No. 20-6087

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

TREVA BACY,

Plaintiff-Appellant,

v.

CHICKASAW NATION INDUSTRIES, INC., and
CNI FEDERAL SERVICES, LLC,

Defendants-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA
THE HONORABLE CHARLES GOODWIN
DISTRICT COURT JUDGE
NO. 19-CV-00512-G

APPELLANT TREVA BACY REPLY BRIEF

ORAL ARGUMENT IS REQUESTED

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December 4, 2020 ***SCANNED PDF ATTACHMENTS INCLUDED***
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COUNTER STATEMENT OF FACTS IN REPLY

1. Appellant, Ms. Treva Bacy, an older African American female, was a well-respected and long-time employee in the FAA Remote Pilot Operator (RPO) program. (Vol II. Aplt. App. 253-258, 259-285)

2. Ms. Bacy maintained her stellar employee performance for approximately thirty (30) years. Ms. Bacy was continually retained by various entities every several years who were awarded the FAA government contract for the administration of the training of air traffic controllers. (Vol I. Aplt. App. 131-132) (Vol II. Aplt. App. 253-258, 259-285)

3. Ms. Bacy had previously not suffered any disciplinary action during her years of service. At the time of her termination, the FAA contract was administered by Appellees on behalf of SAIC, who by agreement continued to maintained Ms. Bacy as an experienced well respected Remote Pilot Operator ("RPO") Lead Air Traffic Control Academy in Oklahoma City. (Vol I. Aplt. App. 131-132) (Vol II. Aplt. App. 253-258, 259-285)

4. The RPO program trains pilots with interactive computer simulations. Ms. Bacy oversaw and provided training to those being trained to assist in the training of the FAA students. (Vol I. Aplt. App. p.146 (Depo pp. 102-103)) (Vol II. Aplt. App. 253-258, 259-285)

5. Ms. Bacy accurately maintain and identified instances where she was attempting to prevent disparate treatment of minority employees after the Defendants took over the contract. Ms. Bacy's actions were in concord to the actual federal contractors published and stated goals. (Vol. 1 Aplt. App. p. 148 (Depo pp. 107, 114, 128-129)) (Vol II. Aplt. App. 253-258; 259-285, 306-310)

6. Ms. Bacy ultimately was falsely accused of supposedly raising her voice to a white supervisor, who was not her direct supervisor. This material fact was disputed by Ms. Bacy. (Vol. 1 Aplt. App. p. 148 (Depo pp. 101-108, 114, 128-129)) (Vol II. Aplt. App. 253-258; 259-285, 306-310, 324-326).

7. Ms. Laminek was considered oppressive and demeaning especially towards minority (mainly black) employees. (Vol II. Aplt. App. 253-258; 259-285, 306-310, 324-326, 331, 334-336, 342-344).

8. Ms. Bacy was immediately terminated at Lamenick's instance and or resulted from a predetermined outcome. Just prior to her termination, Ms. Bacy was attempting to protect a new African American female RPO trainee from the unnecessary and discriminatory wrath of this white supervisor. (Vol II. Aplt. App. 253-258; 259-285, 305-310, 324-326, 331, 334-336, 342-344).

9. As a result of Ms. Bacy's intervention, the supervisor falsely targeted Ms. Bacy claiming that she was insubordinate. The supervisor immediately took her ID access badge and indicated she was terminated before any investigation or

discussions took place. (Vol II. Aplt. App. 253-258; 259-285, 306-310, 324-326, 331, 334-336, 342-344).

10. Appellees demanded her immediate termination even though contrary to a contractual agreement to Ms. Bacy, applicable SAIC employment policies that applied to Defendants. (Vol I. Aplt. App. 131-132) (Vol II. Aplt. App. 253-258, 259-285, 306-310)

11. After 30 years, knowing Ms. Bacy had never been previously disciplined by other contractors; Appellees were well aware Ms. Bacy had previously suffered the loss of her long-term spouse and was currently dealing with and caring for her aging mother who had Alzheimer's where Ms. Bacy was the main financial support source for her mother and family. (Vol I. Aplt. App. 131-132) (Vol II. Aplt. App. 253-258, 259-285, 306-310)

The district court erroneously entered summary judgment indicating no material facts were in dispute. This decision appears to be based in part by not believing and or weighing the disputed facts against Ms. Bacy's testimony. The facts presented as well as reasonable inferences from those facts and circumstances were sufficient to withstand summary judgement. The believability of the witnesses weighed in Ms. Bacy's favor.

Exhibits A through J:

Ms. Bacy previously identified the relevant portions of her exhibits in opposition that are supportive of her position creating support against the pretextual claims of Defendants. The exhibits supported Ms. Bacy's claims regardless of Appellee's attempts to simple state such are to be essentially treated in a de minimis manner. (Vol I. Aplt. App. 131-132) (Vol II. Aplt. App. 253-258, 259-285, 306-310, 311-348)

STANDARD OF REVIEW

The standard of review being **"*de novo*"** is not contested by Appellees and is not at issue before this Court. The purposes of a review *de novo*, contrary to the assertions by Appellees otherwise, is clearly the same standard as the district court utilized. The facts are reviewed in the light most favorable to the non-moving party and all reasonable inferences are drawn in her favor. *Id*. Summary judgment is appropriate **only if** "the movant shows 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). "In this inquiry, the nonmovant **is given wide berth** to prove a factual controversy exists." *Id.*

"A summary judgment motion does not empower a court to act as the jury and determine witness credibility, weigh the evidence, or **choose between competing inferences.**" *Campbell v. Wal-Mart Stores, Inc*., 272 F. Supp. 2d 1276, 1283 (N.D.Okla., 2003); *Nat. Aviation Underwriters, Inc. v. Altus Flying Serv.,*

Inc., 555 F.2d 778, 784 (10th Cir. 1977). (Emphasis added).

Summary Judgments are supposed to be used **sparingly** in employment discrimination cases, because such claims often turn on an employer's intent. *Campbell*, 272 F. Supp. 2d at 1283 (citing *Cone v. Longmont United Hosp. Ass'n*, 14 F.3d 526, 530 (10th Cir. 1994). In this instance, the district court erred in the application of the summary judgment standard by resolving factual disputes and drawing inferences in the light most favorable to the Appellees.

ARGUMENT AND AUTHORITY

PROPOSITION I:

THE DISTRICT COURT ERRED IN FINDING THAT NO MATERIAL FACTS WERE IN DISPUTE PRECLUDING SUMMARY JUDGMENT.

Ms. Bacy, Appellant, submits that her claims for relief, although intertwined are supported by the law and the facts especially as the reasonable inferences of her claims were not provided to her by the district court. "A plaintiff alleging discrimination may prove [her] case by direct or circumstantial evidence." *Sanders v. Sw. Bell Telephone, L.P.*, 544 F.3d 1101, 1105 (10th Cir. 2008). In this action, Ms. Bacy presented direct as well as circumstantial evidence of a racial discriminatory animus. Even if the district court concluded that Ms. Bacy had not presented direct evidence, summary judgment was still inappropriate because Appellant had presented evidence that satisfied the *McDonnell Douglas* burden-shifting framework, as set out in herein where she was entitled to her inferences.

"Direct evidence allows a trier of fact to 'conclude, without inference, that the employment action was undertaken because of the employee's protected status.'" *Black v. Bosque Sys*., CIV-15-0187-HE, 2015 WL 7721246, at *2 fn. 5 (W.D. Okla. Nov. 27, 2015) (citing *Hawkins v. Schwan's Home Serv., Inc*., 778 F.3d 877, 883 n. 4. (10th Cir. 2015)). The district court certainly had to agree that salient direct uncontested facts of a very long employment history free from any adverse employment actions through several contractors were important. That a sudden one-time incident where Ms. Bacy contested any adverse comments of a hostile nature entitled her facts being viewed in a light most favorable to her position regardless of the employer's position.

"[I]n most discrimination cases ... there is rarely direct evidence that the employer's motive was discriminatory." *Denison v. Swaco Gelography Co.,* 941 F.2d 1416, 1420 (10th Cir. 1991). "Therefore, the plaintiff is permitted to use circumstantial evidence to show discrimination" through the use of the burden-shifting framework as set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). *Id.* The *McDonnell Douglas* framework first requires Ms. Bacy to provide evidence (direct or circumstantial) that is sufficient to establish a *prima facie* case. The claimed reason for her immediate discharge was she yelled at or got loud with a supervisor. Essentially, (if believed) an aberrant offense that did not include an threats or threats of violence. A simple outburst under stressful situation of defending a minority employee from discriminatory treatment by Laminek.

Laminek's conduct was not review and she dictated the outcome by demanding Ms. Bacy's identification badge to deny her access to her employment prior to any determination of misconduct. The subsequent removal of Ms. Bacy clearly appears to be demanded by Laminek as withing moments she was removed from the workplace for being loud (which is contested and inferred to viewed in a light more favorable to Ms. Bacy. A black subordinate being harassed by a white supervisor who was being confronted for harassing other black or minority employees. (This also constitutes retaliation which was addressed as not set forth to be understandable.)

Appellees simply seek to de minimize Ms. Bacy personally, her arguments, and her thirty years of faithful employment, her claims of racial animus as being meaningless and unimportant. Summary judgment was inappropriate as will be emphasized below.

PROPOSITION II:

WHETHER THE DISTRICT COURT ERRED BY NOT CONSIDERING THE RELEVANT FACTS AND CIRCUMSTANCES TO ALLOW PROPER EVALUATION OF THE EVIDENCE IN THE MOST FAVORABLE LIGHT FOR APPELLANT.

The district court did correctly point out Ms. Bacy's employment atmosphere as generating an "enmity" which suggests true hatred, either overt or concealed. The district court also correctly pointed out that Ms. Bacy had made out a *prima facia* case. (Vol. II Aplt. Appx. 397); *quoting, DePaula v. Easter Seals El*

Mirador, 859 F.3d 957, 969 (10th Cir. 2017). The district court also correctly stated under the burden shifting analysis "Establishing the prima facie case "**creates a presumption that the employer unlawfully discriminated against the employee**." *Wells v. Colo. Dep't of Transp.*, 325 F.3d 1205, 1223 (10th Cir. 2003). (Emphasis Added) Appellees in response state to this Court at page 14 of their brief:

> "However, Bacy cites to no acts or circumstances that were ignored by the District Court that created such an atmosphere. Instead, Bacy merely asks this Court to extrapolate on its own, the alleged material facts that the District Court failed to consider." *Id* p. 14

Although the district found sufficient evidence of a prima facia case, the district court simply tossed the case indicating the Appellees self-serving self-authenticating reasons to justify the obliteration of a thirty years of good dedicated valuable services to be meaningless and less important than evaluating the legitimacy of such self-serving justifications as being a question of fact.

"A plaintiff produces sufficient evidence of pretext when [he] shows 'such weaknesses, implausibility's, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable factfinder could rationally find them unworthy of credence." *Jones v. Okla. City Pub. Schs.*, 617 F.3d 1273, 1280 (10th Cir. 2010). "Evidence of pretext 'may take a variety of forms.'" *Carter v. Pathfinder Energy Servs., Inc.,* 662 F.3d 1134, 1150 (10th Cir. 2011) (citing *Kendrick, supra,* 220 F.3d at 1230).

Ms. Bacy "need not affirmatively demonstrate that retaliatory reasons motivated [the employer's] decision[.]" *Bausman v. Interstate Brands Corp.,* 252 F.3d 1111, 1120 (10th Cir. 2001). "[O]nce a plaintiff presents evidence sufficient to create a genuine factual dispute regarding the veracity of a defendant's nondiscriminatory reason, we presume the jury could infer that the employer acted for a discriminatory reason and must deny summary judgment." *Jones,* 617 F.3d at 1280. The district court eliminated a determination by a jury by not allowing reasonable minds to consider whether termination was motivated by a racial animus. Ms. Bacy clearly showed the dignity she was due as the employer did not conduct any reasonable inquiry to the demand for immediate termination.

PROPOSITION III:

DISTRICT COURT ERRED BY REJECTING EVALUATION OF RACIALLY BASED "ENMITIES" ARE INSUFFICIENT TO BE DETERMINED BY THE TRIERS OF FACT

The district court did correctly point out Ms. Bacy's employment atmosphere as generating an "enmity" which **suggests true hatred, either overt or concealed**. Hostility implies strong, open enmity that shows itself in attacks or aggression. Animosity carries the sense of anger, vindictiveness, and sometimes the desire to destroy what one hates. *See; https://www.merriam-webster.com/dictionary/enmity.*

Pretext may be shown when the employer's reasons for the adverse employment action are so implausible, contradictory, or insubstantial that a trier of fact could find them unworthy of belief. *Pinkerton v. Colo. Dep't of Transp.,* 563 F.3d 1052, 1065 (10th Cir. 2009). This atmosphere is exactly what Ms. Bacy tried to describe and explain in her sworn testimony and exhibits of an appropriate adopted policy to prevent discrimination. (Vol I. Aplt. App. 131-132) (Vol II. Aplt. App. 253-258, 259-285, 306-310, 311-348)

Unconscious bias occurs when someone who really does not know you makes assumptions about your character, intelligence or capabilities based on how you look, speak or behave. There are many signs of unconscious and conscious bias happening in the workplace especially across society during this time of societal unrest.[1] According to a majority of learned articles and studies the concepts of hidden and or unconscious biases exist. In *Hidden Bias: A Primer, an article published by Tolerance.org, a project of the Southern Poverty Law Center:*

> "The ability to distinguish friend from foe helped early humans survive, and the ability to quickly and automatically categorize people is a fundamental quality of the human mind. Categories give order to life, and every day, we group other people into categories based on social and other characteristics. This is the foundation of stereotypes, prejudice and, ultimately, discrimination.

[1] AMY OPPENHEIMER, THE PSYCHOLOGY OF BIAS: UNDERSTANDING AND ELIMINATING BIAS IN INVESTIGATIONS (2012), http://amyopp.com/wp-content/uploads/2013/07/Psychology_of_Bias_May_2012.pdf (discussing the impact unconscious biases can have on investigators).

> Recent scientific research has demonstrated that biases thought to be absent or extinguished remain as "mental residue" in most of us. Studies show people can be consciously committed to egalitarianism, and deliberately work to behave without prejudice, yet still possess hidden negative prejudices or stereotypes."
> *http://www.tolerance.org/hidden_bias/index.html.*

Ms. Bacy clearly identified the lack of care and outright bias in favor of Sandy Laminek who was supported by management before anyone ever conducted an inquiry. This biased conduct was against the polices applicable to Appellees.

> "Indeed, workplace investigations into complaints of harassment, discrimination, and other workplace misconduct are a critical method for employers to establish that they have complied with certain obligations, such as their "obligation to ensure a discrimination-free work environment.[2] As a result, the fairness and effectiveness of the workplace investigation process utilized by employers has increasingly come under judicial scrutiny."[3]

Journal of law and Policy; 2016, *The Hidden World of Unconscious Bias and its Impact on the "Neutral" Workplace Investigator*; Ashley Lattal.

In *Nazir v. United Airlines*, 100 Cal. Rptr. 3d 296 (Cal. Ct. App. 1st 2009) the California Appeals Court reversed summary judgment for employer defendant

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[2] Northrop Grumman Corp. v. Worker's Comp. Appeals Bd., 127 Cal. Rptr. 2d 285, 296 (Cal. Ct. App. 2002); *see also* U.S. EEOC, ENFORCEMENT GUIDANCE ON VARIOUS EMPLOYER LIABILITY FOR UNLAWFUL HARASSMENT BY SUPERVISORS, EEOC NOTICE 915-002 (June 18, 1999) [hereinafter EEOC ENFORCEMENT GUIDANCE], http://www.eeoc.gov/policy/docs/harassment.html.

[3] *See* STEWART S. MANELA, WORKPLACE INVESTIGATIONS 3, http://www.americanbar.org/content/dam/aba/administrative/labor_law/meetings,/2009/ac2009/107.authcheckdam.pdf. "Employment practices experts frequently testify regarding what constitutes reasonable investigation, and critique employers' investigations. Consequently, employers are increasingly being called upon to explain and justify their investigatory techniques as reasonable and appropriate in the face of these expert opinions." *Id.* at 3 n.4.

where the investigation into discrimination claims showed it was a "far cry" from being impartial and or complete, which raised a triable issue whether the investigation was unbiased or appropriate; see also, *Quela v. Payco-General Am. Credits, Inc.*, 84 F. Supp. 2d 956 (N.D. Ill. 2000).

Appellees have touted the workplace investigation as finding the appropriate facts and circumstances to justify Ms. Bacy's termination. The evidence submitted on its face shows a complete lack of concern for the underlying reasons and only focus on the confabulated justification of purported insubordination. The problems ignored are as follows:

- Laminek was not the supervisor of Ms. Bacy.
- No orders had been given to Ms. Bacy by Laminek until after the claimed incident. (Give me your employment badge)
- Laminek was not threatened with any violence and claimed that Ms. Bacy yelled at her (for discriminating against a black employee and attempting to intentionally get her fired. (Ms. Bacy was engaged in EEO activity).
- No other statements to address the misconduct of Laminek were taken only those to justify terminating Ms. Bacy.

The Appellees never submitted any qualified investigative reports or conducted anything that could be defined as impartial. [4] The Second Circuit in *Malik v. Carrier Corp*., 202 F.3d 97, 105 (2nd Cir. 2000) indicated the appropriate need for an impartial

[4] *See* EEOC ENFORCEMENT GUIDANCE, s*upra* note 1 ("An anti-harassment policy and complaint procedure should contain, at a minimum . . . [a] complaint process that provides a prompt, thorough, and impartial investigation [among other elements]."

investigation. "[A]n employer's investigation of a sexual harassment complaint is not a gratuitous or optional undertaking; under federal law, an employer's failure to investigate may allow a jury to impose liability on the employer." Without such, how can the employer's purported reasons be considered legitimate and unbiased? *See* Justin D. Levinson, *Forgotten Racial Equality: Implicit Bias, Decisionmaking, and Misremembering*, 57 DUKE L.J. 345, 348 (2007).

PROPOSITION IV:

DISTRICT COURT ERRED BY MISINTERPRETING APPELLANT'S FACTUAL MATERIALS THAT WERE PRESENTED IN THEIR ENTIRETY TO PROVIDE THE ATMOSPHERE AND CONSTRAINTS REGARDING DEFENDANTS CONDUCT.

Ms. Bacy provided relevant materials to show the importance of the non-discrimination policies as well as the fair treatment of all employees as valuable resources for SAIC. Appellees simply never followed those conduct policies and allowed the mistreatment of black employees to run rampant. Laminek was allowed and essentially protected while Ms. Bacy was immediately terminated after thirty (30) years of unblemished services. The atmosphere around Ms. Bacy was uncontroverted as identified as the reasonable inferences was she was targeted by Laminek. The district court never scrutinized the sufficiency and or conclusion of the purported investigation under the light most favorable standard provided in Fed. R. Civ. P. 56(a).

The decision of whether or not Ms. Bacy's theory of this case is viable clearly shows that all the inequities and inferences were given to Appellees

even though she had been determined to have proven up a *prima facie* case. The existence remains for "potential jury questions in the presence of materially disputed facts." *Quoting Meshwerks, Inc. v. Toyota Motor Sales U.S.A., Inc.*, 528 F.3d 1258, 1262 n.4 (10th Cir. 2008). Appellees have not relied on any independent or neutral source to justify the claims of not being pretext. See *Thomas v. Berry Plastics Corp.*, 803 F.3d 510, 516 (10th Cir. 2015)("[i]t is well-established in this Circuit that an employer can break the causal chain between the biased subordinate's unlawful actions and the adverse employment action by independently investigating the allegations against the employee.")

Ms. Bacy established a prima facia case but is being denied her day in court based upon the district court determination that her being loud constituted sufficient unbiased grounds justifying termination of her longstanding employment. The whimsical nature of Appellees conduct is not justified as part of their accepted policy of unbiased and fair treatment.

PROPOSITION V:

DISTRICT COURT ERRED BY SHIFTING THE BURDEN TO APPELLANT TO CONCLUSIVELY PROVE THAT HER TERMINATION WAS PRETEXTUAL

Proof that an employer's explanation is unworthy of credence is a form of circumstantial evidence "that is probative of intentional discrimination, and it may be quite persuasive." *Reeves v. Sanderson Plumbing Prods., Inc.,* 530 U.S. 133, 147 (2000). See also *Metzler v. Fed. Home Loan Bank*, 464 F.3d 1164, 1177 (10th

Cir. 2006 ("pretext may be established with evidence that 'nondiscriminatory reasons were after-the-fact justifications.'")

Pretext is also demonstrated by showing "such weaknesses, implausibility's, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its actions that a reasonable factfinder could rationally find them unworthy of credence." *Morgan v. Hilti, Inc*., 108 F.3d 1319, 1323 (10th Cir. 1997). *Coleman v. B-G Maint. Mgmt.*, 108 F.3d 1199, 1203 (10th Cir. 1997) ("Title VII not only forbids discrimination against women in general, but also discrimination against subclasses of women.") (citing, *inter alia*, *Phillips*, 400 U.S. at 544). Ms. Bacy provided notice and identified that other issues were at hand especially as a dipropionate number of older employees were being harassed.

The district court noted alternative claims but rejected such summarily even though adequate evidence existed for retaliation claims although not separately delineated. Federal rules allow plaintiffs to plead claims in the alternative—even inconsistent ones. *See* Fed. R. Civ. P. 8(d)(3) ("A party may state as many separate claims or defenses as it has, regardless of consistency."); *Boulware v. Baldwin*, 545 F. App'x 725, 729 & n.4 (10th Cir. 2013) ("Federal pleading rules have for a long time permitted the pursuit of alternative and inconsistent claims.").

Ms. Bacy's retaliation claims permitted the case to move forward as part of the misconduct identified as being involved in EEOC activity of objecting to the mistreatment of minority employees.

PROPOSITION VI:

WHETHER THE DISTRICT COURT ERRED BY DETERMINING THE ADMISSIBILITY OF HEARSAY EVIDENCE OR POTENTIAL THEORIES OF ADMISSIBILITY OF STATEMENTS PRESENTED AND ARGUED BY APPELLEES AS SWORN STATEMENTS OF FACT CAN BE RELIED UPON TO DEFEAT APPELLANT'S CHALLENGE OF ADMISSIBILITY.

The district court made a presumption of an independent investigation which then by self-serving claims Appellees were essentially able to remove the presumption of discriminatory animus. (Vol. II Aplt. App. 398 (fn. 3)). This is where the district court ignored the objections made by Ms. Bacy about the factual inaccuracies claimed by Appellees. The evidence was material and contested and not worthy of summary judgment. (Aplt. App. 259-354). *See for example*; *United States v. Abel,* 469 U.S. 45, 56 (1984) ("It would be a strange rule of law which held that relevant, competent evidence which tended to show bias on the part of a witness was nonetheless inadmissible because it also tended to show that the witness was a liar."). See also; *Sprint/United Mgmt. Co. v. Mendelsohn*, 552 U.S. 379, 384 (2008); cf. *Old Chief v. United States*, 519 U.S. 172, 187 (1997) (Evidence thus has force beyond any linear scheme of reasoning, and as its pieces come together a narrative gains momentum . . . ."); *FDIC v. Fid. & Deposit Co. of Md*., 45 F.3d 969, 980 n.6 (5th Cir. 1995) (affirming admission of evidence that "define[d] and `elucidate[d] the nature of the transaction'").

Any ability for Mrs. Bacy to challenge the evidence appears to be lost at the summary judgment analysis performed by the district court. *See* Sandra Sperino, *Retaliation and the Reasonable Person*, 67 Fla. L. Rev. 2031, pp. 2033- 2039 (2016) Florida Law Review, March 2016. ("The Court held that the anti-retaliation provisions cover those employer actions that 'would have been materially averse to a reasonable employee or job applicant.' The Court further indicated that "the employer's actions must be harmful to the point that they could well dissuade a reasonable worker from making or supporting a charge of discrimination.") (footnotes and citations omitted).

CONCLUSION

The allegations and facts taken in light most favorable to Ms. Bacy were more than sufficient to provide disputes of material facts about the self- serving claims perpetuated as being bias-neutral. The district court appears to have given Appellees an undeserved cloak of believability over Ms. Bacy.

Respectfully Submitted,

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RULE 28.2(c)(4) STATEMENT REGARDING ORAL ARGUMENT

Appellant, Treva Bacy, requests oral argument due to the complex factual and legal issues involved governing the evaluation of this matter involved with Appellant's claims.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this brief complies with the limitations of Fed.R.App.P. 32(a)(7)(B) because this brief contains **3,861** words, excluding the parts exempted by Fed.R.App.P. 32(a)(7)(B)(iii) and this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in size fourteen Times New Roman font.

/s/ David J. Batton
David J. Batton

CERTIFICATES FOR DIGITAL SUBMISSION

I hereby certify that with respect to the foregoing:

(1) all required privacy redactions have been made per 10th Cir. R. 25.5;

(2) if required to file additional hard copies, that the ECF submission is an exact copy of those documents;

(3) the digital submissions have been scanned for viruses with the most recent version of a commercial virus scanning program, **Avast Premium Security 20.7.2425**; and according to the program are free of viruses.

/s/ David J. Batton
David J. Batton

CERTIFICATE OF SERVICE

I hereby certify that on December 5, 2020, I caused the foregoing Appellants Opening Brief to be filed upon the Court through the use of the Tenth Circuit CM/ECF electronic filing system, and thus also served counsel of record. The resulting service is consistent with the Service Method Report:

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