IN THE CIRCUIT COURT FOR THE NINTH JUDICIAL CIRCUIT
FOR ORANGE COUNTY
STATE OF FLORIDA

CHRISTINE JANNING,	)	
	)	
Plaintiff,	)	**Civil Action No. 2022-CA-008876**
	)	
v.	)	
	)	
SOUTHWEST AIRLINES, CO., SOUTHWEST AIRLINES PILOTS' ASSOCIATION, and MICHAEL HAAK,	)	
	)	
Defendants.	)	

DEFENDANT SOUTHWEST AIRLINES PILOTS' ASSOCIATION'S MOTION TO DISMISS PLAINTIFF'S THIRD AMENDED COMPLAINT

Pursuant to Florida Rule of Civil Procedure 1.140(b)(6), Defendant Southwest Airlines Pilots' Association ("SWAPA"), by and through undersigned counsel, respectfully moves to dismiss Plaintiff Christine Janning's ("Plaintiff") Third Amended Complaint as to Count VII and Count VIII against SWAPA for failure to state a claim.

INTRODUCTION

The Third Amended Complaint is Plaintiff's fourth attempt to bring two claims against SWAPA for alleged conspiracy to unlawfully retaliate. This latest iteration of Plaintiff's complaint continues to suffer the same primary defect as her prior pleadings: Plaintiff still does not allege specific factual allegations that tether SWAPA's purported conduct to an alleged agreement with Southwest Airlines, Co. ("Southwest") to retaliate against Plaintiff. The Third Amended Complaint in fact adds new allegations that firmly establish this disconnect; Plaintiff now alleges that SWAPA's participation in a "collective decision" to ground Plaintiff was based on purportedly false statements Southwest made to SWAPA in a "2C Letter" about Plaintiff's fitness to fly.

Plaintiff makes no specific factual allegations tying SWAPA's alleged conduct to a purported scheme with Southwest to retaliate against Plaintiff, nor could she. The Third Amended Complaint simply does not state a claim for conspiracy to retaliate, and the claims against SWAPA should therefore now be dismissed with prejudice.

Plaintiff's action arises from Defendant Michael Haak's alleged sexual misconduct toward Plaintiff and Defendant Southwest's alleged retaliation against Plaintiff for reporting Haak's conduct. The majority of Plaintiff's claims are against Southwest and Southwest pilots Haak, David Newton, and Michael Hawkes. The only claims Plaintiff brings against SWAPA—the labor union representing Southwest pilots—are two claims for conspiracy to retaliate, one alleging Southwest and SWAPA are co-conspirators (Count VII) and the other alleging Southwest, SWAPA, Newton, and Hawkes as co-conspirators (Count VIII).

This Court previously dismissed Count VII of Plaintiff's Second Amended Complaint because "there remain[ed] a disconnect between [the] alleged conspiracy to retaliate by grounding Plaintiff and SWAPA's alleged conduct of assisting Haak in the criminal action." *See* November 22, 2023, Order Granting in Part and Denying in Part Defendants' Motions to Dismiss Plaintiff's Second Amended Complaint ("November Order") at 3. In her Third Amended Complaint, Plaintiff makes no changes to remedy this deficiency, and in fact Plaintiff has not changed her pleading at all with regard to Count VII.

The Court, however, allowed Count VIII to more forward against Southwest and SWAPA[1] because the Court found that the allegations in Plaintiff's Second Amended Complaint that

[1] The Court's November Order dismissed the conspiracy claim against Cpt. Hawkes and Cpt. Newton because the intracorporate conspiracy doctrine barred the claim against them and Plaintiff failed to adequately raise the personal stake exception. *See* November Order at 4. Plaintiff's Third Amended Complaint nevertheless once again includes Newton and Hawkes in Count VIII for conspiracy, and without adding any new allegations to invoke the personal stake exception.

SWAPA participated in a "collective decision" with Southwest to ground Plaintiff from flying were sufficient to state a claim for conspiracy to retaliate; though the Court described this decision as "a close call." *See id.* at 3.[2]

Plaintiff's Third Amended Complaint, however, now adds specific factual allegations that clearly demonstrate that SWAPA's alleged participation in a collective decision to ground Plaintiff is not tethered to any purported scheme between SWAPA and Southwest to retaliate against Plaintiff, as would be required to assert this claim. *See* Third Amended Complaint ("TAC") ¶¶ 98-117. The new allegations regarding Southwest's alleged false statements about Plaintiff's fitness to fly in the 2C Letter Southwest disseminated to SWAPA, and SWAPA's subsequent purported participation in a collective decision to ground Plaintiff, do not allege that SWAPA's conduct had anything to do with an agreement to retaliate against Plaintiff. Rather, Plaintiff's new allegations state that SWAPA was deceived by the alleged false statements about Plaintiff in the 2C Letter and participated in a "collective decision" to ground Plaintiff based on those purportedly false statements. Accordingly, Plaintiff's new allegations now require the Court to dismiss Plaintiff's conspiracy claims in the Third Amended Complaint with prejudice.

In addition to these new allegations that subvert Plaintiff's claims for conspiracy, the other deficiencies that plagued Plaintiff's prior pleadings remain in the Third Amended Complaint. Plaintiff again repeats her generic allegations of a conspired "old boys' club" culture created to advance the interests of male pilots over all other Southwest employees; such allegations are not

[2] SWAPA respectfully disagrees with the Court's finding that the allegations in the Second Amended Complaint regarding SWAPA's alleged involvement a collective decision to ground Plaintiff were sufficient to state a claim for conspiracy to retaliate. The allegations were conclusory and failed to provide any specific facts that SWAPA and Southwest made a collective decision to ground Plaintiff. Significantly, the Second Amended Complaint also failed to provide any specific facts that such alleged collective decision was in any way tied to a purported scheme to retaliate against Plaintiff.

"clear, positive and specific" and remain "disconnected" from the alleged underlying tort of unlawful retaliation of Plaintiff. Moreover, the Third Amended Complaint reasserts Plaintiff's prior insufficient allegations contending that Plaintiff is unsatisfied with the way SWAPA, as her union, represented her interests related to the incident with Haak. These allegations are still not tied to Southwest's purported retaliation and are, at best, poorly disguised claims for breach of the Duty of Fair Representations (DFR), which are time-barred by a six-month statute of limitations.

Finally, Plaintiff's conspiracy claims are equally barred by the intracorporate conspiracy doctrine. First, Plaintiff again improperly attempts to bolster her conspiracy claims by contending that Southwest and SWAPA are so closely tied that Southwest's decisions are imputed onto SWAPA and, thus, any purported retaliation by Southwest was accomplished through a "collective decision" with SWAPA. Second, as this Court already held in its prior Orders, the intracorporate conspiracy doctrine bars the inclusion of Cpt. Newton and Cpt. Hawkes in Count VIII.

Plaintiff's fourth attempt to muster claims against SWAPA falls woefully short and the two conspiracy claims against SWAPA, Counts VII and Count VIII, should be dismissed with prejudice.

LEGAL ARGUMENT AND SUPPORTING MEMORANDUM OF LAW

A. Legal Standard.

When reviewing a motion to dismiss for failure to state a cause of action, courts accept as true all well-pled facts, drawing reasonable inferences in favor of the complainant. *See Taylor v. City of Riviera Beach*, 801 So. 2d 259, 262 (Fla. 4th DCA 2001). "This does not mean, however, that the courts will by inference on inference or speculation supply essential averments that are lacking." *Kendry v. State Rd. Dep't*, 213 So. 2d 23, 30 (Fla. 4th DCA 1968). Indeed, to adequately state a cause of action, the plaintiff "must allege sufficient ultimate facts to show that [it] is entitled

to relief." *Samuels v. King Motor Co. of Fort Lauderdale*, 782 So. 2d 489, 495 (Fla. 4th DCA 2001) (internal quotations omitted).

In order "[t]o state a cause of action for civil conspiracy, a plaintiff must plead: (1) an agreement between two or more parties; (2) to do an unlawful act or a lawful act by unlawful means; (3) the execution of some overt act in pursuance of the conspiracy; and (4) damage to the plaintiff as a result of said acts." *Logan v. Morgan, Lewis & Bockius Ltd. Liab. P'ship*, 350 So. 3d 404, 412 (Fla. 2d DCA 2022).

General allegations of conspiracy are insufficient; a conspiracy claim requires "clear, positive and specific allegations." *Parisi v. Kingston*, 314 So. 3d 656, 661-63 (Fla. 3d DCA 2021) (finding that a complaint "[a]lleging simply that the co-defendants had an 'agreement' to profit from Piccolo's alleged breach of fiduciary duty and that the property transfer was 'illegal,' without more, was insufficient" to state a claim for conspiracy and that it was "deficient because it fails to allege, with any specificity, any facts evidencing how Parisi conspired with Piccolo and Oxen Group to facilitate either Piccolo's breach of fiduciary or Parisi's trespass upon the decedent's property")). Moreover, in bringing a conspiracy claim, a plaintiff must allege that a defendant "kn[e]w of the scheme and assist[ed] in it in some way to be held responsible for all of the acts of his coconspirators." *Donofrio v. Matassini*, 503 So. 2d 1278, 1281 (Fla. 2d DCA 1987); *see also Menendez v. Beech Acceptance Corp.*, 521 So. 2d 178, 180 (Fla. 3d DCA 1988) ("Some proof of knowledge of a conspiracy and participation in it by the alleged tortfeasor, must be shown"); *Tucci v. Smoothie King Franchises, Inc.*, 215 F. Supp. 2d 1295, 1302 (M.D. Fla. 2002) (dismissing a conspiracy complaint because "[t]here are no facts to support an inference that there was an agreement between [the defendants]").

Crucially, all conspiracy claims require an underlying tort. *Donofrio*, 503 So. 2d at 1281. "Conspiracy is not a separate or independent tort but is a vehicle for imputing the tortious acts of one coconspirator to another to establish joint and several liability." *Lorillard Tobacco Co. v. Alexander*, 123 So. 3d 67, 80 (Fla. 3d DCA 2013) (quoting *Ford v. Roeland*, 562 So. 2d 731, 735 n. 2 (Fla. 5th DCA 1990)); *see also Logan*, 350 So. 3d at 412 ("[T]here is no freestanding cause of action in Florida for civil conspiracy. Rather, the conspiracy is merely the vehicle by which the underlying tort was committed, and the allegations of conspiracy permit the plaintiff to hold each conspirator jointly liable for the actions of the coconspirators.").

Finally, dismissal of a complaint with prejudice is appropriate when an amendment would be futile and the plaintiff cannot demonstrate any new facts or arguments to support their claims. *See Tuten v. Fariborzian*, 84 So. 3d 1065, 1069 (Fla. 1st DCA 2023) (affirming the dismissal of plaintiff's first amended complaint with prejudice because "the court need not allow an amendment that would be futile"); *Schraw v. Estate of Hester*, 693 So. 2d 721, 722 (Fla. 5th DCA 1997) (affirming dismissal with prejudice where "appellant's counsel ha[d] not demonstrated what further amendment could be made if given the opportunity" because no new facts or arguments were included to support the plaintiff's claims).

Plaintiff's Third Amended Complaint fails to satisfy Florida's pleading standard to assert claims for conspiracy against SWAPA, and thus Counts VII and VIII must be dismissed with prejudice.

B. The New Allegations of Plaintiff's Third Amended Complaint Do Not Support a Claim for Conspiracy to Retaliate Based on an Alleged Collective Decision to Ground Plaintiff.

This Court's November Order found that Count VIII of the Second Amended Complaint only barely managed to adequately state a conspiracy claim, describing it as "a close call." *See* November Order at 3. Specifically, the Court found that Plaintiff's allegations that SWAPA

participated in a "collective decision" with Southwest to ground Plaintiff met the threshold to state a claim for conspiracy to retaliate, though only barely so. *See id.* at 3-4.

Plaintiff's Third Amended Complaint, however, now adds specific factual allegations that clearly demonstrate a disconnect between SWAPA's alleged involvement in a collective decision to ground Plaintiff and the underlying tort of retaliation, requiring the Court to now dismiss Plaintiff's conspiracy claims with prejudice. Plaintiff's new complaint alleges that SWAPA's participation in a collective decision to ground Plaintiff was based on Southwest's purported false claims about Plaintiff in Southwest's 2C Letter, rather than as part of a conspiracy with Southwest to retaliate against Plaintiff.

Florida law requires that Plaintiff's allegations of SWAPA's purported conduct be tied to the underlying tort alleged, in this case retaliation. *See* November Order at 3; *see also Lorillard Tobacco Co.*, 123 So. 3d at 80; *Logan*, 350 So. 3d at 412. Furthermore, Plaintiff must allege that SWAPA knew of Southwest's alleged scheme to retaliate against Plaintiff and that SWAPA actually assisted Southwest in the alleged scheme to retaliate. *See Donofrio*, 503 So. 2d at 1281; *Menendez*, 521 So. 2d at 180; *Tucci*, 215 F. Supp. 2d at 1302. Such allegations must be "clear, positive and specific []; general allegations are not sufficient." November Order at 3 (citing *Parisi*, 314 So. 3d at 661). Although Plaintiff's Third Amended Complaint still makes skeletal conclusory allegations that SWAPA and Southwest made a "collective decision" to ground Plaintiff as part of agreement to punish Plaintiff for reporting Haak and participating in an FBI investigation, *see, e.g.,* TAC ¶ 125, such conclusory allegations are insufficient; the Court must instead look to Plaintiff's specific factual allegations.

Here, the new specific factual allegations in the Third Amended Complaint about Southwest's purportedly false 2C Letter and a "collective decision" between SWAPA and

Southwest to ground Plaintiff do not allege that SWAPA's purported conduct had anything to do with a retaliatory scheme between SWAPA and Southwest; rather, the new allegations state that SWAPA was deceived by Southwest's false statements about Plaintiff in the 2C Letter and participated in the alleged collective decision to ground Plaintiff based on these purportedly false statements. *See id.* ¶¶ 98-117.

According to Plaintiff, the 2C Letter was authored by Cpt. Newton in the course of his employment with Southwest and "made baseless allegations about Ms. Janning's competency to fly." *See id.* ¶ 97-98. Plaintiff claims this letter was widely disseminated to "hundreds of SWA and SWAPA employees." *Id*. ¶ 112. Plaintiff also repeatedly states that the contents of the 2C Letter made false statements about Plaintiff:

- The 2C Letter "gave these individuals the false impression that Ms. Janning was the subject of an FBI investigation," *id*. ¶ 95;
- "The impact is found as to the false claims Cpt. Newton made to hundreds of SWA and SWAPA employees and agents by stating that Ms. Janning had been pulled pursuant to 2.C," *id*. ¶ 103;
- "The 2C Letter plainly presented false information, in writing, about Ms. Janning and her fitness to fly to an enormous number of people," *id*. ¶ 113;
- "Beyond this, in addition to the 2C Letter presenting damagingly false information about Ms. Janning, it also endangered her," *id*. ¶ 114.

Significantly, Plaintiff's new allegations state that SWAPA was deceived by the purported false statements in Southwest's 2C Letter about the FBI investigation and Plaintiff's fitness to fly, thus leading to SWAPA's alleged involvement in a "collective decision" to ground Plaintiff. *See id.* ¶¶ 98-117. For example, Plaintiff has alleged that it was a SWAPA employee and attorney,

Helen Yu, who conspired with Southwest to retaliate against Plaintiff by grounding her from flying. *See id.* ¶ 289; SAC ¶ 248. Yet, in the Third Amended Complaint, Plaintiff now adds allegations that Ms. Yu was confused and deceived by the contents of Southwest's 2C Letter and that Ms. Yu "explained that even she believed that Ms. Janning might have been the subject of the FBI investigation due to the fact that Section 2.C of the CBA had been cited." TAC ¶ 110; *see also id*. ¶¶ 109-113. Plaintiff then alleges that the "collective decision" to ground Plaintiff was based on Plaintiff's purported "involvement in the FBI investigation of the Incident," which is the very thing Plaintiff repeatedly alleges that SWAPA had been misled about by Southwest in the 2C Letter. *Id*. ¶ 125.

Thus, according to the specific factual allegations of Plaintiff's Third Amended Complaint, it was the allegedly false statements in Southwest's 2C Letter that led to SWAPA's alleged participation in a collective decision to ground Plaintiff. *See id.* ¶¶ 98-125. There are simply no factual allegations in the Third Amended Complaint to support Plaintiff's improper conclusory claim that SWAPA and Southwest's "collective decision" to ground Plaintiff was part of an agreement between Southwest and SWAPA to unlawfully retaliate against Plaintiff.

These new allegations are consistent with the allegations Plaintiff has made in her prior complaints (and repeated in the current Third Amended Complaint) that attribute the decision to retaliatorily ground Plaintiff entirely to Southwest.[3] *See, e.g.,* SAC ¶¶ 103, 141-43, 163, 220, 254; TAC ¶¶ 123, 169-71, 191, 248, 282. Indeed, Plaintiff's Third Amended Complaint attributes all retaliatory conduct—including any alleged retaliatory grounding—to Southwest, not SWAPA. *See*

[3] Moreover, though Plaintiff raised the issue of her grounding by Southwest in her EEOC Charge, she never mentioned SWAPA or any "collective decision" between SWAPA and Southwest at any point in the Charge. *See* EEOC Charge Number 510-2021-03456, attached as **Exhibit 1**. Instead, the decision to ground Plaintiff is entirely attributed to Southwest. *See id.*

TAC ¶¶ 95–98 (publishing the 2C Letter disparaging her to Southwest and SWAPA employees); *id.* ¶ 123 (grounding Plaintiff from flying); *id.* ¶¶ 147-151 (denying Plaintiff the FAA's 180-day extension to return to flight without simulator training); *id.* ¶¶ 192-197 (handling the self-reporting of Plaintiff's son's suspected Covid-19 infection differently than that of her ex-husband).

In sum, the new allegations in Plaintiff's Third Amended Complaint regarding Southwest's purportedly false 2C Letter and SWAPA's alleged participation in a collective decision to ground Plaintiff do not support a claim against SWAPA for conspiracy to retaliate. Plaintiff fails to allege specific facts that connect SWAPA's alleged conduct to the underlying tort of retaliation, and her claims against SWAPA for conspiracy to retaliate must be dismissed with prejudice.

C. The Remaining Allegations Directed at SWAPA in Plaintiff's Third Amended Complaint are Identical to Plaintiff's Second Amended Complaint and Thus Still Do Not Support a Claim for Conspiracy Against SWAPA.

Other than Plaintiff's new allegations regarding the 2C Letter and SWAPA's alleged involvement in a purported collective decision to ground Plaintiff, the remaining allegations in Plaintiff's Third Amended Complaint relating to the conspiracy claims against SWAPA are identical to Plaintiff's Second Amended Complaint and therefore still do not state a claim for conspiracy to retaliate. Plaintiff's Third Amended Complaint continues to lack "clear, positive and specific" allegations that SWAPA knew of and assisted Southwest in a scheme to retaliate against Plaintiff. Plaintiff continues to include bare conclusory allegations that are disconnected from the alleged underlying tort of retaliation, and the Court should therefore now dismiss with prejudice Counts VII and VIII of the Third Amended Complaint.

i. Plaintiff Again Fails to Plead "Clear, Positive and Specific" Facts of a Conspiracy to Retaliate.

Plaintiff's Third Amended Complaint stubbornly repeats the same improper generic conspiracy allegations against SWAPA that are disconnected from the alleged act of retaliation

asserted in Count V. As the Court has already determined in its two prior Orders,[4] Plaintiff's vague and specious allegations of a conspired "old boys' club" culture do not support the alleged underlying tort of unlawful retaliation against Plaintiff and cannot form the basis of Plaintiff's conspiracy claims. *See, e.g.,* TAC ¶¶ 272, 286 ("[F]or the entire life of Southwest, an 'old boys' club' culture has existed at Southwest, wherein male pilots were prioritized above all other employees at Southwest, which was by arrangement and agreement between Southwest and SWAPA."); *id.* ¶¶ 273, 287 ("Southwest and SWAPA had agreed and conspired together to advance the positions and interests of male pilots over the positions and interests of all other employees, agents, and staff."); *id.* ¶¶ 275, 288 ("This conspired culture at both Southwest and SWAPA fostered a perfect breeding ground for the incidents and claims presented herein."), *id.* ¶ 280 ("This was done to further protect the old boys' club culture that Southwest and SWAPA agreed to foster."); *see also, e.g., id.* ¶ 175 ("By at least 2008, SWAPA and Southwest had an agreement . . . to protect Cpt. Haak and other tenured male pilots from their unfortunate sexual indiscretion with female pilots and flight attendants."); *id.* ¶ 177 ("Neither Southwest, nor SWAPA did anything to prevent sexual assault, sexual battery, sexual harassment and/or other sexual abuses from being inflicted by tenured male pilots upon female pilots and flight attendants.").

These general allegations, even if true, have nothing at all to do with Plaintiff and do not support the retaliation against Plaintiff in 2020 and 2021 that is alleged in the Third Amended Complaint.

[4] *See* June 26, 2023, Order Granting Defendants' Motions to Dismiss Plaintiff's Amended Complaint ("June Order") at 5; November Order at 3.

ii. Plaintiff's Allegations Against SWAPA Still Amount to Nothing More than a Poorly Disguised and Time-Barred Claim for Breach of the Duty of Fair Representation.

Furthermore, like Plaintiff's first three complaints, the Third Amended Complaint consists of improper, bare, and conclusory assertions that Plaintiff is unsatisfied with the way in which SWAPA, as her union, represented her interests in relation to the incident with Haak and failed in its duty to support her. *Id.* ¶¶ 168-74, 185-86, 278-79. Such allegations, however, are disconnected from Southwest's purported retaliation against Plaintiff and thus do not support a claim for conspiracy to unlawfully retaliate. *See* June Order at 5; November Order at 3. As such, Plaintiff's conspiracy claims against SWAPA amount to nothing more than poorly disguised claims for breach of the Duty of Fair Representation (DFR), which are time-barred.

"The DFR is a judicially derived corollary to the union's statutory status as the employees' collective bargaining representative." *Avera v. Airline Pilots Ass'n Int'l*, 436 F. App'x 969, 979 (11th Cir. 2011). "A union owes its members a duty to represent them adequately, honestly, and in good faith." *Id.* "A breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith." *Vaca v. Sipes*, 386 U.S. 171, 190, 87 S. Ct. 903, 916 (1967). While the assertions regarding SWAPA in Plaintiff's Third Amended Complaint fall far short of demonstrating arbitrary, discriminatory or bad faith acts, even if it did, Plaintiff is time-barred from bringing a breach of duty of fair representation claim. *See e.g., Avera*, 436 F. App'x at 979 ("In the interest of labor relations stability, courts have adopted a short, six-month statute of limitation for the filing of DFR claims."); *Hechler v. Int'l Bhd. Of Elec. Workers*, 834 F. 2d 942, 944 (11th Cir. 1987); 29 U.S.C.

§ 160(b) ("[N]o complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge.").[5]

Plaintiff cannot circumvent the statute of limitations for DFR claims by superficially relabeling her claims as "conspiracy to retaliate." Although Plaintiff contends SWAPA acted in a manner adverse to her, the alleged actions are simply reflective of a union's duty to represent all its members and, at times, balance conflicts between and amongst them. *See, e.g., Ford Motor Co. v. Huffman*, 345 U.S. 330, 338 (1953) (finding that "[t]he complete satisfaction of all who are represented is hardly to be expected" in the context of conflicts of interest between members during Union bargaining); *Samples v. Ryder Truck Lines, Inc.*, 755 F. 2d 881, 885–86 (11th Cir. 1985) (holding that "the basic premise of unionism is that such a sacrifice on the individual's part is more than outweighed by the benefits that accrue to him when his union can act with the assurance that it speaks with the exclusive voice of all its members" in the context of a member unhappy with a union's resolution of his claim). Indeed, like Plaintiff's prior complaints, the Third Amended Complaint directs allegations at SWAPA that have nothing to do with Southwest's purported retaliation of Plaintiff; instead, these allegations assert that SWAPA purportedly failed to represent Plaintiff's interests. Specifically, according to Plaintiff, SWAPA:

- "did nothing beneficial [for Plaintiff]," TAC ¶ 168;

[5] "For the purpose of determining when the [statute of limitations] period begins to run, [courts] look to when plaintiffs either were or should have been aware of the injury itself." *Benson v. Gen Motors Corp.*, 716 F. 2d 862, 864 (11th Cir. 1983). According to Plaintiff's Third Amended Complaint, she was aware of any alleged injury purportedly caused by SWAPA no later than December 2020, when Plaintiff allegedly informed SWAPA of Haak's inappropriate conduct and SWAPA "did nothing" in response. *See* TAC ¶¶ 167-71. Thus, any claim Plaintiff may have had against SWAPA for its purported failure to satisfy its duty of fair representation expired prior to when Plaintiff filed her initial complaint in September 2022.

- "refused to advocate on [Plaintiff's] behalf even when [Plaintiff] actively sought her union's assistance in determining a legitimate basis for her grounding," *id.* ¶ 169;
- "did [not] support or even offer support for [Plaintiff]," *id*. ¶ 170;
- "did nothing to assist [Plaintiff] when Southwest stranded her in Denver despite the fact that [Plaintiff] contacted her SWAPA representatives," *id*. ¶ 171;
- "fail[ed] to go to bat for [Plaintiff]," *id*. ¶ 173.

In addition, Plaintiff again alleges that SWAPA wrote a purportedly false letter about Haak's employment record to the magistrate judge in Haak's criminal proceeding and concealed past reports in Haak's record. *See* TAC ¶¶ 173-75; *see also* April 26, 2021, letter to the Honorable J. Mark Coulson, attached as **Exhibit 2**.[6] Notably, the letter makes no reference to, or mention of, Plaintiff. The Third Amended Complaint also similarly includes allegations of SWAPA's purported actions relating to an FBI investigation of Haak's conduct. *See* TAC ¶¶ 174, 185-87, 279. But these allegations of a labor union's submission of a letter in a court proceeding regarding one of its members (Haak) and response to an FBI investigation of one of its members (Haak) are simply reflections of the union's duty to represent all of its members. SWAPA's alleged conduct is not directed at Plaintiff and has nothing to do with Southwest's purported retaliation against Plaintiff; rather, the allegations relate to a criminal proceeding of Haak and an FBI investigation of Haak, not Plaintiff. *See* November Order at 3 ("[T]here remains a disconnect between [the] alleged conspiracy to retaliate by grounding Plaintiff and SWAPA's alleged conduct of assisting

[6] Although Plaintiff did not attach the April 26, 2021, letter to her Third Amended Complaint, the complaint incorporates the letter by reference, *see* TAC ¶¶ 172, 278, 282, and thus the Court may consider the letter on a motion to dismiss, *see, e.g., One Call Prop. Servs. Inc. v. Sec. First Ins. Co.*, 165 So. 3d 749, 752 (Fla. 4th DCA 2015) ("[W]here the terms of a legal document are impliedly incorporated by reference into the complaint, the trial court may consider the contents of the document in ruling on a motion to dismiss. . .").

Haak in the criminal action."). In dismissing the conspiracy claims of the Amended Complaint and Second Amended Complaint, this Court rejected these same allegations and should do so again here.

iii. The Intracorporate Conspiracy Doctrine Continues to Bar Plaintiff's Conspiracy Claims.

This Court should again reject Plaintiff's repeated misguided attempts to bolster her conspiracy claims in Counts VII and VIII with allegations amounting to an agency relationship between SWAPA and Southwest. Plaintiff's Third Amended Complaint, like the prior complaints, maintains that SWAPA and Southwest are so closely related that they essentially act as one entity, creating a "conspired culture" to advance the interests of male pilots over other Southwest employees. *See* TAC ¶¶ 12-19. Not only do these allegations demonstrate a fundamental misunderstanding of SWAPA's role, as a union, to represent its member pilots' collective interests in bargaining and negotiating with Southwest, but they also cannot form the basis of a conspiracy claim under the intracorporate conspiracy doctrine.

Specifically, the intracorporate conspiracy doctrine "forecloses an 'actionable conspiracy between an entity and its officers or agents'" because, by definition, two or more independent persons are required to form a conspiracy. *Weisman v. Southern Wine & Spirits of Am., Inc.*, 297 So. 3d 646, 652 (Fla. 4th DCA 2020); *see also Chambers v. Santiago*, No. 3:21cv677-MCR-HTC, 2021 U.S. Dist. LEXIS 251992, at *19, 2021 WL 6753554 (N.D. Fla. Nov. 9, 2021) ("[A] corporation's employees, acting as agents of the corporation, are deemed incapable of conspiring among themselves or with the corporation."); *Astrotel, Inc. v. Verizon Fla., LLC*, Case No. *:11-cv-2224-T-33TBM, 2012 U.S. Dist. LEXIS 63172, at *26 (M.D. Fla. May 4, 2012) (holding that the intracorporate conspiracy doctrine applies to both employment relationships and parent-subsidiary relationship).

Here, Plaintiff's Third Amended Complaint repeats the allegations of the Amended Complaint and the Second Amended Complaint that SWAPA is "directed" by Southwest and that the companies are so closely related that they essentially act as one entity. *See, e.g.,* TAC ¶¶ 12, 14 (Southwest and SWAPA are "extremely closely tied and share numerous employees, agents, members and officers," and "[m]ost of the decisions of SWAPA are directed by Southwest").[7] Therefore, because Plaintiff's own pleading treats SWAPA as Southwest's agent, even if Plaintiff did allege an agreement between SWAPA and Southwest to retaliate against Plaintiff (which she does not), any such agreement was not reached between two independent parties, and therefore any assertion of a conspiracy between and amongst them necessarily fails.

In addition, Count VIII of Plaintiff's Third Amended Complaint disregards the Court's prior two Orders that the intracorporate conspiracy doctrine bars Plaintiff's claim of a conspiracy between Southwest, SWAPA, Cpt. Hawkes, and Cpt. Newton. In its prior Orders, the Court held that pursuant to the intracorporate conspiracy doctrine, Hawkes and Newton, as senior employees of Southwest, "cannot conspire with Southwest and likely cannot conspire with SWAPA (as union members)." June Order at 5-6; November Order at 4; *see also, e.g., HRCC, Ltd. v. Hard Rock Café Int'l USA, Inc.*, 302 F. Supp. 3d 1319, 1326 (M.D. Fla. 2016) (applying the intracorporate conspiracy doctrine where two of the defendants were employees of the third corporate defendant and did not have a personal stake independent of the corporate defendant); *Nieto v. United Auto Workers Local 598*, 672 F. Supp. 987, 993 (E.D. Mich. 1987) (holding that the intracorporate conspiracy doctrine applies to a union and its members); *Moody v. InTowns Suites*, No. 1:04-CV-1198-TWT-AJB, 2006 U.S. Dist. LEXIS 103761, at * 217–18, 2006 WL 8431638 (N.D. Ga. Feb.

[7] SWAPA is a distinct entity from Southwest and is not an agent of or owned or controlled by Southwest in any way. For purposes of this motion, however, the facts alleged in Plaintiff's Third Amended Complaint are accepted as true. *Roney v. Miami Beach*, 148 Fla. 52, 56 (Fla. 1941).

1, 2006) (citing *Nieto* for the proposition that unions and their members receive protection from the intracorporate conspiracy doctrine).

The "personal stake" exception to the intracorporate conspiracy doctrine does not save Plaintiff's claims. *See Weisman*, 297 So. 3d at 652 ("Under the [personal stake] exception, a corporation conspiring with its own agents can be held liable where its 'agent has a personal stake in the activities that are separate and distinct from the corporation's interest.'"). This Court already found that "personal dislike is not sufficient to invoke the exception" and that "'[a]ny personal satisfaction that [the individual defendants] would receive' from the grounding of Plaintiff 'simply does not rise to an independent gain that would warrant application of the personal stake exception.'" November Order at 4-5 (internal citations omitted). Plaintiff's Third Amended Complaint includes no new allegations to invoke the exception. Thus, any purported agreement reached among Newton, Hawkes, Southwest, and SWAPA was not an agreement among independent parties and cannot form the basis of a conspiracy claim.

Counts VII and VIII of Plaintiff's Third Amended Complaint must therefore be dismissed with prejudice pursuant to the intracorporate conspiracy doctrine.[8]

[8] SWAPA also maintains its argument from its motions to dismiss the Amended Complaint and Second Amended Complaint that Counts VII and VIII continue to allege improper duplicative conspiracy claims; when such a situation arises, "a court 'should dismiss claims that are duplicative of other claims.'" *Manning v. Carnival Corp.*, No. 12-22258-CIV-ALTONAGA/Simonton, 2012 U.S. Dist. LEXIS 128835, at *7, 2012 WL 3962997 (S.D. Fla. Sept. 11, 2012); *see also id.* at 5 ("Duplicative claims are those that stem from identical allegations, that are decided under identical legal standards, and for which identical relief is available."); *Giambra v. Wendy's Int'l, Inc.*, NO. 8:08-cv-2016-T-27EAJ, 2009 U.S. Dist. LEXIS 50357, at *6, 2009 WL 1686677 (M.D. Fla. June 15, 2009) (dismissing a claim of negligent supervision as duplicative of a claim of respondeat superior in the same complaint because they were based on the same facts); *Wilborn v. Trant*, NO.: 4:15-cv-02071-JHE, 2018 U.S. Dist. LEXIS 240893, at *4, 2018 WL 11215327 (N.D. Ala. May 21, 2018) ("Redundant or duplicative causes of action are subject to dismissal."); *Wiggins v. Tigrent, Inc.*, 147 So. 3d 76, 82 (Fla. 2d DCA 2014) (holding that "[b]ecause the Florida Rules of Civil Procedure are modeled after the Federal Rules of Civil Procedure, federal decisions are

CONCLUSION

For the foregoing reasons, Defendant SWAPA requests that the Court dismiss Plaintiff's claims against SWAPA, Count VII and Count VIII of the Third Amended Complaint, with prejudice for failure to state a cause of action, and for any further relief that the Court deems just and proper.

highly persuasive in ascertaining the intent and operative effect of various provisions of the rules.").

Dated: December 20, 2023

Respectfully Submitted,

/s/ Carly A. Kligler
Carly A. Kligler
Fla. Bar No. 83980
Ellen Ross Belfer
Fla. Bar No. 685208
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777 South Flagler Drive, Suite 800
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Attorney for Defendant Southwest Airlines Pilots' Association (SWAPA)

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on December 20, 2023, a copy of the foregoing document was filed electronically and served by email from the Court's E-Filing Portal System on all counsel or parties of record.

/s/ Carly A. Kligler
Carly Kligler

EXHIBIT 1

CHARGE OF DISCRIMINATION

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

AGENCY: ☒ FEPA ☒ EEOC

CHARGE NUMBER: 510-2021-03456

FLORIDA COMMISSION ON HUMAN RELATIONS and EEOC State or local Agency, if any

NAME (Indicate Mr., Ms., Mrs.)	SOCIAL SECURITY NUMBER	DATE OF BIRTH
Ms. Christine Janning	[redacted]	[redacted]

STREET ADDRESS	CITY, STATE AND ZIP CODE	HOME TELEPHONE (Include Area Code)
[redacted]	[redacted]	[redacted]

NAME OF 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)
Southwest Airlines	40,000+	(214) 792-4000

STREET ADDRESS	CITY, STATE AND ZIP CODE	COUNTY
2702 Love Field Drive	Dallas, TX 75235	Dallas County

CAUSE OF DISCRIMINATION BASED ON *(Check Appropriate Box)*

☐ RACE ☐ COLOR ☒ SEX ☐ RELIGION ☐ NATIONAL ORIGIN
☒ RETALIATION ☐ AGE ☐ DISABILITY
☐ OTHER (specify_ ☐ CONTINUING ACTION

DATE DISCRIMINATION TOOK PLACE

EARLIEST	LATEST
May 6, 2020	Ongoing

THE PARTICULARS ARE:

I. Personal Harm I have over 25 years of professional aviation experience. In 2004 I was employed with Air Tran. In 2011 Southwest Airlines purchased Air Tran. I am currently a First Officer for Southwest Airlines based out of Orlando, Florida. On August 9, 2020, I was assigned to fly with Michael Haak, rather than my regular flight partner, Del Mann. I had never met Captain Haak and was uncertain as to why this change was made. I completed a flight to Philadelphia with Captain Haak without incident. On the return flight on August 10, 2020, Captain Haak suddenly announced that there was something he wished to do before retiring. He then proceeded to place the airplane on auto-pilot, strip off his clothing, masturbate and ejaculate while displaying pornography on a tablet. Captain Haak took photographs of himself with his cellular telephone and encouraged me to do the same. I did so in order to create and preserve evidence of the incident. Captain Haak placed the passengers and crew in danger with this conduct. Moreover, his actions victimized me. I was trapped by Captain Haak as he bolt-locked the cockpit door and I could not remove myself from the cockpit to escape his disgusting behavior, but rather, was forced to sit in close proximity as he indulged his sexual desires. In addition I maintain that Captain Haak's behavior was foreseeable. Upon information and belief, Captain Haak's proclivities and, in all likelihood, his plan to engage in this behavior was known to many of his colleagues and supervisors. I submitted a formal complaint of sexual harassment to Julie O'Grady, Senior Employee Relations Investigator on November 6, 2020. Six days later, I was advised that there was no way to conduct an internal investigation because Captain Haak had since retired. I responded by reiterating that Captain Haak's propensities were well known, and that the entire circumstance surrounding the August 10, 2020 incident should be investigated. On November 13, 2020, I learned the matter had been forwarded to Ann Marie Donalson from Southwest's Corporate Security Department. Due to the egregious nature of events, Ms. Donalson considered my sexual harassment/assault and suggested I inform the Federal Bureau of Investigation ("FBI"). On December 2, 2020, I met directly with the FBI investigators. Throughout this period, I cooperated fully with the investigation and complied with the directive to maintain confidentiality. This same courtesy was not extended to me. Instead, information regarding the incident and the investigation was shared with numerous individuals throughout the company, subjecting me to embarrassment, humiliation and fear. On December 9, 2020, while at the airport in Denver, CO, I was contacted by David Newton, Headquarters Chief Pilot, and advised that I was being pulled from flight status effective immediately and indefinitely. As grounds, he stated that "we were told about a possible lawsuit" and that I was being removed "to protect you and the Company." I was assured that I would continue to be paid, however, my rate of pay during this involuntary leave was less than my earnings as an active pilot. As further retaliation, Southwest has not paid me correctly since putting me on involuntary leave. I have reported these wage shortages to Chief Pilot Mike Hawkes to no avail. On March 25, 2021, I was returned to work. However, due to the 3 ½ month involuntary leave, my FAA required takeoff and landing currency expired March 7 and I was required to take training to be able to fly again.

II. Discrimination Statement: Based on the foregoing, I believe that I have been subjected to sexual harassment discrimination and retaliation in violation of the Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e, *et seq.* ("Title VII"), and the Florida Civil Rights Act of 1992 ("FCRA"), Florida Statutes, Chapter 760, et seq. I hereby request all legal and equitable relief to which I am entitled, including recovery of all my attorney's fees and costs incurred.

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

SIGNATURE OF COMPLAINANT

Christine Janning

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.

DATE: 4/2/2021

NOTARY - (When necessary for State and Local Requirements)

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE

2 APRIL 2021

(Day, month, and year)

JULIA SYKES
MY COMMISSION #GG918811
EXPIRES: OCT 02, 2023
Bonded through 1st State Insurance

EXHIBIT 2

SWAPA
SOUTHWEST AIRLINES PILOTS ASSOCIATION

April 26, 2021

The Honorable J. Mark Coulson
Magistrate Judge
U.S. District Court, District of Maryland
101 West Lombard Street
Chambers 8D
Baltimore, MD 21201

Re: Michael James Haak (EE#[redacted])

Dear Judge Coulson,

Southwest Airlines Pilots Association (the "Association") is the certified labor bargaining unit representing the over 9,000 pilots employed by Southwest Airlines Co. ("Southwest"). The work rules and conditions for Southwest pilots are set forth in the collective bargaining agreement negotiated between the Association and the airline ("CBA"). The current CBA was ratified on November 7, 2016. As a condition of continued employment with Southwest, and in accordance with the provisions of the Railway Labor Act, as amended, each pilot covered in the CBA is required to become a member of the Association.

The Association's business records show that Michael James Haak (EE#[redacted] was hired by Southwest as a pilot on January 1, 1994. He retired as a captain from the airline on September 1, 2020. Our business records show that Captain Haak did not have any employment related issues nor complaints for which he would have required union representation. In addition, the Association is informed of any training issues related to its pilot members. Our records also do not show any training issues for Captain Haak. In his 27-year career with Southwest, Captain Haak had spotless employment and training records.

Sincerely,

Captain Michael Santoro
Vice President
E:
O: [redacted]