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U.S. DISTRICT COURT
N.D. OF ALABAMA

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

FARIBA MOEINPOUR,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**CASE NO.: 2:21-cv-1302-RDP**
	)	
BOARD OF TRUSTEES OF THE UNIVERSITY OF ALABAMA, et al.	)	**ORAL ARGUMENT REQUESTED**
	)	
	)	
Defendants.	)	

DEFENDANT MARY JO CAGLE'S BRIEF IN SUPPORT OF RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW, MOTION FOR NEW TRIAL, AND MOTION FOR REMITTITUR

Defendant Mary Jo Cagle files this brief in support of her renewed motion for judgment as a matter of law, motion for new trial, and motion for remittitur.

ARGUMENT

I. Cagle is entitled to judgment as a matter of law.

Cagle is entitled to judgment as a matter of law on Plaintiff's Section 1981 claim. "A district court should grant judgment as a matter of law when the plaintiff presents no legally sufficient evidentiary basis for a reasonable jury to find for him on a material element of his cause of action." *Pickett v. Tyson Fresh Meats, Inc.*, 420 F.3d 1272, 1278 (11th Cir. 2005).

Section 1981 guarantees all persons "the same right . . . to make and enforce contracts." 42 U.S.C. § 1981(a). The term "make and enforce contracts" includes the "performance" and "enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship." *Id.* § 1981(b).

A mere coworker with no privity of contract with or supervisory role over the plaintiff cannot be individually liable for a hostile work environment claim under § 1981. *See Miller v. Wachovia Bank, N.A.*, 541 F. Supp. 2d 858, 868 (N.D. Tex. 2008); *Farrar & Ball, LLP v. Hudson*, 2018 WL 1251823, at *4 n.2 (S.D. Tex. Mar. 12, 2018) (citing *Miller* and granting summary judgment on plaintiff's § 1981 claim to coworkers who "lacked authority regarding employment decisions such as compensation or firing"); *Covalt v. Pintar*, 2008 WL 2312651, at *7 (S.D. Tex. Jun. 4, 2008) (holding that defendant was not "individually liable as a co-worker for her alleged discriminatory or retaliatory actions" under § 1981); *Iweha v. Kansas*, 2022 WL 1684697, at *8 (D. Kan. May 26, 2022) (explaining that "the weight of authority outside our Circuit holds that plaintiffs can't bring § 1981 claims against non-supervisory co-workers"); *McLennan v. Oncor Elec. Delivery Co.*, 2012 WL 3072340, at *4 (N.D. Tex. Jul. 6, 2022) ("It is clear to this Court that Section 1981 creates individual liability, but only against employees with substantial control over a plaintiff with respect to employment decisions."); *Floyd v. Ne. Fla. Health Servs., Inc.*, 2015 WL 2412329, at *3 n.3 (M.D. Fla. May 20, 2015) ("Plaintiff's non-supervisory coworkers would be dismissed because a coworker cannot be held individually liable under § 1981 for race discrimination, hostile work environment, or retaliation.").

"[A] hostile work environment claim, like a retaliation claim is directed at the action of the employer, because only the employer is ultimately responsible for the environment of the workplace." *Miller*, 541 F. Supp. 2d at 868. Under the text of the statute, an individual coworker with no decision-making authority over the plaintiff cannot affect the "performance" or "terms and conditions" of her contractual relationship under § 1981. While the Court decided otherwise at summary judgment (Doc. 108 at 28), it appears not to have considered *Miller* or the "weight of

authority" holding that a mere coworker cannot be individually liable under § 1981—even if the claim is one for hostile work environment. *See Iweha*, 2022 WL 1684697, at *8.

The undisputed evidence at trial was that Cagle lacked authority over Plaintiff's employment and had no influence over employment decisions related to Plaintiff. Cagle was in an administrative-only role, had no supervisory or managerial authority over anyone in the lab, and played no role in employment decisions related to Plaintiff. Tr. Vol. III at 467. As Cagle argued in her Rule 50(a) motion, there was no evidence that Plaintiff's contractual rights were "in some way thwarted." Doc. 193 at 4 (quoting *Kinnon v. Arcoub, Gopman & Assocs., Inc.*, 490 F.3d 886, 892 (11th Cir. 2007)). Cagle cannot be personally liable for Plaintiff's hostile work environment claim under Section 1981 and is thus entitled to judgment as a matter of law.

Independently, there was no legally sufficient evidentiary basis for a reasonable jury to conclude that Plaintiff was subjected to severe or pervasive harassment on the basis of her race or ethnicity such that she was unable to perform or enjoy the benefits of her contract with UAB. *See* Doc. 90 at 8–11; Doc. 193 at 4–5. Cagle is thus entitled to judgment as a matter of law on this ground as well. If the Court grants Cagle judgment as a matter of law, Cagle asks the Court to conditionally grant her motion for new trial under Rule 50(c)(1) in the event of vacatur or reversal on appeal.

II. Alternatively, Cagle is entitled to a new trial.

In the alternative, Cagle is entitled to a new trial. "A judge should grant a motion for a new trial when the verdict is against the clear weight of the evidence or will result in a miscarriage of justice, even though there may be substantial evidence which would prevent the direction of a verdict." *Tracy v. Fla. Atl. Univ. Bd. of Trustees*, 980 F.3d 799, 811 (11th Cir. 2020) (quotation omitted).

The verdict against Cagle is against the manifest weight of the evidence and will result in a miscarriage of justice. Plaintiff's uncorroborated allegations of harassment by Cagle were so incredulous as to defy belief. *See* Doc. 193 at 3–4. The clear weight of the evidence showed that Cagle did not engage in any of the harassment Plaintiff alleged. Although Plaintiff claimed to be recording everything that happened to her, she could produce no photographs or recordings to corroborate any of her bare allegations of Cagle's conduct. Tr. Vol I at 96:8–11, Tr. Vol. III at 437–38, 478–79. Plaintiff testified she couldn't record the alleged gun-brandishing incident because her phone was out of battery. Tr. Vol. I at 190–91. But in her testimony earlier the same day, Plaintiff testified she had her phone recording. Tr. Vol. I at 100. And she testified in her deposition she called Dr. Grubbs from the parking lot that morning. Tr. Vol. II at 211–12. Plaintiff's wild allegations about the gun-brandishing incident and Cagle's supposed mafia connections highlight just how unbelievable her testimony is. Cagle thus asks the Court to grant her a new trial in the event her motion for judgment as a matter of law is denied.

III. Alternatively, the verdict should be remitted or constitutionally reduced.

If the Court does not grant Cagle judgment as a matter of law, she moves in the alternative for a remittitur or constitutional reduction of the awards of mental anguish and punitive damages on the ground that they are excessive and not supported by the evidence. If the Court concludes the verdict is excessive, Plaintiff must accept either a remittitur or a new trial. *See Johansen v. Combustion Eng'g, Inc.*, 170 F.3d 1320, 1329 (11th Cir. 1999). Nonetheless, this Court may constitutionally reduce the jury's punitive damages award pursuant to Rule 50(b) without giving Plaintiff the option of a new trial. *See id.* at 1331.

A. The $500,000 mental anguish damages award should be remitted.

The $500,000 mental anguish damages award against Cagle is excessive and not supported by the evidence. "As a general rule, a remittitur order reducing a jury's award to the outer limit of the proof is the appropriate remedy where the jury's damage award exceeds the amount established by the evidence." *Rodriguez v. Farm Stores Grocery, Inc.*, 518 F.3d 1259, 1266 (11th Cir. 2008) (quotation omitted). Testimony on mental anguish "must establish that the plaintiff suffered demonstrable emotional distress, which must be sufficiently articulated; neither conclusory statements that the plaintiff suffered emotional distress nor the mere fact that a [§ 1981] violation occurred supports an award for compensatory damages." *Akouri v. Fla. Dep't of Transp.*, 408 F.3d 1338, 1345 (11th Cir. 2005) (quotation omitted). Proof of a "genuine injury" is necessary. *Id.* (quotation omitted).

Plaintiff failed to provide sufficient evidence of mental anguish damages. Plaintiff's evidence consisted of her own, uncorroborated assertions and the conclusory statements of a physician she consulted post-lawsuit. Tr. Vol. II at 298–299. Plaintiff failed to show any mental anguish or emotional distress she alleges amounts to a genuine injury. Plaintiff merely asserted, in response to a leading question from her counsel, that she suffered "stress," "anxiety," and "trauma." Tr. Vol. I at 96, 97, 142. Her therapist merely testified that she was emotional, conceding that her conditions at the time of trial were "milder." Tr. Vol. II at 315. He also admitted her symptoms primarily stemmed from her arrest (Tr. Vol. II at 316–17), an event in which Cagle played no part. The compensatory damages award against Cagle should thus be eliminated or, at minimum, substantially remitted to comport with the evidence at trial.

B. The $325,000 punitive damages award against Cagle should be remitted or constitutionally reduced.

The $325,000 punitive damages award against Cagle should be remitted or constitutionally reduced. When reviewing the jury's award of punitive damages, this Court should consider whether there was clear and convincing evidence supporting such an award. *See White v. Burlington N. & Santa Fe R. Co.*, 364 F.3d 789, 817–23 (6th Cir. 2004) (Sutton, J., concurring) (arguing that a "clear and convincing" standard should apply to an award of punitive damages in a Title VII case). "The Supreme Court has directed that, for the issue of punitive damages to reach the jury in a section 1981 case, the plaintiff must come forward with substantial evidence that the employer acted with actual malice or reckless indifference to his federally protected rights." *Goldsmith v. Bagby Elevator Co.*, 513 F.3d 1261, 1280 (11th Cir. 2008) (quotation omitted). "Malice or reckless indifference is established by a showing that the employer discriminated in the face of the knowledge that its actions would violate federal law." *Id.* (quotation omitted); *accord Kolstad v. Am. Dental Ass'n*, 527 U.S. 526, 536–37 (1999).

Here, Plaintiff failed to prove by clear and convincing evidence that Cagle engaged in conduct warranting a punitive damages award. As explained, Plaintiff's uncorroborated allegations of misconduct are so far-fetched that they cannot serve as a basis for punitive damages. Further, Plaintiff failed to prove Cagle knew her actions would violate federal law. Cagle has a high school education (Tr. Vol III at 466–67), and there was no evidence that she had reason to know of federal civil rights statutes or that she could have individual liability under them. Given the lack of evidence, the issue of punitive damages should not have been submitted to the jury. This error, which was preserved at trial and anticipated by the Court as a post-verdict issue (Tr. Vol IV at 641–62), independently requires a new trial. Regardless, the punitive damages award should be eliminated or, at minimum, substantially remitted to comport with the evidence at trial.

Alternatively, the award should be constitutionally reduced in light of due process requirements. The Court must determine the constitutionality of the punitive damages award *de novo*. *See Cooper Indus., Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 431 (2001). None of the jury's findings with respect to the punitive damages award are facts protected from reexamination by the Seventh Amendment. *See id.* at 437.

The punitive damages award violates due process under the standards of *BMW of North America v. Gore*, 517 U.S. 559 (1996). *BMW* requires the Court to consider the degree of reprehensibility of the defendant's conduct, the ratio of compensatory to punitive damages, and sanctions for comparable misconduct in deciding whether a punitive damages award is constitutionally excessive. *See id.*; *State Farm Mutual Automobile Insurance v. Campbell*, 538 U.S. 408, 418 (2003).

First, the reprehensibility of the alleged conduct does not support the award. As explained, the sole evidence of Cagle's harassment towards Plaintiff was Plaintiff's own, far-fetched testimony, uncorroborated by recordings, photographs, or other witness testimony. Contemporaneous evidence of Plaintiff's reports to HR also shows Cagle's conduct was never alleged to be racial. Tr. Vol. I at 146–72. For her part, Cagle vehemently denied engaging in any of the alleged conduct. Tr. Vol. III at 477–78, 486–89. Other witnesses confirmed Cagle's testimony. Tr. Vol. III at 442–43, 456, 526, 528.

Second, after the compensatory damages are remitted to comport with the limited evidence of actual harm to Plaintiff, the ratio of compensatory to punitive damages is excessive. "[T]he Supreme Court has indicated that a ratio greater than 4:1 between punitive and compensatory damages will likely be close to the line of constitutional impropriety." *Williams v. First Advantage LNS Screening Solutions Inc.*, 947 F.3d 735, 750 (11th Cir. 2020). And where the compensatory

damages award is substantial, a lesser ratio of 1:1 "will reach the outermost limit of the due process guarantee." *Id.*

Third, the available sanctions for comparable misconduct warrant a reduction in the award. Under Title VII, the lowest cap on compensatory and punitive damages combined is $50,000, which is recoverable against employers with more than 14 and less than 101 employees. 42 U.S.C. § 1981a(b)(3)(A). Applied to one individual, the comparable cap should be a fraction of $50,000. And as this Court recognized in its post-trial briefing order (Doc. 202), the combined compensatory and punitive damages award against UAB (assuming it was not a state actor against whom punitive damages are not recoverable) may not exceed $300,000. *See* 42 U.S.C. § 1981a(b)(3)(D). Given the claims against Cagle and UAB rest on similar allegations, it would be constitutionally unfair to hold Cagle liable for a $825,000 combined damages award when UAB can only be liable for $300,000. *BMW* supports a constitutional reduction of the punitive damages award against Cagle if the award is not eliminated or remitted on other grounds.

CONCLUSION

For these reasons, the Court should grant Cagle judgment as a matter of law. Alternatively, the Court should grant Cagle a remittitur or new trial. In the event the Court grants Cagle judgment as a matter of law, Cagle asks the Court to conditionally grant her motion for new trial under Rule 50(c)(1) in the event of vacatur or reversal on appeal. Cagle requests oral argument on this motion.

Respectfully submitted,

s/ Scott Burnett Smith
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CERTIFICATE OF SERVICE

I hereby certify that on October 8, 2024, I electronically filed the foregoing with the Clerk of the Court. I hereby certify that a copy of the foregoing is being served via electronic mail upon counsel of parties:

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