

**IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

In re:)	
)	Chapter 11
LAVIE CARE CENTERS, LLC, <i>et al.</i> , ¹)	Case No. 24-55507 (JMB)
)	
Debtors.)	(Jointly Administered)
)	
EUCLIDE JULIEN,)	Chapter 11
)	
Plaintiff,)	Adv. Case No. 25-05053 (JMB)
)	
v.)	Related to Docket Nos. 1, 2, 3
)	
LAVIE CARE CENTERS, LLC,)	
)	
Defendant.)	
)	
)	

**MEMORANDUM OF LAW IN SUPPORT OF
DEBTOR DEFENDANT’S MOTION TO DISMISS ADVERSARY COMPLAINT**

LaVie Care Centers, LLC (“LaVie” or the “Debtor Defendant”) hereby files this memorandum of law (this “Memorandum”) in support of its *Motion to Dismiss Adversary Complaint* (the “Motion”),² pursuant to Rules 12(b)(1), 12(b)(3), 12(b)(5), 12(b)(6), and 12(b)(7) of the Federal Rules of Civil Procedure (the “Federal Rules”), made applicable to this proceeding by Rule 7012(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for entry

¹ The last four digits of LaVie Care Centers, LLC’s federal tax identification number are 5592. There are 282 Debtors in these chapter 11 cases, which are being jointly administered for procedural purposes only. A complete list of the Debtors and the last four digits of their federal tax identification numbers are not provided herein. A complete list of such information may be obtained on the website of the Debtors’ claims and noticing agent at <https://www.veritaglobal.net/LaVie>. The location of LaVie Care Centers, LLC’s corporate headquarters and the Debtors’ service address is 1040 Crown Pointe Parkway, Suite 600, Atlanta, GA 30338.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan (as defined herein).



of an order dismissing with prejudice the complaint (the “Complaint”) filed by Ms. Euclide Julien (“Ms. Julien”) at Docket No. 1 in the above-captioned adversary proceeding (this “Adversary Proceeding”), and respectfully states as follows:

SUMMARY OF ARGUMENT

1. More than three months after the Plan was confirmed, Ms. Julien filed the Complaint (which amounts to nothing more than a proof of claim), seeking \$10 million from the Debtor Defendant for alleged unjust termination and purported workplace discrimination she experienced at Fletcher Health and Rehabilitation Center (the “Facility”) in 2022. Though the merits of the allegations set forth in the Complaint are not addressed herein and the Debtor Defendant expressly reserves all rights with respect thereto, the Complaint is fraught with procedural and substantive deficiencies and must be dismissed.

2. *First*, the Complaint should be dismissed pursuant to Federal Rule 12(b)(1) because this Court lacks subject matter jurisdiction to adjudicate the “personal injury tort” claims alleged by Ms. Julien in the Complaint, pursuant to the statutory “core proceeding” exclusion set forth in 28 U.S.C. § 157(b)(2).

3. *Second*, the Complaint should be dismissed pursuant to Federal Rule 12(b)(3) because 28 U.S.C. § 157(b)(5) provides that the proper venue for adjudication of “personal injury tort” claims is the district court in which the claim arose, not this Court.

4. *Third*, the Complaint should be dismissed pursuant to Federal Rule 12(b)(5) because Ms. Julien never served the Debtor Defendant with the Complaint or Summons (as defined herein), as reflected by Ms. Julien’s own certificate of service filed in the Adversary Proceeding, in violation of Federal and Bankruptcy Rules.

5. *Fourth*, the Complaint should be dismissed pursuant to Federal Rule 12(b)(6), as Ms. Julien failed to comply with the procedural requirements of asserting a Title VII claim against

the Debtor Defendant and, even if such procedural deficiencies were ignored, Ms. Julien failed to allege sufficient facts in the Complaint to state a Title VII claim upon which relief can be granted.

6. *Fifth*, the Complaint should be dismissed pursuant to Federal Rule 12(b)(7) because Ms. Julien failed to join the Facility as a defendant in this Adversary Proceeding despite only having the right to sue the Facility (not the Debtor Defendant) pursuant to the EEOC Determination (as defined herein). Due to her failure to comply with the requisite 90-day statute of limitations contained in the EEOC Determination, Ms. Julien cannot join the Facility at this time, further meriting dismissal.

7. *Finally*, the Complaint should be dismissed because, even if the Court could provide Ms. Julien with the relief she seeks—which it cannot for the foregoing reasons—such relief may prejudice the Debtor Defendant and certain of its affiliates and subsidiaries as debtors and debtors-in-possession (collectively, the “Debtors”). As this Court knows, the Debtors are on the precipice of consummating their confirmed Plan and emerging from chapter 11 in short order. Continued prosecution of the Complaint—which seeks \$10 million from the Debtor Defendant—would derail the Debtors’ near-term efforts to consummate their confirmed Plan, to the detriment of all parties-in-interest, justifying its dismissal.

8. For these reasons and the additional reasons discussed herein, the Complaint must be dismissed with prejudice.

JURISDICTION AND VENUE

9. The United States Bankruptcy Court for the Northern District of Georgia, Atlanta Division (the “Court”) has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of this case and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409. The legal predicates for the relief

requested herein are Federal Rules 12(b)(1), 12(b)(3), 12(b)(5), 12(b)(6), and 12(b)(7), made applicable to this Adversary Proceeding by Bankruptcy Rule 7012(b).

BACKGROUND

10. On June 2, 2024 (the “Petition Date”), each Debtor commenced a case by filing a petition for relief under chapter 11 of the Bankruptcy Code (collectively, the “Chapter 11 Cases”) in the United States Bankruptcy Court for the Northern District of Georgia, Atlanta Division (the “Court”). The Debtors are operating their businesses and managing their property as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108. Additional information regarding the Debtors’ operations and the reason for the commencement of the Chapter 11 Cases is set forth in the *Declaration of M. Benjamin Jones in Support of Chapter 11 Petitions and First Day Pleadings* [Docket No. 17] (the “First Day Declaration”).

11. On June 13, 2024, the Office of the United States Trustee for Region 21 (the “U.S. Trustee”) appointed an official committee in the Chapter 11 Cases (the “Committee”). *See Appointment and Notice of Appointment of Committee of Creditors Holding Unsecured Claims* [Docket No. 112]. To date, no trustee or examiner has been appointed in the Chapter 11 Cases.

12. On July 2, 2024, the Court entered the *Order (I) Establishing Bar Dates for Filing Claims Against the Debtors; and (II) Granting Related Relief* [Docket No. 218] (the “Bar Date Order”). The Bar Date Order set the deadline for filing general proofs of claim as August 30, 2024 at 5:00 p.m. (prevailing Eastern Time).

13. On October 26, 2024, Ms. Julien filed a proof of claim against the Debtor Defendant (the “Julien Claim”). *See* Claim No. 5185.³ The Julien Claim asserts \$1,000,000 is owed by Debtor Defendant for “wrongful termination.” *Id.* The only supporting documentation contained

³ A copy of the Julien Claim is attached hereto for reference as **Exhibit A**.

in the Julien Claim is a Charge of Discrimination (EEOC Charge Number 511-2023-00511) (the “EEOC Charge”)⁴ filed by Ms. Julien with the U.S. Equal Employment Opportunity Commission (the “EEOC”) against the Facility—not the Debtor Defendant—on November 14, 2022. To the Debtor Defendant’s knowledge, no EEOC charge has been filed by Ms. Julien against the Debtor Defendant to date.

14. On November 14, 2024, the Court held a hearing on confirmation of the Debtors’ proposed chapter 11 plan (the “Confirmation Hearing”). On December 5, 2024, the Court entered the *Findings of Fact, Conclusions of Law, and Order Approving on Final Basis and Confirming Debtors’ Modified Second Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Reorganization* [Docket No. 735] (the “Confirmation Order”), confirming the *Debtors’ Modified Second Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Reorganization* [Docket No. 730] (the “Plan”). As part of confirming the Plan, the Court also entered the *Memorandum Decision on Opt Out Third-Party Releases Included in Debtors’ Joint Second Amended Plan of Reorganization* [Docket No. 736] (the “Confirmation Opinion”).

15. On December 3, 2024, the EEOC issued a formal determination (the “EEOC Determination”)⁵ regarding the EEOC Charge and informed Ms. Julien that the EEOC was dismissing the EEOC Charge against the Facility:

The EEOC will not proceed further with its investigation and makes no determination about whether further investigation would establish violations of the statute . . . The EEOC makes no finding as to the merits of any other issues that might be construed as having been raised by this charge . . . This is official notice from the EEOC of the dismissal of your charge . . .

⁴ A copy of the EEOC Charge was attached to the Complaint and is attached hereto for reference at Exhibit B.

⁵ A copy of the EEOC Determination was attached to the Complaint and is attached hereto for reference at Exhibit C.

EEOC Determination, at 1 (emphasis added). Importantly, the EEOC Determination also provided notice to Ms. Julien that she had 90 days within receipt of the EEOC Determination to file a lawsuit against the Facility. *See id.* To the Debtor Defendant’s knowledge, no such lawsuit has been filed by Ms. Julien against the Facility, which is not named as a defendant in this Adversary Proceeding.⁶

16. On March 10, 2025, 97 days after the date of the EEOC Determination, Ms. Julien filed the Complaint against the Debtor Defendant only—not the Facility—seeking damages in \$10,000,000 (nine times more than the Julien Claim asserts).⁷ *See* Adv. Docket No. 1. On that same day, the Clerk of the Court filed a summons (the “Summons”). *See* Adv. Docket No. 2. To date, the Debtor Defendant has not been served with a copy of the Complaint or the Summons. Indeed, the certificate of service filed by Ms. Julien on March 10, 2025 (the “Certificate of Service”) states that Ms. Julien only served the Complaint and the Summons on non-Debtor Synergy Healthcare Services. *See* Adv. Docket No. 3.

17. The Summons provides that the deadline for the Debtor Defendant to file a motion or answer with respect to the Complaint was April 9, 2025. *See* Adv. Docket No. 2. Counsel to the Debtor Defendant spoke with Ms. Julien in advance of the deadline regarding the Complaint and the allegations set forth therein. On that phone call, Ms. Julien orally agreed to a 10-day extension of the Debtor Defendant’s response deadline but refused to withdraw the Complaint.⁸

⁶ To be sure, any such filing of a lawsuit would violate the automatic stay provisions under Bankruptcy Code section 362(a). *See* 11 U.S.C. § 362(a).

⁷ The Debtor Defendant reserves all rights with respect to the allegations set forth in the Complaint and expressly reserves any and all claims, counterclaims, or defenses with respect to the same.

⁸ Because ten days from April 9, 2025 fell on a Saturday (April 19, 2025), the Debtor Defendant’s response deadline extended to the following business day, April 21, 2025, pursuant to Bankruptcy Rule 9006(a). *See* Fed. R. Bankr. P. 9006(a).

ARGUMENT

I. The Complaint Should be Dismissed Pursuant to Federal Rule 12(b)(1) for Lack of Subject Matter Jurisdiction.

18. Federal Rule 12(b)(1), made applicable to the instant matter by Bankruptcy Rule 7012(b), permits a defendant to move to dismiss for lack of subject matter jurisdiction. *See* Fed. R. Civ. P. 12(b)(6). As a general matter, bankruptcy judges may hear and determine all cases under title 11 and all “core proceedings” arising under title 11. *See* 28 U.S.C. § 157(b)(1). While the list of core proceedings provided in section 157(b)(2) is not exhaustive, it states that core proceedings specifically do not include “the liquidation or estimation of **contingent or unliquidated personal injury tort** . . . claims against the estate for purposes of distribution in a case under title 11.” 28 U.S.C. § 157(b)(2)(B) (emphasis added); *see also* 28 U.S.C. § 157(b)(2)(O) (stating that core proceedings include “other proceedings affecting the liquidation of assets of the estate or the adjustment of the debtor-creditor . . . relationship, **except personal injury tort or wrongful death claims**”) (emphasis added). Rather, “personal injury tort and wrongful death claims shall be tried **in the district court** in which the bankruptcy case is pending, or in the district court in the district in which the claim arose . . .” 28 U.S.C. § 157(b)(5) (emphasis added).

19. There are two interpretations of what constitutes a “personal injury tort” under section 157(b)(2). Some courts limit “personal injury tort claims” to those involving bodily injury, holding that a tort without trauma or bodily injury is not within the statutory exception for a “personal injury tort claim” under section 157(b). *See, e.g., In re Atron, Inc. of Michigan*, 172 B.R. 541, 545 (Bankr. W.D. Mich. 1994) (holding that bankruptcy court has jurisdiction to determine wrongful discharge claim because it was not a “personal injury tort” claim); *Perino v. Cohen*, 107 B.R. 453, 455 (S.D.N.Y. 1993) (finding state anti-discrimination claim is not “personal injury tort” claim “in the traditional, plain-meaning sense of those words, such as slip and fall, or

a psychiatric impairment beyond mere shame and humiliation”). However, the majority of courts apply a broader interpretation and find that “personal injury torts” include civil rights actions in addition to claims involving bodily injury. *See, e.g., In re Mason*, 514 B.R. 852, 859-60 (Bankr. E.D. Ky. 2014) (holding that Title VII civil rights claims constituted “personal injury tort” claims and noting that “[t]he Bankruptcy Court has familiarity and expertise with business related torts and statutory causes of action that relate to those contractual relationships, such as fraud and consumer liability statutes, but the District Court is better equipped to deal with violations of a person’s rights protected by statutorily created causes of action”); *In re Redondo Constr. Corp.*, Adv. No. 05-00093, 2006 WL 3898382, at *3 (Bankr. D. Puerto Rico June 29, 2006) (finding that age discrimination claims are “personal injury torts” that are to be tried outside the bankruptcy court); *In re Sanjari*, No. 05-50205-JBR, 2006 WL 1233928, at *3 (Bankr. D. Mass. May 4, 2006) (finding that civil rights violations constitute “personal injury torts” that are beyond the jurisdiction of the bankruptcy court); *Stranz v. Ice Cream Liquidation, Inc.*, 281 B.R. 154, 162 (Bankr. D. Conn. 2002) (concluding that sexual harassment claims constitute “personal injury torts” to be adjudicated outside of bankruptcy); *In re Gary Brew Enters. Ltd.*, 198 B.R. 616 (Bankr. S.D. Cal. 1996) (finding that racial discrimination complaint was “personal injury tort” claim which had to be tried in federal district court and not in bankruptcy court).

20. To interpret civil rights claims as “personal injury tort” claims is also consistent with the generally accepted definition of “personal injury.” For example, Black’s Law Dictionary defines “personal injury” as not only “bodily injury” but also “[a]ny invasion of a personal right, including mental suffering and false imprisonment.” BLACK’S LAW DICTIONARY (12th ed. 2024). The Restatement (Second) of Torts also recognizes tort liability for violations of legislative provisions like Title VII, among others. *See* RESTATEMENT (SECOND) OF TORTS § 874A, Cmt. b.

(1979) (“Examples of legislative provisions creating new tort rights are civil rights acts . . .”). Finally, Congress specifically granted an exemption to a debtor’s right to receive “payment” or “property traceable to” payment on account of “personal *bodily* injury” pursuant to 11 U.S.C. § 522(d)(11)(D). Importantly, Congress did not make the same distinction in 28 U.S.C. § 157(b) and instead only referenced “personal injury tort” therein, leaving open the possibility for broader judicial interpretation.

21. Though the Complaint fails to cite to any applicable law in support of such allegations or state the specific law(s) that the Debtor Defendant specifically violated, the EEOC Charge references Title VII of the Civil Rights Act of 1984, leading the Debtor Defendant to assume that Title VII provides the basis for the allegations set forth in the Complaint.⁹ To that end, the Complaint states that Ms. Julien was terminated “unjustly” by the Facility and faced “various forms of discrimination, including sex, national origin, and more” while employed. Compl., at 3-4. The Complaint also alleges that Ms. Julien experienced physical and/or mental distress during her employment. *See id.* Pursuant to the authority discussed above, the Debtor Defendant submits that the Complaint alleges solely “personal injury tort claims” and therefore constitutes a non-core proceeding that is beyond the jurisdiction and purview of this Court, justifying its dismissal for lack of subject matter jurisdiction pursuant to Federal Rule 12(b)(1).

II. The Complaint Should be Dismissed Pursuant to Federal Rule 12(b)(3) for Improper Venue.

22. Federal Rule 12(b)(3), made applicable to the instant matter by Bankruptcy Rule 7012(b), permits a defendant to move to dismiss for improper venue. *See* Fed. R. Civ. P. 12(b)(3).

⁹ 42 U.S.C. § 2000e-2(a) states that “it shall be an unlawful employment practice for an employer . . . to discriminate against any individual . . . because of such individual’s race, color, religion, sex, or national origin.” 42 U.S.C. § 2000e-2(a).

As noted above, “personal injury tort and wrongful death claims shall be tried **in the district court** in which the bankruptcy case is pending, or in the district court in the district in which the claim arose . . .” 28 U.S.C. § 157(b)(5) (emphasis added). Accordingly, the Debtor Defendant submits that the proper venue for the Complaint is the district court in which the claim arose, not this Court, meriting its dismissal pursuant to Federal Rule 12(b)(3).

III. The Complaint Should be Dismissed Pursuant to Federal Rule 12(b)(5) for Insufficient Service of Process Because Ms. Julien Failed to Serve the Debtor Defendant.

23. Federal Rule 12(b)(5), made applicable to the instant matter by Bankruptcy Rule 7012(b), permits a defendant to move to dismiss for insufficient service of process when a plaintiff fails to properly serve him or her with the summons and complaint. *See* Fed. R. Civ. P. 12(b)(5). Bankruptcy Rule 7004(b)(9) governs the procedure for service on a debtor in an adversary proceeding after a petition has been filed and until the case is dismissed or closed and requires “mailing a copy of **the summons and complaint** to the debtor at the address shown in the petition or to such other address as the debtor may designate in a filed writing.” Fed. R. Bankr. P. 7004(b)(9) (emphasis added); *In re Kouterick*, 161 B.R. 755, 759 (Bankr. D.N.J. 1993) (indicating that “the only safe way to ensure proper service of notices is to serve the [debtor] directly”).

24. A plaintiff “is responsible for having the summons and complaint served within the time allowed by Rule 4(m).” Fed. R. Civ. P. 4(c)(1) (made applicable by Bankruptcy Rule 7004). Federal Rule 4(m) imposes a 90-day time limit for perfection of service following the filing of a complaint. *See* Fed. R. Civ. P. 4(m). Finally, Federal Rule 4(h)(1) provides that a domestic corporation, like the Debtor Defendant, must be served: “(1) in a judicial district of the United States: (A) in the manner prescribed by Rule 4(e)(1) for serving an individual; or (B) by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any

other agent authorized by appointment or by law to receive service of process and . . . by also mailing a copy of each to the defendant . . .” Fed. R. Civ. P. 4(e)(1). Notwithstanding the 90-day service window set forth in Federal Rule 4(m), Bankruptcy Rule 7004(e) provides that service made under Federal Rule 4(h)(1) “shall be by delivery of the summons and complaint **within 7 days after the summons is issued.**” Fed. R. Bankr. P. 7004(e) (emphasis added). To the extent that service is not completed within the foregoing timeframes, the action is subject to dismissal without prejudice. *See Umbenhauer v. Woog*, 969 F.2d 25, 30 (3d Cir. 1992) (“Upon determining that process has not been properly served on a defendant, district courts possess broad discretion to either dismiss the plaintiff’s complaint for failure to effect service or to simply quash service of process.”); *In re Wash. Mut., Inc.*, 575 B.R. 609, 613 (Bankr. D. Del. 2017) (indicating that failure to serve both the complaint and the summons “requires a court to either dismiss the complaint without prejudice against the defendant or to order service to be effectuated within a certain time”).

25. Pursuant to the foregoing authority, to comply with the Federal and Bankruptcy Rules, Ms. Julien was required to serve the Debtor Defendant with a copy of the Complaint along with a copy of the Summons. As of the date of this filing, Ms. Julien has yet to serve the Debtor Defendant with a copy of the Complaint or the Summons, thereby failing to satisfy the service requirements set forth in Bankruptcy Rule 7004(b)(9). Indeed, as reflected by the Certificate of Service filed by Ms. Julien in the Adversary Proceeding, she has only served non-Debtor Synergy Healthcare Services and has failed to properly serve the Debtor Defendant with the Complaint or the Summons to date.

26. Though the Debtor Defendant recognizes that Ms. Julien may be granted additional leeway by this Court as a *pro se* litigant in this Adversary Proceeding, the Debtor Defendant submits that Ms. Julien should be required to submit service on the Debtor Defendant to provide

sufficient due process and should not be excepted from the procedural requirements as required by the Bankruptcy Rules and the Federal Rules simply because she is not represented by counsel. *See In re WorldCom, Inc.*, No. 02-13533 (AJG), 2007 WL 1836599, at *3 (Bankr. S.D.N.Y. June 26, 2007) (citing *Traguth v. Zuck*, 710 F.2d 90, 92 (2d. Cir. 1983)) (indicating that *pro se* status does not exempt plaintiff “from compliance with relevant rules of procedural and substantive law”); *In re Wash. Mut., Inc.*, 575 B.R. at 613 (finding *pro se* plaintiff exceeded these “limits” by failing to properly serve defendants more than 200 days after filing of the complaint); *see also McNeil v. United States*, 508 U.S. 106, 113 (1993) (stating that procedural rules in ordinary civil litigation should not be interpreted as to excuse mistakes by those who proceed without counsel); *Mala v. Crown Bay Marina, Inc.*, 704 F.3d 239, 245 (3d Cir. 2013) (requiring *pro se* litigants to “serve process on the correct defendants” and preventing *pro se* litigants from “flout[ing] procedural rules” that apply to all other litigants).

27. Accordingly, because Ms. Julien has yet to serve either the Complaint or the Summons on the Debtor Defendant to date, her service is qualitatively deficient, which merits dismissal of the Complaint pursuant to Federal Rule 12(b)(5).

IV. The Complaint Should be Dismissed Pursuant to Federal Rule 12(b)(6) Because It Fails to State a Claim Upon Which Relief Can be Granted.

28. Federal Rule 12(b)(6), made applicable to the instant proceeding by Bankruptcy Rule 7012(b), permits a defendant to move to dismiss for “failure to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). To survive a motion to dismiss under Federal Rule 12(b)(6), a complaint must contain sufficient factual allegations, accepted as true, to state a claim to relief that is plausible on its face. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). To state a claim, a plaintiff’s complaint must “contain either direct or inferential allegations respecting all the material elements necessary to

sustain a recovery under some viable legal theory.” *Roe v. Aware Woman Ctr. for Choice, Inc.*, 253 F.3d 678, 683 (11th Cir. 2001). A complaint is “plausible on its face” when the plaintiff pleads sufficient factual content for the court to draw the reasonable inference the defendant is liable for the conduct alleged. *See Iqbal*, 556 U.S. at 678. A complaint must show more than a mere possibility that the defendant has acted unlawfully. *See id.*; *Twombly*, 550 U.S. at 556.

29. In deciding a Federal Rule 12(b)(6) motion to dismiss, all well-pled facts are taken as true and viewed in the light most favorable to the plaintiff. *See Iqbal*, 556 U.S. at 678; *In re Nilhan Developers, LLC*, 631 B.R. 507, 517 (Bankr. N.D. Ga. 2021) (citing *Iqbal*, 556 U.S. at 678). The Court may consider attached exhibits, documents incorporated by reference, and matters properly subject to judicial notice. *See Nilhan Developers*, 631 B.R. at 517. However, the Court is “not bound to accept as true a legal conclusion couched as a factual allegation.” *Nilhan Developers*, 631 B.R. at 518 (citing *Twombly*, 550 U.S. at 555; *Iqbal*, 556 U.S. at 678). Additionally, the Court is “not required to accept as true allegations that contradict exhibits attached to the complaint or matters properly subject to judicial notice, or allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.” *Id.* (citing *Deerpont Grp., Inc. v. Agrigenix, LLC*, 393 F. Supp. 3d 968, 974 (E.D. Cal. 2019)).

30. To survive dismissal, a complaint must contain “factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678. This requires more than mere “labels and conclusions,” *Youkelstone v. In re Wash. Mut. Inc. (In re Wash. Mut. Inc.)*, 741 F. App’x 88, 93 (3d Cir. 2018), or the “sheer possibility that a defendant has acted unlawfully.” *Iqbal*, 556 U.S. at 678. Accordingly, a complaint’s “[f]actual allegations must be enough to raise a right to relief above the speculative level[.]” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007), such that a court can “infer more

than the mere possibility of misconduct.” *Iqbal*, 556 U.S. at 679; *Fowler v. UPMC Shadyside*, 578 F.3d 203, 211 (3d Cir. 2009) (“This ‘plausibility’ determination is ‘a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.’”) (quoting *Iqbal*, 556 U.S. at 679). While courts must “accept all of the complaint’s well-pleaded facts as true,” they may “disregard any legal conclusions.” *Fowler*, 578 F.3d at 210–11 (“[C]onclusory or ‘bare-bones’ allegations will no longer survive a motion to dismiss.”); *Yates v. Yates*, No. 14-545-LPS, 2018 WL 1444576, at *2 (D. Del. Mar. 23, 2018) (“The Court is not obligated to accept as true ‘bald assertions,’ ‘unsupported conclusions and unwarranted inferences,’ or allegations that are ‘self-evidently false.’”) (internal citations omitted). A complaint which has simple “recitals of the elements of a cause of action, supported by mere conclusory statements” is insufficient to survive a motion to dismiss. *See In re Bavaria Yachts USA, LLLP*, 575 B.R. 540, 563-64 (Bankr. N.D. GA. 2017).

31. Here, the claims asserted by Ms. Julien in the Complaint suffer from severe procedural and substantive deficiencies, meriting dismissal of the Complaint.

32. *First*, Ms. Julien failed to comply with the procedural requirements for commencing a Title VII action against the Debtor Defendant.¹⁰ A plaintiff may only commence a Title VII action after filing a charge with the EEOC and receiving a right-to-sue letter. *See* 42 U.S.C. §§ 2000e-5(e), (f); *see Francis v. Elmsford School Dist.*, 442 F.3d 123, 126 (2d Cir. 2006) (“Title VII plaintiffs must receive a ‘right-to-sue’ letter from the EEOC before filing suit in court.”). Here, the EEOC Charge was filed against the Facility, **not** the Debtor Defendant. To the Debtor Defendant’s knowledge, no EEOC charge has been filed by Ms. Julien against the Debtor

¹⁰ While no law is cited or referenced in the Complaint itself as the basis for Ms. Julien’s allegations, the Debtor Defendant assumes, based on the reference to Title VII in the EEOC Charge, that the claims set forth in the Complaint are asserted pursuant to Title VII of the Civil Rights Act of 1964.

Defendant to date. Because no EEOC charge has been filed by Ms. Julien against the Debtor Defendant, EEOC has not issued a right-to-sue letter to Ms. Julien with respect to the Debtor Defendant to date. As such, Ms. Julien **cannot** commence a Title VII action against the Debtor Defendant, as she has not filed a charge with the EEOC, nor has she received a right-to-sue letter from the EEOC with respect to the Debtor Defendant.

33. Title VII also requires that a plaintiff file a complaint of discrimination in a United States district court within ninety days of receiving an EEOC right-to-sue letter. *See In re WorldCom, Inc.*, 2007 WL 1836599, at *2 (citing *Sherlock v. Montefiore Medic. Ctr.*, 84 F.3d 522, 525 (2d Cir. 1996)). The ninety-day deadline imposed by Title VII is “treated as a statute of limitations” and should be strictly construed. *See id.* (citing *Smith v. Henderson*, 137 F. Supp. 2d 313, 317 (S.D.N.Y. 2001)). Failure to comply with the time limitations warrants dismissal of the complaint. *See id.* (citing *McFarland v. Metro-North Commuter R.R.*, 993 F. Supp. 210, 211 (S.D.N.Y. 1998)). Here, even if the EEOC Determination regarding the Facility constituted a right-to-sue letter with respect to the Debtor Defendant—which it does not—the Complaint was filed 97 days after the date of the EEOC Determination, meaning that Ms. Julien failed to comply with the statute of limitations set forth therein. Taken together, Ms. Julien’s failure to comply with the foregoing procedural requirements merits dismissal of the Complaint.

34. *Second*, even if the foregoing procedural deficiencies were ignored by this Court—which they should not be—the Complaint fails to assert sufficient facts to survive a motion to dismiss. Rather, the Complaint merely contains two handwritten pages of blanket assertions that Ms. Julien experienced “various forms of discrimination, including sex, national origin, and more” during her employment at the Facility. Compl., at 3. However, there are no facts included in the Complaint to demonstrate such alleged discrimination by the Debtor Defendant—indeed, the

Complaint fails to provide details regarding (a) specific instances of discrimination by the Debtor Defendant,¹¹ (b) when such alleged discrimination occurred,¹² (c) which person(s) were involved with such purported discrimination,¹³ or (d) the specific harm to Ms. Julien that stemmed from the purported discrimination.¹⁴

35. The Complaint also blindly alleges—without more—that Ms. Julien was “unjustly” terminated by the Facility (not the Debtor Defendant), Compl., at 3, and similarly fails to provide any specific facts to support the notion that Ms. Julien’s termination on October 5, 2022 was “unjust” in any respect. The EEOC Charge attached to the Complaint states that Ms. Julien was terminated “for misconduct in which [she] did not engage” and alleges that “males have engaged in similar or worse misconduct but were not similarly disciplined or discharged.” EEOC Charge, at 1. However, Ms. Julien fails to explain the purported misconduct at issue, nor does she provide any additional facts to support these allegations. While Ms. Julien points to a prior EEOC charge she filed in January 2022 as the reason for “retaliatory treatment” she allegedly experienced, the January 2022 EEOC charge is not included with the Complaint and the only reference to such

¹¹ The Complaint fails to specifically describe any purported discrimination by any employee of the Debtor Defendant. *See generally* Compl. The EEOC Charge attached to the Complaint states that Ms. Julien believed she had been discriminated against by the Facility based on her race, national origin, and sex; however, the only reference to any purported discrimination is as follows: “Comments have also been made about [Ms. Julien’s] Haitian national origin, including but not limited to whether [she is] [l]egal and practice [v]oodoo.” EEOC Charge, at 1. No other specifics are provided.

¹² The only dates provided in the Complaint are the date of Ms. Julien’s termination—October 5, 2022—and the date of a hospital visit at “the end of September 2022.” Compl, at 3-4. No specifics are provided with respect to any alleged acts of discrimination against Ms. Julien.

¹³ While two names are referenced in the Complaint—“Travis” and “Jayna Moore”—the Complaint merely alleges that such individuals “told [Ms. Julien] that the doctor’s note [she] received for the hospital visit at the end of September 2022 was not valid.” Compl., at 3-4. No specific allegations of discrimination by these two individuals are included in the Complaint.

¹⁴ The Complaint includes a reference to Ms. Julien’s “back pain,” an emergency room visit for “muscle aches,” and seeking “mental help” in the months leading to her termination (without providing any additional context). However, the Complaint fails to demonstrate that any discrimination by the Debtor Defendant resulted in the alleged physical and/or mental harm.

purported treatment is in the EEOC Charge from November 2022 that was included with the Complaint.¹⁵ No additional details are provided in the Complaint to suggest that her termination was “unjust” or retaliatory in any respect.¹⁶

36. Taken together, the Complaint’s mere “labels and conclusions” and baseless assertions with respect to purported discrimination of Ms. Julien in her employment at the Facility, as well as its vague, generic references to the events leading to her allegedly “unjust” termination, fail to state a claim upon which relief can be granted. When these substantive deficiencies are coupled with the Title VII procedural deficiencies discussed above, the Complaint must be dismissed pursuant to Federal Rule 12(b)(6).

V. The Complaint Should be Dismissed Pursuant to Federal Rule 12(b)(7) for Failure to Join the Facility as a Defendant in the Adversary Proceeding.

37. Federal Rule 12(b)(7), made applicable to the instant proceeding by Bankruptcy Rule 7012(b), permits a defendant to move to dismiss for failure to join a party under Federal Rule 19. *See* Fed. R. Civ. P. 12(b)(7). Federal Rule 19(a)(1)(A) provides, among other things, a party must be joined if, in that party’s absence, the court cannot accord complete relief among existing parties. *See* Fed. R. Civ. P. 19(a)(1)(A). Federal Rule 19(a)(1)(A) provides a “two-part test” for determining whether an action should proceed in a nonparty’s absence. *City of Marietta v. CSX Transp., Inc.*, 196 F.3d 1300, 1305 (11th Cir. 1999). The first question is “whether complete relief can be afforded in the present procedural posture, or whether the nonparty’s absence will impede

¹⁵ The EEOC Charge alleges that the “retaliatory treatment” Ms. Julien experienced consisted of “cutting [her] hours, randomly changing [her] schedule without notice and assignment of undesirable shifts,” and being “passed over for promotions.” EEOC Charge, at 1.

¹⁶ Notably, as discussed above, the EEOC dismissed the EEOC Charge on December 3, 2024 and declined to proceed with any investigation regarding Ms. Julien’s allegations against the Facility. *See generally* EEOC Determination.

either the nonparty's protection of an interest at stake or subject parties to a risk of inconsistent obligations." *Id.* In making the first determination—*i.e.*, whether the party in question should be joined—"pragmatic concerns, especially the effect on the parties and the litigation," control. *Focus on the Family v. Pinellas Suncoast Transit Auth.*, 344 F.3d 1263, 1280 (11th Cir. 2003); *see also In re Torcise*, 116 F.3d 860, 865 (11th Cir. 1997) ("[F]indings of indispensability must be based on stated pragmatic considerations, especially the effect on parties and on litigation."). If the answer to this first question is no, "it is unnecessary to reach the second question which requires the Court to determine if the case should proceed or be dismissed in the event joinder of required parties is not feasible." *U.S. v. Rigel Ships Agencies, Inc.*, 432 F.3d 1282, 1291 (11th Cir. 2005) (citing *Marietta*, 196 F.3d at 1305).

38. As noted above, Ms. Julien only named the Debtor Defendant in the Complaint, despite the fact that the EEOC Charge was filed against the Facility only—not the Debtor Defendant—and the EEOC Determination only provided Ms. Julien with the right to sue the Facility, not the Debtor Defendant. The continued prosecution of this Complaint is inappropriate without the joinder of the Facility to the Complaint, given that the allegations raised by Ms. Julien purportedly occurred at the Facility and allegedly may have involved other employees at the Facility. However, because Ms. Julien failed to sue the Facility prior to the 90-day deadline set forth in the EEOC Determination, any and all claims against the Facility are barred and disallowed as a result of Ms. Julien's violation of the governing statute of limitations, meaning that the Facility cannot be joined as a defendant in the Adversary Proceeding.

39. Federal Rule 19(b) provides that if a party who is required to be joined cannot be joined, the court must determine whether the action can proceed among the existing parties or should be dismissed. *See Fed. R. Civ. P. 19(b)*. The factors for the court to consider include: (a) to

the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties; (b) the extent to which any prejudice could be lessened or avoided by: (1) protective provisions in the judgment; (2) shaping the relief; or (3) other measures; (c) whether a judgment rendered in the person's absence would be adequate; and (d) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder. *See id.* Here, since the Facility cannot be joined in the Adversary Proceeding as a result of the governing statute of limitations, the Debtor Defendant submits that continued prosecution of the Complaint would result in prejudice to the Debtor Defendant, particularly since no EEOC Charge has been filed to date by Ms. Julien against the Debtor Defendant and Ms. Julien's allegations in the Complaint that were raised in the EEOC Charge were against the Facility, not the Debtor Defendant. Given the risk of prejudice to the Debtor Defendant absent the Facility's joinder, the Complaint must be dismissed pursuant to Federal Rule 12(b)(7).

VI. Continued Prosecution of the Complaint May Prejudice the Consummation of the Plan and the Debtors' Emergence from Chapter 11.

40. As set forth above, the Debtors are in the process of preparing to go effective on their confirmed Plan in the near term. In order to ensure that the contemplated effective date sticks, it is essential that the Debtors, their professionals, and their employees remain focused on the remaining tasks necessary to complete before consummation of the Plan. Continued prosecution of the Complaint, which is simply a restatement of a filed proof of claim in these Chapter 11 Cases and is rife with procedural and substantive deficiencies, will only detract from the Debtors' efforts to implement the Plan, to the detriment of all parties-in-interest, including Ms. Julien. Accordingly, for the reasons set forth herein, the Complaint should be dismissed with prejudice.

WHEREFORE, for the reasons set forth herein, the Debtor Defendant respectfully requests that the Court enter the proposed order, substantially in the form attached hereto as Exhibit A to the Motion filed contemporaneously herewith, (i) dismissing the Complaint with prejudice and (ii) granting the Debtor Defendant such other and further relief as is just and proper.

Dated: April 21, 2025
Atlanta, Georgia

MCDERMOTT WILL & EMERY LLP

/s/ Daniel M. Simon
Daniel M. Simon (Georgia Bar No. 690075)
1180 Peachtree St. NE, Suite 3350
Atlanta, Georgia 30309
Telephone: (404) 260-8535
Facsimile: (404) 393-5260
Email: dsimon@mwe.com

- and -

Emily C. Keil (admitted *pro hac vice*)
444 West Lake Street, Suite 4000
Chicago, Illinois 60606
Telephone: (312) 372-2000
Facsimile: (312) 984-7700
Email: ekeil@mwe.com

Counsel for the Debtors and Debtors-in-Possession

CERTIFICATE OF SERVICE

I hereby certify that on this date a true and correct copy of the foregoing Memorandum was served by the Court's CM/ECF system on all counsel of record registered in the above-captioned adversary proceeding through CM/ECF and on Ms. Julien via first-class mail at the below address set forth in the Complaint. The Debtors' claims and noticing agent will be filing a supplemental certificate of service on the docket to reflect any additional service of the foregoing.

Ms. Euclide Julien
6421 N. Florida Avenue
Tampa, FL 33604

Dated: April 21, 2025
Atlanta, Georgia

MCDERMOTT WILL & EMERY LLP

/s/ Daniel M. Simon
Daniel M. Simon (Georgia Bar No. 690075)
1180 Peachtree St. NE, Suite 3350
Atlanta, Georgia 30309
Telephone: (404) 260-8535
Facsimile: (404) 393-5260
Email: dsimon@mwe.com

Counsel for the Debtors and Debtors-in-Possession

EXHIBIT A

Julien Claim

Fill in this information to identify the case:

Debtor LaVie Care Centers, LLC

United States Bankruptcy Court for the: Northern District of Georgia
(State)

Case number 24-55507

Official Form 410 Proof of Claim

04/22

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. **Who is the current creditor?** Euclide M. Julien. I received no formal notice of bankruptcy.
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor _____

2. **Has this claim been acquired from someone else?** No
 Yes. From whom? _____

3. **Where should notices and payments to the creditor be sent?**

Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
See summary page	

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Contact phone 239-758-4045 Contact phone _____

Contact email michellejulien99@yahoo.com Contact email _____

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?** No
 Yes. Claim number on court claims registry (if known) _____ Filed on _____
MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?** No
 Yes. Who made the earlier filing? _____

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? No
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____

7. How much is the claim? \$ 1,000,000. Does this amount include interest or other charges?
 No
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
 Limit disclosing information that is entitled to privacy, such as health care information.

Wrongful Termination

9. Is all or part of the claim secured? No
 Yes. The claim is secured by a lien on property.
Nature or property:
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
 Motor vehicle
 Other. Describe: _____

Basis for perfection: _____
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: \$ _____
Amount of the claim that is secured: \$ _____
Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amount should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: \$ _____

Annual Interest Rate (when case was filed) _____ %
 Fixed
 Variable

10. Is this claim based on a lease? No
 Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff? No
 Yes. Identify the property: _____



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

- No
 Yes. Check all that apply:

Amount entitled to priority

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

- Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). \$ _____
- Up to \$3,350* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7). \$ _____
- Wages, salaries, or commissions (up to \$15,150*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4). \$ _____
- Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8). \$ _____
- Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5). \$ _____
- Other. Specify subsection of 11 U.S.C. § 507(a)() that applies. \$ _____

* Amounts are subject to adjustment on 4/01/25 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim entitled to administrative priority pursuant to 11 U.S.C. 503(b)(9)?

- No
 Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ _____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 10/26/2024
MM / DD / YYYY

/s/Euclide M. Julien
 Signature

Print the name of the person who is completing and signing this claim:

Name Euclide M. Julien
First name Middle name Last name

Title Ms.

Company LaVie Care Centers, LLC, et al
 Identify the corporate servicer as the company if the authorized agent is a servicer.

Address _____

Contact phone _____ Email _____



For phone assistance: Domestic (877) 709-4750 | International (424) 236-7230

Debtor: 24-55507 - LaVie Care Centers, LLC		
District: Northern District of Georgia, Atlanta Division		
Creditor: Euclide M. Julien. I received no formal notice of bankruptcy. 6421 N. Florida Avenue Tampa, FL, 33604 United States Phone: 239-758-4045 Phone 2: Fax: Email: michellejulien99@yahoo.com	Has Supporting Documentation: Yes, supporting documentation successfully uploaded Related Document Statement:	
	Has Related Claim: No Related Claim Filed By:	
	Filing Party: Creditor	
Other Names Used with Debtor:	Amends Claim: No Acquired Claim: No	
Basis of Claim: Wrongful Termination	Last 4 Digits: No	Uniform Claim Identifier:
Total Amount of Claim: 1,000,000	Includes Interest or Charges: No	
Has Priority Claim: No	Priority Under:	
Has Secured Claim: No Amount of 503(b)(9): No Based on Lease: No Subject to Right of Setoff: No	Nature of Secured Amount: Value of Property: Annual Interest Rate: Arrearage Amount: Basis for Perfection: Amount Unsecured:	
Submitted By: Euclide M. Julien on 26-Oct-2024 5:00:29 p.m. Eastern Time Title: Ms. Company: LaVie Care Centers, LLC, et al		

This form is affected by the Privacy Act of 1974; See Privacy Act Statement before completing this form.

AGENCY CHARGE NUMBER
 FEPA
 EEOC
 511-2023-00511

Florida Commission on Human Relations and EEOC
 State or local Agency, if any

NAME (indicate Mr., Ms., Mrs.) HOME TELEPHONE (Include Area Code)
Ms. Euclide M. Julien **239-758-4045**

STREET ADDRESS CITY, STATE AND ZIP CODE DATE OF BIRTH
212 Halliday Park Drive **Tampa FL 33612** **02/02/1992**

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)

NAME NUMBER OF EMPLOYEES, MEMBERS TELEPHONE (Include Area Code)
Fletcher Health and Rehabilitation Center **50+** **813-265-1600**

STREET ADDRESS CITY, STATE AND ZIP CODE COUNTY
518 W Fletcher Ave **Tampa FL 33612** **Hillsborough**

NAME TELEPHONE (Include Area Code)

STREET ADDRESS CITY, STATE AND ZIP CODE COUNTY

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es)) DATE DISCRIMINATION TOOK PLACE
 RACE COLOR SEX RELIGION NATIONAL ORIGIN EARLIEST LATEST
 RETALIATION AGE DISABILITY OTHER (Specify:) 10/5/22
 CONTINUING ACTION

THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s):

I. Personal Harm:

On January 24, 2022, I filed EEOC Charge No. 511-2022-00315. Since filing the Charge, I was subjected to retaliatory treatment, including cutting my hours, randomly changing my schedule without notice and assignment of undesirable shifts. I have also been passed over for promotions. The EEOC issued a Notice of Rights on May 13, 2022. Since the Right to Sue was issued, I was subjected to retaliation and unjust discipline including a suspension on September 20, 2022 and termination from employment on October 5, 2022 for misconduct in which I did not engage. Comments have also been made about my Haitian national origin, including but not limited to whether I am Legal and practice Voodoo. Additionally, males have engaged in similar or worse misconduct but were not similarly disciplined or discharged.

II. Reason for Adverse for Adverse Action:

I was told I was terminated for insubordination, poor performance and a no call, no show. However, I received permission for my absence that day.

III. Discrimination Statement:

I believe I have been discriminated against based on my race, national origin and sex and retaliated against for engaging in protected activity in violation of Title VII of the Civil Rights Act of 1964, as amended, and the Florida Civil Rights Act, as amended.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY (When necessary for State and Local Requirements)

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.

SIGNATURE OF COMPLAINANT

Date 11-14-22 Euclide Julien
 Charging Party (Signature)

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Month, day and year)

EXHIBIT B

EEOC Charge

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974; See Privacy Act Statement before completing this form.

AGENCY CHARGE NUMBER
 FEPA
 EEOC 511-2023-00511

Florida Commission on Human Relations and EEOC
 State or local Agency, if any

NAME (indicate Mr., Ms., Mrs.) HOME TELEPHONE (Include Area Code)
Ms. Euclide M. Julien **239-758-4045**

STREET ADDRESS CITY, STATE AND ZIP CODE DATE OF BIRTH
212 Halliday Park Drive Tampa FL 33612 02/02/1992

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)

NAME NUMBER OF EMPLOYEES, MEMBERS TELEPHONE (Include Area Code)
Fletcher Health and Rehabilitation Center 50+ 813-265-1600

STREET ADDRESS CITY, STATE AND ZIP CODE COUNTY
518 W Fletcher Ave Tampa FL 33612 Hillsborough

NAME TELEPHONE (Include Area Code)

STREET ADDRESS CITY, STATE AND ZIP CODE COUNTY

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es)) DATE DISCRIMINATION TOOK PLACE
 RACE COLOR SEX RELIGION NATIONAL ORIGIN EARLIEST LATEST
 RETALIATION AGE DISABILITY OTHER (Specify:) 10/5/22
 CONTINUING ACTION

THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s):

I. Personal Harm:

On January 24, 2022, I filed EEOC Charge No. 511-2022-00315. Since filing the Charge, I was subjected to retaliatory treatment, including cutting my hours, randomly changing my schedule without notice and assignment of undesirable shifts. I have also been passed over for promotions. The EEOC issued a Notice of Rights on May 13, 2022. Since the Right to Sue was issued, I was subjected to retaliation and unjust discipline including a suspension on September 20, 2022 and termination from employment on October 5, 2022 for misconduct in which I did not engage. Comments have also been made about my Haitian national origin, including but not limited to whether I am Legal and practice Voodoo. Additionally, males have engaged in similar or worse misconduct but were not similarly disciplined or discharged.

II. Reason for Adverse for Adverse Action:

I was told I was terminated for insubordination, poor performance and a no call, no show. However, I received permission for my absence that day.

III. Discrimination Statement:

I believe I have been discriminated against based on my race, national origin and sex and retaliated against for engaging in protected activity in violation of Title VII of the Civil Rights Act of 1964, as amended, and the Florida Civil Rights Act, as amended.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and cooperate fully with them in the processing of my charge in accordance with their procedures.	NOTARY (When necessary for State and Local Requirements)
	I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.
I declare under penalty of perjury that the foregoing is true and correct.	SIGNATURE OF COMPLAINANT
	SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Month, day and year)

Date 11-14-22 Euclide M. Julien
 Charging Party (Signature)

EXHIBIT C

EEOC Determination



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Tampa Field Office
501 East Polk St, Suite 1000
Tampa, FL 33602
(800) 669-4000
Website: www.eeoc.gov

DETERMINATION AND NOTICE OF RIGHTS

(This Notice replaces EEOC FORMS 161, 161-A & 161-B)

To: Euclide Julien
212 Halliday Park Dr
Tampa, FL 33612
Re: Charge No: 511-2023-00511
EEOC Representative and email: Jose Torres
Investigator
jose.torres@eeoc.gov

DETERMINATION OF CHARGE

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

NOTICE OF YOUR RIGHT TO SUE

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

If you file a lawsuit based on this charge, please sign in to the EEOC Public Portal and upload the court complaint to charge 511-2023-00511.

Please retain this notice for your records.

On behalf of the Commission,

A handwritten signature in black ink that reads "Tamra S. Schweiberger".

Digitally signed by Tamra
Schweiberger
Date: 2024.12.03 13:13:13 -05'00'

Tamra S. Schweiberger
Director

Cc: Jennie L Conrad; Synergy Healthcare Services; 5102 W Laurel St Ste 700 Tampa, FL 33607;
Jennie.l.conrad@synergyhcs.com
Joan M Kosanovich; Synergy Healthcare Services; 5102 W Laurel St Ste 700 Tampa, FL 33607;
Joan.m.kosanovich@synergyhcs.com
Anelys Perez; 1005 N Marion St Tampa, FL 33602; Anelys@nbmlawyers.com
Darren D McClain Esq.; Nelson, Bisconti & McClain, LLC; 1005 N Marion St Tampa, FL 33602;
Dmccclain@tampaemploymentlawyer.com

Enclosure with EEOC Notice of Closure and Rights (01/22)

INFORMATION RELATED TO FILING SUIT UNDER THE LAWS ENFORCED BY THE EEOC

*(This information relates to filing suit in Federal or State court **under Federal law**. If you also plan to sue claiming violations of State law, please be aware that time limits may be shorter and other provisions of State law may be different than those described below.)*

IMPORTANT TIME LIMITS – 90 DAYS TO FILE A LAWSUIT

If you choose to file a lawsuit against the respondent(s) named in the charge of discrimination, you must file a complaint in court **within 90 days of the date you receive this Notice**. Receipt generally means the date when you (or your representative) opened this email or mail. You should **keep a record of the date you received this notice**. Once this 90-day period has passed, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and the record of your receiving it (email or envelope).

If your lawsuit includes a claim under the Equal Pay Act (EPA), you must file your complaint in court within 2 years (3 years for willful violations) of the date you did not receive equal pay. This time limit for filing an EPA lawsuit is separate from the 90-day filing period under Title VII, the ADA, GINA, the ADEA, or the PWFAs referred to above. Therefore, if you also plan to sue under Title VII, the ADA, GINA, the ADEA or the PWFAs, in addition to suing on the EPA claim, your lawsuit must be filed within 90 days of this Notice and within the 2- or 3-year EPA period.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Filing this Notice is not enough. For more information about filing a lawsuit, go to <https://www.eeoc.gov/employees/lawsuit.cfm>.

ATTORNEY REPRESENTATION

For information about locating an attorney to represent you, go to:
<https://www.eeoc.gov/employees/lawsuit.cfm>.

In very limited circumstances, a U.S. District Court may appoint an attorney to represent individuals who demonstrate that they are financially unable to afford an attorney.

HOW TO REQUEST YOUR CHARGE FILE AND 90-DAY TIME LIMIT FOR REQUESTS

There are two ways to request a charge file: 1) a Freedom of Information Act (FOIA) request or 2) a "Section 83" request. You may request your charge file under either or both procedures. EEOC can generally respond to Section 83 requests more promptly than FOIA requests.

Since a lawsuit must be filed within 90 days of this notice, please submit your FOIA and/or Section 83 request for the charge file promptly to allow sufficient time for EEOC to respond and for your review.

To make a FOIA request for your charge file, submit your request online at <https://eeoc.arkcase.com/foia/portal/login> (this is the preferred method). You may also submit a FOIA request for your charge file by U.S. Mail by submitting a signed, written request identifying your request as a "FOIA Request" for Charge Number 511-2023-00511 to the

Enclosure with EEOC Notice of Closure and Rights (01/22)

District Director at Evangeline Hawthorne, 100 SE 2nd St Suite 1500, Miami, FL 33131.

To make a Section 83 request for your charge file, submit a signed written request stating it is a "Section 83 Request" for Charge Number 511-2023-00511 to the District Director at Evangeline Hawthorne, 100 SE 2nd St Suite 1500, Miami, FL 33131.

You may request the charge file up to 90 days after receiving this Notice of Right to Sue. After the 90 days have passed, you may request the charge file only if you have filed a lawsuit in court and provide a copy of the court complaint to EEOC.

For more information on submitting FOIA requests, go to <https://www.eeoc.gov/eeoc/foia/index.cfm>.

For more information on submitted Section 83 requests, go to <https://www.eeoc.gov/foia/section-83-disclosure-information-charge-files>.