,” “ambiguous statements,” “systematically better treatment of similarly situated employees,” or evidence that “the employer’s justification is pretextual.” *Ismael v. Roundtree*, 161 F.4th 752, 760 (11th Cir. 2025) (quotation omitted).

As best as we can tell, Lugo appears to contend that her coworkers of other races received more favorable treatment. For this kind of comparator evidence to support an inference of discriminatory intent, the comparators must be “similarly situated in all material respects.” *Lewis v. City of Union City*, 918 F.3d 1213, 1224–25 (11th Cir. 2019) (en banc). As relevant here, a similarly situated comparator “will share the plaintiff’s employment or disciplinary history.” *Id.* at 1228. Lugo complains that Alicia Pebbles—a black woman—was picked for the leadership position that Lugo was eyeing. But as Lugo concedes, Pebbles had worked at the Birmingham-Jefferson County Transit Authority for a longer period of time than she had. An “employer is well within its rights to accord different treatment to employees who are differently

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situated in material respects,” including those “who have different work histories.” *Id.* (internal quotation marks omitted).¹

Turning to her termination, Lugo asserts that her employer’s disciplinary justification is pretext for discrimination. To show pretext, she must demonstrate that her employer’s explanation is mired with so many “weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions” that “a reasonable factfinder could find them unworthy of credence.” *Gogel v. Kia Motors Mfg. of Ga., Inc.*, 967 F.3d 1121, 1136 (11th Cir. 2020) (en banc) (quotation omitted). Not only does the employer’s proffered reason have to be false, discrimination must be “the real reason for the adverse action.” *Ismael*, 161 F.4th at 761 (quotation omitted).

In the months leading up to her termination, Lugo was reprimanded—several times—for various work-related issues: underperforming while working remotely, abruptly hanging up on difficult customers, disobeying orders, and failing “to take ownership of her mistakes.” And when Lugo did not address these problems as part of her performance improvement plan, she was fired. Lugo contends that this decision reflects a rush to judgment. In her view, her supervisor “didn’t let [her] talk after accusing [her]

¹ Lugo also contends that the employer turned a blind eye to Pebbles’s internet issues. But Pebbles hardly received more favorable treatment. Like Lugo, Pebbles was written up for the “logins and logouts” documented by the system and then ordered to return to the office “until further notice.” But unlike Lugo, who “was argumentative and denied the data,” Pebbles “accepted the data and results” of the IT audit.

of insubordination,” denying her “the right to speak” and the “opportunity to explain.” Whether her supervisor acted too hastily is not for us to referee. *See Gogel*, 967 F.3d at 1148. Title VII does not empower federal courts to operate as a “super-personnel department assessing the prudence of routine employment decisions, no matter how medieval, high-handed, or mistaken.” *Flowers v. Troup Cnty., Ga., Sch. Dist.*, 803 F.3d 1327, 1338 (11th Cir. 2015) (quotation omitted). Lugo does not point to any evidence “that would call into question the genuineness” of her employer’s disciplinary rationale or suggest that her race or national origin had anything to do with her termination.² *Gogel*, 967 F.3d at 1150. As a result, no reasonable jury could infer that the employer’s justifications were pretext for discrimination.

In short, Lugo has not presented “enough evidence for a reasonable jury to conclude that illegal discrimination occurred.” *McCreight*, 117 F.4th at 1326. The district court did not err by granting her employer’s motion for summary judgment as to Lugo’s disparate treatment claims.

² Lugo contends that her employer committed fraud on the court by submitting forged disciplinary documents. But she does not offer any evidence to support this bold assertion. In fact, Lugo relies on the very documents that she claims to be fabricated, including her employer’s assessment that her “call center service level” had improved as a result of the performance improvement plan. As Lugo would have it, we must accept the positive aspects of her disciplinary record as genuine and disregard the negative aspects as phony. We reject this self-serving approach.

B.

Both Title VII and the Americans with Disabilities Act proscribe retaliation against an individual who has “opposed” any practice made unlawful by those statutes. *See* 42 U.S.C. §§ 2000e-3(a), 12203(a). To make out a successful retaliation claim under either statute, the plaintiff must show that (1) she “engaged in statutorily protected expression,” (2) she “suffered an adverse employment action,” and (3) “there is a causal connection between the two events.” *Shannon v. Bellsouth Telecomms., Inc.*, 292 F.3d 712, 715 (11th Cir. 2002) (alterations adopted and quotation omitted); *Batson v. Salvation Army*, 897 F.3d 1320, 1329 (11th Cir. 2018).

We start with Title VII. Lugo does not point to any evidence indicating that she opposed any race- or national origin-based discrimination against her or anyone else. One exhibit contains a grainy photograph of a computer screen, apparently depicting an email from Lugo’s supervisor informing her that she could raise her “concerns of being discriminated against or ‘picked on’” to a workplace counselor. Even assuming that this unauthenticated exhibit would be admissible at trial, it says nothing at all about race or national origin, and does not indicate that Lugo ever brought up that she believed she had faced discrimination on those grounds. *See Coutu v. Martin Cnty. Bd. of Cnty. Comm’rs*, 47 F.3d 1068, 1074 (11th Cir. 1995). A generalized complaint about “[u]nfair treatment, absent discrimination based on race, sex, or national origin, is *not* an unlawful employment practice under Title VII.” *Id.*

In any event, the temporal proximity between the allegedly protected activity and the allegedly retaliatory acts is too remote to support causation. Lugo complained that she was “being discriminated against or ‘picked on’” in September 2019—almost a year before she was passed over for a promotion and two years before her termination. “A three to four month disparity between the statutorily protected expression and the adverse employment action is not enough” to show retaliatory motive. *Thomas v. Cooper Lighting, Inc.*, 506 F.3d 1361, 1364 (11th Cir. 2007). The disparities in this case do not come close. Moreover, any inference of retaliatory motive is especially implausible given the fact that Lugo received positive performance reviews from her supervisor throughout 2020. No reasonable jury could find that the employer sought to retaliate against Lugo for her September 2019 complaint.

Lugo’s ADA claims fare no better. Lugo asserts that she was punished because she advocated for the “rights of disabled customers.” For support, she relies on an internal document—again from September 2019—explaining that on an unspecified day, she said that she “wanted to take it upon herself to call passengers to notify them that the operator was running extremely late and give the passengers the option to wait or see if they can find another way home.” In response, Lugo’s supervisor admonished her not to “call passengers to give them this option unless told by a supervisor or a team lead.” Setting aside lingering uncertainties as to what Lugo actually did and whether that conduct would be protected under the ADA, the temporal proximity between Lugo’s September 2019 conduct and the challenged employment actions

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is not proximate at all. Again, the earliest of the allegedly retaliatory actions occurred almost a year later. And because Lugo has offered nothing else to support an inference of retaliatory motive, no reasonable jury could find in her favor on her ADA claims.³

* * *

Given the lack of evidence indicating that the employer harbored any discriminatory or retaliatory intent, we **AFFIRM** the district court's summary judgment order.

³ Our analysis "applies with equal force" to Lugo's retaliation claims under § 1981 and the Rehabilitation Act. *Holbrook v. City of Alpharetta*, 112 F.3d 1522, 1526 n.2 (11th Cir. 1997); see *Goldsmith v. Bagby Elevator Co.*, 513 F.3d 1261, 1277 (11th Cir. 2008).

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

DIANA YAZMIN LUGO,

Plaintiff,

v.

BIRMINGHAM-JEFFERSON
COUNTY TRANSIT AUTHORITY,

Defendant.

Case No.: 2:22-cv-362-ACA

ORDER

Plaintiff Diana Yazmin Lugo moves the court to reconsider its opinion granting Defendant Birmingham-Jefferson County Transit Authority's ("Transit Authority") motion for summary judgment pursuant to Federal Rule of Civil Procedure 59(e).¹ (Doc. 136).

"[R]econsideration of an order is an extraordinary remedy and is employed sparingly." *Rueter v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 440 F. Supp. 2d 1256, 1267 (N.D. Ala. 2006). Motions for reconsideration should not be a "knee-

¹ The title of Ms. Lugo's motion, "Plaintiff's Motion for Reconsideration and Relief from a Judgment and Order," suggests that she also raises a Rule 60 challenge to the court's judgment and order, though she makes no arguments as to why Rule 60 relief is warranted. (*See generally* doc. 136). To the extent Ms. Lugo raises a Rule 60 challenge to the court's judgment and order, the court **DENIES** such a challenge because it does not find evidence of clerical mistakes; mistake, inadvertence, surprise, or excusable neglect; newly-discovered evidence; fraud, misrepresentation, or misconduct by Transit Authority; that the judgment is void or has been satisfied, released, discharged, or based on an earlier judgment that has been reversed or vacated; or any other reason that justifies relief. *See* Fed. R. Civ. P. 60(a)-(b).

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jerk reaction to an adverse ruling.” *Id.* at 1268. Reconsideration is available only “when a party presents the court with evidence of an intervening change in controlling law, the availability of new evidence, or the need to correct clear error or manifest injustice.” *Summit Med. Ctr. of Ala., Inc. v. Riley*, 284 F. Supp. 2d 1350, 1355 (M.D. Ala. 2003).²

Ms. Lugo asserts that reconsideration is warranted for several reasons. First, she requests reconsideration because “there may have been clear mistakes and[/]or omission[s] o[f] the facts” in the court’s opinion. (Doc. 136 at 1–2). Second, Ms. Lugo argues that the court erred by denying her motions for appointment of counsel and her motion to compel discovery. (*Id.* at 3, 5–6).³ Finally, Ms. Lugo contends that the court never ruled on her motion for sanctions against Transit Authority and misinterpreted her invocation of Rule 56(f). (*Id.* at 5).

1. Mistakes or Omissions of Fact

First, the facts that Ms. Lugo claims the court misunderstood or omitted do not meet the standard for reconsideration. Ms. Lugo disputes that she became a citizen of the United States in 2002, and she disputes the court’s incorrect spelling

² Although the cases cited in this paragraph are non-precedential district court opinions, the court finds them persuasive.

³ To the extent Ms. Lugo’s Rule 59(e) motion “relitigate[s] old matters, [or] raise[s] argument or present evidence that could have been raised prior to the entry of judgment,” the court DENIES her motion. See *Michael Linet, Inc. v. Vill. of Wellington*, 408 F.3d 757, 763 (11th Cir. 2005).
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of her native country, Colombia. (Doc. 136 at 6). But the court did not state that Ms. Lugo became a citizen in 2002; it stated that she “became a citizen *after* moving to the United States in 2002.” (Doc. 134 at 3) (emphasis added). And although the court used the deposition transcript’s incorrect spelling of Colombia (doc. 134 at 3) (citing doc. 79-1 at 3–4), each time the court referred to Ms. Lugo’s national origin, the court correctly identified that Ms. Lugo was “Colombian.” (*Id.* at 13–14, 19–20). Thus, neither of these issues are “manifest errors of . . . fact” that warrant reconsideration of the court’s ruling. *In re Kellogg*, 197 F.3d 1116, 1119 (11th Cir. 1999).

Ms. Lugo also raises several facts that she believes the court overlooked in its decision. For example, Ms. Lugo explains that although comparator Tunisia Green was required to work from the office after experiencing computer problems at home, Ms. Green never had employee counseling, which proves Ms. Lugo’s disparate treatment claim. (Doc. 136 at 16). But Ms. Lugo’s second amended complaint, filed by her former counsel, did not allege that she was discriminatorily disciplined, only that she was discriminatorily assigned duties, such as working from the office, that other employees were not assigned. (Doc. 43 ¶¶ 17, 25). The court cannot consider claims not included in Ms. Lugo’s second amended complaint.

In addition, Ms. Lugo asserts that the court “over[looked] the fact that [her] [performance improvement plan] was . . . going to be followed with a monthly
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evaluation.” (Doc. 136 at 21). The court did not overlook this fact. The court’s opinion directly quotes the performance improvement plan’s assertion that evaluations would take place every thirty days. (Doc. 134 at 6). Accordingly, Ms. Lugo’s concerns that the court misunderstood or omitted facts essential to her case are not grounds for reconsideration.

2. Denial of Motions for Appointment of Counsel and Motions to Compel

Second, Ms. Lugo takes issue with the court’s denials of her motions to compel and her motions for appointment of counsel. (Doc. 136 at 4–5, 25–27 (motion to compel); *id.* at 3, 24–25 (motions for appointment of counsel)). Ms. Lugo has already moved the court to reconsider (doc. 86), and the court has already reconsidered (doc. 109 at 3–8), its denials of her motions to compel. The court agrees with its thorough analysis in the reconsideration order and thus declines to address the issue again here. (*See id.*).

As to the motions for appointment of counsel, Ms. Lugo argues that the court should have appointed counsel to represent her because she did not know the Federal Rules of Civil Procedure and was a working, single parent. (Doc. 136 at 3, 24–25). The court has compassion for Ms. Lugo’s difficulty finding counsel and admiration for her dedication to pursue her claims. But Ms. Lugo’s lack of knowledge of the Federal Rules of Civil Procedure does not excuse her from knowing and/or
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complying with those rules. *See Moon v. Newsome*, 863 F.2d 835, 837 (11th Cir. 1989).

Moreover, Ms. Lugo's personal circumstances do not change the standard for the appointment of counsel in a civil case: "civil plaintiffs have no right to counsel, [and] the appointment of counsel is appropriate in exceptional circumstances." *Smith v. Fla. Dep't of Corr.*, 713 F.3d 1059, 1065 (11th Cir. 2013); *see Fowler v. Jones*, 899 F.2d 1088, 1096 (11th Cir. 1990) (appointment of counsel is "a privilege that is justified only by exceptional circumstances, such as where the facts and legal issues are so novel or complex as to require the assistance of a trained practitioner"). The court therefore properly denied her three motions for appointment of counsel after finding that her claims were not so novel or complex as to require assistance of counsel at this stage of the litigation. (Doc. 59; doc. 68 at 1; doc. 96 at 2). The court will not reconsider its decision on these grounds.

3. Invocation of Rule 56(f) and Motion for Sanctions

Finally, Ms. Lugo explains that reconsideration is warranted because the court misinterpreted her invocation of Rule 56(f) and never responded to her motion for sanctions against Transit Authority. (Doc. 136 at 5, 28–29 (invocation of Rule 56(f)); *id.* at 5, 27 (motion for sanctions)).

Because Ms. Lugo is *pro se*, the court liberally construed a reference to Rule 56(f) in one of her briefs as invoking both Rule 56(f) and Rule 56(d). (*See* doc. 134
App'x 19 (a))

at 10–12). Ms. Lugo now explains that the court “misinterpreted” her references as invoking those rules when she “was trying to say . . . that the motion for summary judgment could be at risk to be granted under [R]ule 56(f)” in favor of the Transit Authority. (Doc. 136 at 29). With this clarification, perhaps the court’s analyses of Rules 56(f) and (d) were unnecessary. But the court conducted these analyses in an attempt to liberally construe Ms. Lugo’s arguments so as to comply with the Supreme Court’s decision in *Erickson v. Pardus*, 551 U.S. 89, 94 (2007), which held that courts must “liberally construe[]” documents filed *pro se*. And these analyses did not affect the outcome of the judgment at issue because the court denied any possible invocations of Rules 56(f) and/or (d) by Ms. Lugo. (See doc. 134 at 10–12). Therefore, any misinterpretation by the court with respect to these analyses was not a “manifest error” that calls for reconsideration. *In re Kellogg*, 197 F.3d at 1119.

Ms. Lugo also argues that the court erred in failing to rule on her request for sanctions against Transit Authority. (Doc. 136 at 5, 27). In a reply to Transit Authority’s response in opposition to one of Ms. Lugo’s motions to compel, Ms. Lugo moved the court to “[r]emove or review the sanction imposed to [Ms. Lugo] and [r]everse it to [Transit Authority] in Ms. Lugo’s favor because [it] is unfair, contradictory,” and “an error . . . [that] caused harm to [Ms. Lugo] during [Transit Authority’s] [m]otion for [s]anction[s]” against her. (Doc. 92 at 1).

App 20(a)

The court lacked authority to consider Ms. Lugo's request for sanctions against Transit Authority for two independent reasons. First, Ms. Lugo's motion for sanctions also contained motions for other requested actions (*see* doc. 92 at 1), and "[a] motion for sanctions must be made separately from any other motion," Fed. R. Civ. P. 11(c)(2). Second, the court could not possibly have "reversed" the sanctions imposed against her to Transit Authority because the court never entered sanctions against her. (Doc. 92 at 13; *see* doc. 109 at 8–9); *see also* *Lugo v. Birmingham-Jefferson Cnty. Transit Auth.*, No. 23-13904, slip op. at 2 (11th Cir. Mar. 26, 2024) (dismissing Ms. Lugo's appeal from this court's "sanction judgment" for lack of jurisdiction because "the court did not impose sanctions on [Ms.] Lugo . . . at any . . . time"). Nonetheless, to the extent the court was required to rule on Ms. Lugo's motion for sanctions, the court **DENIES** her motion. (Doc. 92).

4. Conclusion

Because the court does not find that it made manifest errors of law and fact in its opinion and entry of final summary judgment to Transit Authority, the court **DENIES** Ms. Lugo's Rule 59(e) motion. (Doc. 136). And to the extent the court was required to rule on Ms. Lugo's motion for sanctions, the court **DENIES** that motion. (Doc. 92).

App 21 (2)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

DIANA YAZMIN LUGO,

Plaintiff,

v.

BIRMINGHAM-JEFFERSON
COUNTY TRANSIT AUTHORITY,

Defendant.

Case No.: 2:22-cv-00362-ACA

FINAL JUDGMENT

Consistent with the accompanying memorandum opinion, the court **GRANTS** Defendant Birmingham-Jefferson County Transit Authority's motion for summary judgment and **ENTERS SUMMARY JUDGMENT** in its favor on all claims. (Doc. 119).

DONE and ORDERED this March 31, 2025.



ANNEMARIE CARNEY AXON
UNITED STATES DISTRICT JUDGE

App 22 (a)

III. CONCLUSION

The court **WILL GRANT** Transit Authority's motion for summary judgment and **WILL ENTER SUMMARY JUDGMENT** on all claims. (Doc. 119). The court **DENIES** Ms. Lugo's motions under Federal Rules of Civil Procedure 56(d) and 56(f), to the extent she seeks relief under those rules in her response. (Doc. 93 at 4). Because this opinion will inform Ms. Lugo as to the status of her case, the court **DENIES AS MOOT** Ms. Lugo's motion for case status update. (Doc. 128).

DONE and **ORDERED** this March 31, 2025.



ANNEMARIE CARNEY AXON
UNITED STATES DISTRICT JUDGE

App23(a)

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

DIANA YAZMIN LUGO,

Plaintiff,

v.

2:22-cv-00362-ACA

**BIRMINGHAM, JEFFERSON
COUNTY TRANSIT AUTHORITY,**

Defendant.

ORDER

Plaintiff Diana Yazmin Lugo, proceeding *pro se*, has moved to compel Justin Ridgeway to appear for a deposition and to answer interrogatories, and to compel Bracie Smith to appear for a deposition. (Doc. 69). The court **SETS** this motion for a hearing on **Thursday, August 31, 2023, 9:15 AM**, Courtroom 6B, Hugo L Black US Courthouse, Birmingham, AL before Judge Annemarie Carney Axon. A court reporter will be present.

The court **ORDERS** Ms. Lugo to provide copies of the subpoenas and interrogatories at issue to the court in advance of the hearing. The court **CAUTIONS**

App 24(a)

Accordingly, the court **DENIES** Transit Authority's motion for sanctions.
(Doc. 87).

III. CONCLUSION

For the reasons articulated from the bench and as further explained by this memorandum opinion and order, Ms. Lugo's motion to compel is **DENIED**. (Doc. 69). Her motion for reconsideration is **DENIED**. (Doc. 86). The Transit Authority's motion for sanctions is **DENIED**. (Doc. 87).

DONE and ORDERED this February 6, 2024.



ANNEMARIE CARNEY AXON
UNITED STATES DISTRICT JUDGE

APP.25(a)

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

DIANA YAZMIN LUGO,

Plaintiff,

v.

**BIRMINGHAM-JEFFERSON
COUNTY TRANSIT AUTHORITY,**

Defendant.

2:22-cv-00362-ACA

ORDER

The court **DIRECTS** the Clerk to **REFER** this matter to Judge Johnson for mediation.

DONE and **ORDERED** this January 28, 2025.



ANNEMARIE CARNEY AXON
UNITED STATES DISTRICT JUDGE

App.26(a)

>max

Results of Customer Care Score Card:

CCA Name: D. Lugo

Period: June - Aug 31, 2020

Abandonment Rate Average: Under 10%

Quality Monitoring Average: (98)

Non-Productive Time Average: 1.31

Attendance: Good

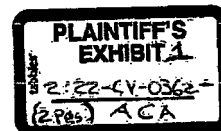
Tardiness: Good

Comments: Program from "daisy" ; Speak Loud

Signature: [Signature]

Date: 9/2/2020

APP 27 (a)





Below is a list of issues/concerns brought forth by Diana Lago that she felt needed to be addressed concerning her time in the Para Transit call center. Also, included are the solutions offered to her after investigation by Supervisor Bracie Smith. These solutions were provided to her in a counselling session on September 24, 2019.

1. Issue: Diana stated that she does not like the way Phonsha answers or talks to her. Stated that Phonsha tells her that she is not her boss, but Bracie is her boss.

Resolve:

Instructed Diana that while, Phon not her boss she is responsible for maintaining the flow of the Para Transit call center and addressing any immediate issues that they may have or notifying supervisor of any issues that she cannot address. It is my (supervisor's) expectation that she will be respected in that role. Any directive or instruction from her is not to be ignored or dismissed. If any of her directives are questioned notify Bracie, Myrna or Terry with your concerns.

2. Issue: Diana stated that around the 4th of July there was an incident involving a customer asking for her ETA and Phonsha took the phone from Diana and put the call on speaker phone and took over the call. She asked her not to do that again.

Resolve:

Informed Diana not to ignore anyone when they are calling your name to get your attention.

Place the customer on a brief hold to see what the person is needing.

3. Issue: Diana stated that sometimes when it is time for her to take her lunch or breaks there are no other agents in the call center to answer the phone. Diana claims her phone rings back to back and another agents' phone don't ring even if they are available.

Resolve:

Diana's lunch time is 12:00-1:00p M-Th, 4:00-5:00p on Fridays and 5:00p-4:00p on Saturdays. According to timeclock data from July 1-Sept. 23, 2019, Diana clocked out for lunch on time or before time for her lunch period. There were seven times she clocked out later than five minutes after her scheduled time (the latest being 14 minutes later). Told Diana to call, text or email me when she feels that it is her time to go on break or lunch and no other agent is in the call center to answer the phone.

4. Issue: There was a day that Diana wanted to take R upon herself to call passengers to notify them that the operator was running extremely late and give the passengers the option to wait or see if they can find another way home.

Resolve:

Diana was instructed to never call passengers to give them this option unless told by a supervisor or a team lead.

APP28(a)



BJCTA 0217



5. Issue: When callers do not want to talk to Diana or cannot understand her, she asks for help from other agents and they say "no" and refuse to help.

Resolve:

Instructions to Diana: If you get a customer who does not want to speak with you, first ask another agent for help and if no one is available, send an email with their name and number to Phonshea, Debra, Terry and Brade indicating that the customer did not want to speak with you and asked for assistance from another agent to take their reservation. Never transfer a call if an agent says they are already on a call.

6. Issue: Diana feels that she should not be addressed about work issues when she is on break or lunch.

Resolve:

If you are on lunch or break, do not go into any working area if you do not want to (possibly) be addressed about work issues.

*My signature acknowledges that I have gone over each one of these issues/concerns with my supervisor and have a clear understanding of what is expected regarding them going forth.

Diane Lugo, CCA

(Refused to sign)

Brade E. Smith 9/24/19

Brade E. Smith, Customer Care Supervisor

Terry J. Barnfield 9/24/19

Terry Barnfield, Customer Care Supervisor

APP 29(a)





INTEROFFICE MEMORANDUM

TO: DIANA LUGO
FROM: BRACIE E. SMITH, CUSTOMER CARE SUPERVISOR
SUBJECT: RESULTS OF COACHING SESSION
DATE: AUGUST 21, 2020
CC: MYRNA PITTMAN

On Friday, August 21, 2020 I had a coaching session you as a result of listening to a call and hearing you tell the customer things that were not a part of your customer care training. I gave you the following scenario: "If Johnny Carrington called and was not happy with the service that you were giving him, could not understand you or did not believe you and asked to speak to your supervisor what is the procedure?" Your response was to "apologize to the customer, tell them we cannot transfer calls to supervisors. We have to take a message, send an email to the supervisor and they will call you back in 24 to 48 hours." I reminded you that that has never been a part of your customer care training. You said that you have been told several times by other employees to never transfer calls to supervisors, to just send an email to the supervisor and they will call the customer back.

To assure that you are clear on the rules of engagement when dealing with customers you are asked to attend a customer care refresher training class on Wednesday, August 26, 2020 from 10:00am to 12:00pm in the Intermodal Training area. In this course we will re-examine the core customer care training that customer care associates receive during their initial training, while giving you an opportunity to ask any questions that you may have on the "how to's" of your job duties.

The Customer Care Department is committed to ensuring that all our associates are equipped with all that they always need in order to provide excellent customer service to our internal and external customers. We believe that providing you with the opportunity to attend this training will increase your ability to provide such service. We look forward to seeing you there.

Please be aware that this documents a coaching meeting and is not added to your file as any disciplinary action. Please let me know if you have questions. Thanks



APP 30 (2)

10-12 (w/1) f...

"Dana Lugo"

Harassment Complaint Form

Name of the Complainant: Diana Lugo

Department: Customer Care

Phone Number:

E-mail:

Today's Date:

Name of the Accused: Bracie Smith

Department: Customer Care

Relationship of the Accused to the Complainant (manager, co-worker, client, etc.): Supervisor

Phone Number:

E-mail:

Date of Incident:

(If more than one event, please report each event on a separate form.)

September 24, 2019 - Diana Lugo allegedly went in Bracie's office with issues to receive help. She wrote down information based on Bracie's comments. Afterwards, she said Bracie sent notifications to show that she (Diana) basically was the issue. *Bracie said she sent but Bracie doesn't know what she was talking about.*

Periodically - Due to Pandemic, Customer Care worked from home. Diana alleges she was called in to the office on some days while all others worked from home. I need dates? (Page 2)
Diana didn't call her but I don't know how she knew she had internet to the store. She was
Diana and Bracie listened to a call which the passenger did not book a ride for one day. When they listened to the call, Diana told Bracie, see, she confirmed twice. Bracie said I know the passenger and she probably meant something else. - Agent B remembers
told Diana to be better about Bracie than said she
placed a call to Bracie. And that's not what she said.
8/13/2020 - Bracie wrote up Diana, but Myrna (Bracie's manager) pulled the write-up and Myrna apologized to Diana. - Diana was called by Bracie and Diana had a conversation
dispute officer Bracie called Diana and Bracie was the
witness that told her that he had to do that. She said so
Diana volunteered to work overtime when Bracie offered it. Diana couldn't do the days she offered, but suggested Monday. Bracie told her no, but then sends a schedule that includes Monday for Diana to work. - Agent B remembers the conversation

It was removed the next day.
He had a shirt with up to a collar - 10 yrs
Wagoner home life. Sometimes called back (Gang Bline) transferred
to home. She helped her. too to her to come (see her the next day).

PLAINTIFF'S
EXHIBIT 14

APP3/CA)

App31ca)

PLAINTIFF'S
EXHIBIT 14
161 pg
2022-CV-862
Exhibits 1-14

BJCTA 0249
(1 pg)

Page 42 1 MS. LUGO: No, no, no. I'm 2 asking if she remember. It was one of 3 the occasion, if we have computer system, 4 we call help desk. Mark came to the 5 office and fixed some of the computers, 6 but he didn't fix mine. But instead of 7 that, he left a sticky note with Tunisia 8 with his cell phone number asking have 9 Diana to call me. 10 MR. DONAHUE: You're asking her 11 if she knows anything about that? 12 MS. LUGO: If she remembers 13 that. 14 A. I don't remember. 15 Q. Because I have the sticky note. 16 A. I don't remember that. 17 Q. You don't remember? 18 A. No, ma'am. 19 Q. Do you know this form which is 20 called "Interoffice Memorandum"? It's 21 stated as Exhibit No. 7 for Plaintiff. 22 MR. DONAHUE: Have you ever seen 23 that before?	1 there. 2 Q. Not this one because it's to 3 myself. 4 A. Right. 5 Q. I just didn't have a blank form 6 because I don't -- I don't have access to 7 that form. I just wanted to ask you. 8 Okay. Have you ever had one 9 before? 10 A. It all depends on what -- what 11 it was about. 12 Q. Excuse me? It -- 13 A. I don't know what it's about 14 over there. 15 Q. It has some information. For 16 instance, it can be for coaching 17 sessions, like improvement plan coachi 18 sessions that's going to tell you where 19 you have improved, this or that or -- it 20 has -- 21 A. Oh, yes. Yes. 22 Q. You have one before? 23 A. Yes.
Page 43 1 THE WITNESS: Yes. I've seen 2 this before. 3 Q. Have you ever had one before? 4 (Witness reviews document.) 5 A. This is for some kind of meeting 6 that we were having or something? 7 MR. DONAHUE: No. It says to 8 Diana Lugo from Bracie Smith, "Results of 9 Coaching Session." 10 THE WITNESS: No. No. 11 MR. DONAHUE: Are you familiar 12 with that? 13 THE WITNESS: No. Because it's 14 got her name on it. 15 MR. DONAHUE: Yeah. 16 THE WITNESS: It doesn't have my 17 name on it. 18 Q. (By Ms. Lugo) No, no, no. Yes. 19 I'm asking for the form. Have you ever 20 seen this form, interoffice memorandum? 21 MR. DONAHUE: Have you ever seen 22 a form like that? 23 A. Yeah. But not that one right	1 Q. Okay. Sure. Have you ever had 2 this -- have you ever had this 3 Performance Improvement Plan, Exhib 4 8? 5 A. Talking about the evaluations? 6 Q. Yes, ma'am. 7 MR. DONAHUE: No. This -- 8 Q. The monthly or some type of a -- 9 it is evaluation. It says that it's, you 10 know, monthly evaluation or -- 11 MR. DONAHUE: This is a 12 performance improvement plan. Have 13 ever had a performance -- performance 14 improvement plan? 15 THE WITNESS: Yes, I have. 16 Q. Perfect. 17 A. Things I need to work on. 18 Q. Thank you. 19 A. Yeah. 20 Q. Have you ever been evaluated 21 from the term 2019 to 2021 with this 22 form? 23 MR. DONAHUE: With the

APP 32C2)

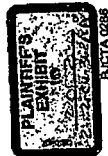
12 (Pages

Veritext Legal Solutions.

877-373-3660

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APP 34(a)

[illegible]

PLAINTIFF'S
EXHIBIT
2:22-cv-0462
ACA (2825)

in according to the
training, the age does
not make people to be
disabled, this service
was only for
disability riders.

1	• Review the duties of a Consumer Care Team. Provide assistance and do not commit your duties to that of the Peer Support Action Officer or any other department	• Respond to queries by referring learners, simply provide the information requested • When scheduling events, they should be seen only by persons with whom the issues concern • They should be seen when they are available • They have to be seen at the times specified in the calendar and must answer any queries • All enquiries should be not confirmed when the speaker is not present • They are open ended	• Inform the duties of a Consumer Care Team. Provide assistance and do not commit your duties to that of the Peer Support Action Officer or any other department	• Inform the duties of a Consumer Care Team. Provide assistance and do not commit your duties to that of the Peer Support Action Officer or any other department	• Inform the duties of a Consumer Care Team. Provide assistance and do not commit your duties to that of the Peer Support Action Officer or any other department
2	Improve communication skills				• Inform the duties of a Consumer Care Team. Provide assistance and do not commit your duties to that of the Peer Support Action Officer or any other department
3	Improve ability to follow directions and to take responsibility for the coordination	• Advise on directions given to you and do not make changes without prior notice • Coordinate activities effectively, in order to ensure you are seen when you are available • Do not assume directions or responsibilities which are not yours			• Advise on directions given to you and do not make changes without prior notice • Coordinate activities effectively, in order to ensure you are seen when you are available • Do not assume directions or responsibilities which are not yours
4	Improve ability to follow directions and to take responsibility for the coordination				• Advise on directions given to you and do not make changes without prior notice • Coordinate activities effectively, in order to ensure you are seen when you are available • Do not assume directions or responsibilities which are not yours

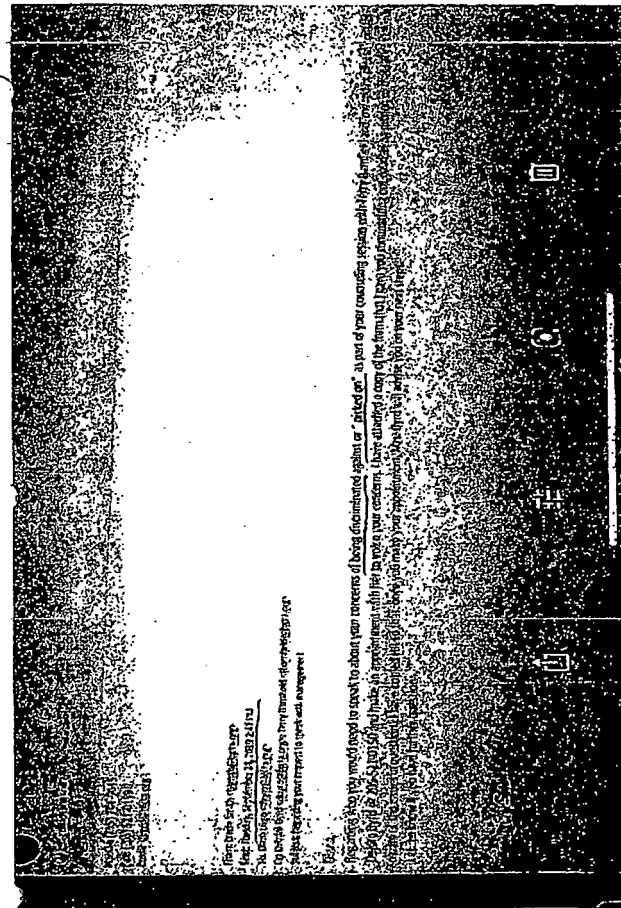
The Performance Improvement team will not begin _____ April 28, 2023, in _____ July 28, 2023, with a mandatory update every Friday during the summer implementation period. The team is expected to meet at least once a month to discuss progress and challenges. The team will also hold a final meeting in _____ July 28, 2023, to discuss the results of the implementation and to provide feedback to the team.

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214-11

APP. 36 (2)

PLAINTIFF'S
EXHIBIT



PLAINTIFF'S
EXHIBIT
1 of 8

APP. 37(a)

Page 26 1 complaints once they asked to be called 2 by supervisors? 3 MR. DONAHUE: Already asked and 4 answered. She just said. 5 MS. LUGO: No. She -- 6 MR. DONAHUE: She said no, if 7 they were in meetings or something. 8 Q. No, they were not? 9 A. Uh-huh. 10 Q. Okay. No, they were not. 11 Okay. So now I want to know if 12 you know this form that is called 13 customer care center quality monitoring 14 form. Do you know that? This is called 15 Exhibit No. 5. 16 A. Are you talking about our 17 evaluations? 18 Q. Yes, ma'am. Did you -- 19 A. Yeah, I'm aware of that. 20 Q. Yes, ma'am. 21 A. Very much aware. 22 Q. So the evaluation form, did you 23 know that? Perfect.	1 A. I object. 2 MS. LUGO: Excuse me. Why? 3 A. I object. 4 MR. DONAHUE: Because how c 5 she witness it if you were the only one 6 there? I mean -- 7 MS. LUGO: I was texting her 8 sometimes. It was -- 9 MR. DONAHUE: Can I finish, 10 please? 11 MS. LUGO: Sure. 12 MR. DONAHUE: How can she 13 witness something if you're claiming 14 you're the only one there? 15 MS. LUGO: Excuse me. I'm goin 16 to answer your question. Because 17 eventually, we texted each other, and I 18 sent different text messages telling her, 19 "Hey, Ms. Bracie called me to work by 20 myself," different times. And it was on 21 of the occasion -- I remember that -- in 22 where her computer from home had an 23 issue. She had to come to the office,
Page 27 1 A. Yes. 2 Q. Have you ever been evaluated? 3 A. Yeah, I have been evaluated. 4 Some are good, some not so good. 5 Q. Some good, some not so good? 6 A. Not so good. Yes, ma'am. 7 Q. Sorry. Okay. Do you remember 8 during the time period of 2019 to 2021 if 9 this help desk of supervisors were coming 10 to our office to say -- because of the 11 system was really slow, advising us to 12 delete the inbox or outbox from Outlook 13 to make the computers run faster? 14 A. I don't remember that. 15 Q. You don't remember that? 16 A. Uh-huh. 17 Q. Okay. Are you a witness that 18 Diana Lugo was working by herself in the 19 whole entire building at BJCTA while 20 everybody else was working at home 21 remotely? 22 MR. DONAHUE: Object to the 23 form.	1 and we talk about it. And I said, "I'm 2 always by myself." I was sick and all 3 that. 4 Q. So, are you a witness that Diana 5 Lugo was working by herself in the offi 6 at BJCTA while everybody else was we 7 remotely? 8 A. One time. 9 Q. One time. Basically yes; right? 10 A. Yes. 11 MR. DONAHUE: Object to the 12 form. 13 Q. Yes or no? 14 A. Object. 15 MS. LUGO: But she already said 16 yes. 17 THE WITNESS: I'm sorry. 18 MS. LUGO: (Inaudible) because 19 she had the knowledge. 20 Q. Did Diana tell you that she was 21 gradually getting sick of working by 22 herself at BJCTA building and showed 23 once you come back to work at the offic

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Page 30 1 the swollen face and the eyes that -- I 2 have my eyelashes that fell down? 3 A. You showed me, but you were 4 saying something about you was having 5 issues at your apartment with the 6 flooding in your -- in your apartment -- 7 Q. Also. 8 A. -- or something. 9 Q. Yes. But no. The question was 10 that did I ever tell you that I was 11 gradually getting sick from working by -- 12 here myself at BJCTA building and I 13 showed that I have a swollen face and I'm 14 coughing? 15 A. When you told me that -- 16 Q. Okay. 17 A. I couldn't say yes on that 18 because I don't know if it was causing 19 from the issue you was having at home. 20 Q. Okay. Now -- 21 MR. DONAHUE: Wait a minute. 22 Let her finish her answer. She has a 23 right to --	Page 32 1 have the appropriate temperature to 2 perform work, or it was too cold? 3 A. No. We always had good weather 4 in there. No. 5 Q. No what? Excuse me. The 6 question is, did the office of BJCTA have 7 appropriate temperature to perform work 8 or was it too cold or? 9 A. It wasn't too cold, no, ma'am. 10 Q. Okay. Now, I remember you said 11 that you brought an electrical cover and 12 jacket to work at BJCTA because it was 13 really cold. Do you remember that, that 14 electrical cover? 15 A. Yeah. I had a blanket then. 16 Q. What was the reason you brought 17 the electrical cover? 18 A. Because we had other people in 19 the office. Some had fans in some of the 20 cubicles, and some of them -- they had -- 21 all had the fans on you, and that's what 22 made me cold, so I had it on because of 23 other people.
Page 31 1 A. I don't -- 2 MR. DONAHUE: -- finish her 3 answer. 4 A. I don't know if the issue was 5 coming from your home or whether it was 6 coming from MAX. You did show me that, 7 yeah, because I saw it. Yes. 8 Q. Yes. But you see that I was 9 sick. You just don't know the reason 10 why. 11 A. Exactly. 12 Q. Perfect. 13 A. Yes, ma'am. 14 Q. Now, did Diana Lugo ever tell 15 you that maintenance was -- maintenance 16 was coming to spray very strong chemical 17 poisons, and in one of the occasion, we 18 have to step out from the office because 19 it was hard to breathe? 20 A. No, ma'am. 21 Q. You don't remember? 22 A. I don't remember that. 23 Q. Okay. Did the office of BJCTA	Page 33 1 Q. Okay. 2 A. I also had a heater too with the 3 fans blowing so -- but I said -- I said I 4 don't want nobody to cut theirs off if 5 they're too hot and stuff, so 6 (indicating). 7 Q. Okay. Do you remember where was 8 the air-condition like adjuster once we 9 felt that it was really cold or really 10 hot? Do you know if it was inside of the 11 office or we have to go somewhere else to 12 adjust or who will be taking care of 13 that? 14 A. I -- 15 MR. DONAHUE: I'm going to 16 object. Let me -- let me -- I'm going to 17 object. How is that relevant to your 18 case, what the temperature is inside the 19 building? 20 MS. LUGO: I want to know 21 because I was getting really sick because 22 of the cold temperature when I was 23 (inaudible) in the building. So I was

9 (Pages 30 - 33)

Thanks no problem, I just need to know if the warns were removed or what is the next step.
You can let me know.

Thanks once again and have a great day

Kindly;

Diana Lugo
Customer Service

From: Jerry Walker <jwalker1@bjcta.org>
Sent: Monday, April 12, 2021 7:11 AM
To: Diana Lugo <dylugo@bjcta.org>
Subject: Meeting on 4/12/2021

Ms. Lugo,

Top of the hour to you, due to an Executive Meeting today I will have to reschedule our meeting for today. Do not have a reschedule date, I will get with you late on a date.

Jerry M. Walker
Human Resources Director
Birmingham - Jefferson County Transit Authority
1801 Morris Ave
Birmingham, Alabama 35203
Office: (205) 521-0129
Cell: (205) 936-7439
jwalker1@bjcta.org



App. 40(a)

1 Mr. Donahue, can you please tell me how it came to be that
2 Ms. Bridges -- I'm sorry -- Ms. Smith contacted you about
3 Ms. Lugo's call?

4 MR. DONAHUE: We actually contacted Ms. Smith.

5 THE COURT: And how is it that she was willing and
6 able to sit for --

7 MR. DONAHUE: I was not privy. That's what Ms. Lugo's
8 saying.

9 THE COURT: She's representing that you told her.

10 MR. DONAHUE: I did not tell her that. I said that I
11 have no control over it. I talked to Ms. Smith. I have no
12 control over it to get her here or compel her, make her come to
13 a deposition. And I was kind enough to give her the last known
14 address that I have and telephone number so that she could do
15 that.

16 THE COURT: So you didn't tell her that Ms. Smith does
17 not want to testify?

18 MR. DONAHUE: No, I did not.

19 MS. LUGO: Your Honor, I object that. We communicate
20 through the e-mail, and this is what the e-mail that
21 Mr. Donahue sent to me.

22 I am not available on August 15th, when I already said the
23 times for the deposition. And he also wrote me, I already have
24 a deposition set. I am available from 8/18 -- August 18th or
25 August 21st. And as far as Ms. Smith, she does not want to

APP 41(C2)

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1 MR. DONAHUE: My paralegal did. Our office did, yes.
2 And I consider my paralegal an arm of me, yes.

3 THE COURT: Okay. But you said you did not tell her
4 that she doesn't want to testify.

5 You said, I did not tell her that. I said I have no
6 control over it. I talked to Ms. Smith. I have no control
7 over it to get her here or compel her, make her come to a
8 deposition. And I was kind enough to give her her contact
9 information.

10 I'm paraphrasing the last part.

11 MR. DONAHUE: I don't recall Ms. Smith telling me
12 that, but it is in an e-mail. And I'll stand behind that, and
13 I apologize to the court that I don't remember that.

14 THE COURT: Okay. I'm fascinated to know how it is
15 that it came to be that she was once willing to sit for her
16 deposition and then spoke to someone at your office and was no
17 longer willing.

18 MR. DONAHUE: She never told our office that she was
19 willing. She told Ms. Lugo that she was willing.

20 THE COURT: Okay. And then you called her, and then,
21 suddenly, she's no longer willing to?

22 MR. DONAHUE: Well, when Ms. Lugo said she wanted to
23 depose Ms. Smith, we wanted to know what Ms. Smith was going to
24 say.

25 THE COURT: And then all of a sudden -- I know how

APP. 42(a)

LAUREN SHIRLEY, RPR, CRR

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2023 Sep-18 PM 05:41
U.S. DISTRICT COURT
N.D. OF ALABAMA

N U M B E R	I D E N T I F I E D	RULING ON OBJECTION (if any)			RULING ON REOFFER			R E C D. C O N D. O R L T D.	R E C E I V E D	2:22-cv-362-ACA Lugo v. B'ham, Jefferson Co. Transit PLAINTIFF'S Exhibits for Motion to Compel held 9/14/23.	
		SUS	O/R	RES	SUS	O/R				DESCRIPTION	
1	9/14/23									Emails Submitted by Ms. Lugo --	
										Correspondence with defense counsel	
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