IN THE CIRCUIT COURT FOR THE NINTH JUDICIAL CIRCUIT FOR ORANGE COUNTY, FLORIDA

CHRISTINE JANNING,

Plaintiff,

v. **CASE NO: 2022-CA-008876-O**

SOUTHWEST AIRLINES CO., SOUTHWEST AIRLINES PILOTS' ASSOCIATION, MICHAEL HAAK, DAVID NEWTON, and MICHAEL HAWKES,

Defendants.
_____/

DEFENDANTS SOUTHWEST AIRLINES CO. AND MICHAEL HAWKES' MOTION TO DISMISS COUNTS I, II, VII, VIII, IX, X, XI AND XII OF PLAINTIFF'S THIRD AMENDED COMPLAINT

Defendants[1] Southwest Airlines Co. ("SWA") and Michael Hawkes, pursuant to Fla. R. Civ. P. 1.140(b)(6), file this Motion to Dismiss Counts I, II, VII, VIII, IX, X, XI and XII of the Third Amended Complaint for failure to state a cause of action, and in support thereof state as follows:

MEMORANDUM OF LAW

I.

INTRODUCTION

The Third Amended Complaint is Plaintiff's *fourth* bite at the apple to allege state law negligence and other common law tort claims against the Defendants. This latest

[1] Undersigned counsel also represents Defendant David Newton in this matter. However, Captain Newton has not been served despite undersigned counsel's offer to accept service on his behalf back on February 28, 2023. Accordingly, this Motion is filed only on behalf of Defendants SWA and Hawkes.

attempt fails for many of the same reasons the Court already discussed in its prior Orders dismissing Plaintiff's claims. Plaintiff's purported facts—which have evolved into fantastical with each repleading—simply do not support Plaintiff's claims of negligent supervision, negligent retention, assault, battery, false imprisonment, libel, slander, and conspiracy. Accordingly, the Court should dismiss Plaintiff's claims with prejudice.

II.

BACKGROUND

This lawsuit arises out of Plaintiff Christine Janning's employment with SWA. *See* 3rd Am. Compl. ¶20. Plaintiff brings claims against SWA for Negligent Supervision (Count I), Negligent Retention (Count II), Retaliation under the Florida Civil Rights Act ("FCRA") (Count V), Hostile Work Environment under the FCRA (Count VI), Conspiracy to Retaliate (Counts VII and VIII), Slander/ Slander Per Se (Counts IX and XI), Libel/ Libel Per Se (Counts X and XII), and Gender Discrimination (Count XIII) "stemming from the sexual assault of Captain Michael Haak on Captain Christine Janning, and the events that followed thereafter." 3rd Am. Compl. ¶1. Plaintiff brings claims of Sexual Assault (Count III), Sexual Battery (Count IV), and False Imprisonment (Count XIV)[2] against Captain Haak; claims of Conspiracy to Retaliate (Counts VII and VIII) against Southwest Airlines Pilots' Association ("SWAPA"); and claims of Conspiracy to Retaliate (Count VIII), Slander/ Slander Per Se (Count XI), and Libel/ Libel Per Se (Count XII) against Captains David Newton and Michael Hawkes.[3]

[2] Plaintiff again incorrectly misnumbers this count as Count XIII, but Count XIII is her claim for Gender Discrimination against SWA.

[3] Like Captain Newton (*see supra* n.1), Captain Haak has not been served.

Plaintiff has had multiple attempts to plead Counts I, II, VII, VIII, IX, X, XI and XII. Plaintiff filed her original Complaint on September 26, 2022 against SWA, SWAPA, and Captain Haak. SWA and SWAPA moved to dismiss Plaintiff's original Complaint and just before the scheduled hearing on the motion to dismiss, Plaintiff voluntarily withdrew the Complaint and filed her First Amended Complaint on January 18, 2023. Plaintiff's First Amended Complaint added claims against Captain David Newton and Captain Michael Hawkes. SWA, Captain Hawkes, and SWAPA filed motions to dismiss the First Amended Complaint. On June 26, 2023, the Court granted SWA, Captain Hawkes, and SWAPA's motions to dismiss Counts I, II, VII, VIII, IX, X, XI and XII of Plaintiff's First Amended Complaint. On July 10, 2023, Plaintiff filed her Second Amended Complaint. SWA, Captain Hawkes, and SWAPA again moved to dismiss. On November 22, 2023, the Court dismissed Counts VII, IX, X, XI, and XII, and dismissed Count VIII as to the individual defendants. The Court allowed Counts I and II against SWA and Count VIII against SWA and SWAPA to survive. The Court granted Plaintiff leave to amend the dismissed counts.

On December 6, 2023, Plaintiff filed her Third Amended Complaint, which again fails to state claims for each count despite the Court's clear instructions on the minimum pleading standards. *See* Order Granting Defendants' Motion to Dismiss Plaintiff's Amended Complaint, Filing #176077032 (hereinafter, "Order No. 1"); Order Granting Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint, Filing #486690571 (hereinafter, "Order No. 2").

III.

LEGAL STANDARD

Florida is a fact-pleading jurisdiction. *See Cont'l Baking Co. v. Vincent,* 63 So. 2d 242, 244 (Fla. 5th DCA 1994). Florida Rule of Civil Procedure 1.110(b)(2) requires that "[a] pleading which sets forth a claim for relief . . . must state a cause of action and shall contain . . . a short and plain statement of the ultimate facts showing that the pleader is entitled to relief." *Goldschmidt v. Holman*, 571 So. 2d 422, 423 (Fla. 1990). At the outset of a suit, plaintiffs must state their pleadings with sufficient particularity to allow for defendants to prepare their defenses. *See Arky, Freed, Stearns, Watson, Greer, Weaver & Harris, P.A. v. Bowmar Instrument Corp.*, 537 So. 2d 561 (Fla. 1988).

Rule 1.140(b) provides that dismissal of a cause of action is appropriate when no relief can be granted under the alleged set of facts. *Seigle v. Progressive Consumers, Ins. Co.*, 819 So. 2d 732, 734 (Fla. 2002). "One of the basic purposes of a motion to dismiss is to test the overall sufficiency of the complaint to state a claim upon which relief can be granted." *Augustine v. Southern Bell Tel. & Tel. Cor.*, 91 So. 2d 320, 323 (Fla. 1956). If any element of a claim is not sufficiently pleaded, the complaint should be dismissed. *Royal & Sunalliance v. Lauderdale Marine Ctr.*, 877 So. 2d 843, 845 (Fla. 4th DCA 2004).

IV.

ARGUMENT

A. Plaintiff Fails To State A Claim For Negligent Supervision (Count I) And Negligent Retention (Count II)

Plaintiff's negligent supervision and retention claims should be dismissed because – as alleged within the four corners of the Third Amended Complaint – Plaintiff has failed

to plead that Southwest should have been aware of any conduct that indicated Captain Haak was unfit for duty and that Southwest failed to take measures to prevent the alleged false imprisonment.

In Florida, a claim of negligent supervision and negligent retention may occur "when during the course of employment, the employer becomes aware or should have become aware of problems with an employee that indicates his unfitness and the employer fails to take further action such as investigation, discharge, or reassignment." *Baumgartner v. Papa Johns USA, Inc.*, 2019 U.S. Dist. LEXIS 223942, at *15 (M.D. Fla. Oct. 15, 2019) (*quoting Martinez v. Pavex Corp*., 422 F. Supp. 2d 1284, 1298 (M.D. Fla. 2006)). Critically, under Florida law, "the underlying wrong allegedly committed by an employee in a negligent supervision or negligent retention claim must be based on an injury resulting from a tort which is recognized under common law." *Footstar Corp. v. Doe*, 932 So. 2d 1272, 1278 (Fla. 2d DCA 2006).

Here, Plaintiff brings the negligent supervision and retention claims based on allegations of prior incidents of "Cpt. Haak sexually molesting, sexually assaulting, and/or sexually harassing female employees of Southwest" and "committing acts of domestic violence (stalking) against a woman to whom he was not married." 3rd Am. Compl. ¶¶212-13, 220-21. However, as this Court has recognized in its prior Orders, "Florida law does not recognize a common law cause of action based on the negligent failure to maintain a workplace free of sexual harassment." *Latson v. Hartford Ins.*, 2006 U.S. Dist. LEXIS 10669, at *15 (M.D. Fla. Feb. 28, 2006) (dismissing negligent retention, training, and supervision claim); *see also Merrick v. Radisson Hotels Int'l, Inc.*, 2007 U.S. Dist. LEXIS 39021, at *13 (M.D. Fla. May 30, 2007) (dismissing negligent retention and

supervision claims because Florida does not recognize a common law cause of action for sexual harassment).

Accordingly, the Court has found that Plaintiff cannot rely on alleged sexual harassment in support of the negligent retention and negligent supervision claims. The Court has also found in prior orders that Plaintiff has not sufficiently alleged assault or battery, and Plaintiff has not amended those counts. Thus, the only potential tort on which Plaintiff can rely in support of her negligent retention and negligent supervision claims is the false imprisonment count. Critically, however, Plaintiff has not plead that Captain Haak engaged in prior acts that should have made Southwest aware that he was unfit for duty and likely to falsely imprison an employee in a cockpit, during flight, as alleged by Plaintiff. There are simply no allegations of remotely similar conduct referenced in Counts I and II. *See Baumgartner*, 2019 U.S. Dist. LEXIS 223942, at *15 (noting that a claim of negligent supervision and negligent retention may occur "when during the course of employment, the employer becomes aware or should have become aware of problems with an employee that indicates his unfitness and the employer fails to take further action such as investigation, discharge, or reassignment"). Thus, the Court should dismiss Counts I and II because Plaintiff's negligent supervision and retention claims as pleaded in the four corners of the Third Amended Complaint are based on the underlying tort of sexual harassment – not false imprisonment, and there are no allegations to support that Southwest was negligent with respect to any allegations of false imprisonment.

B. **Plaintiff's Conspiracy To Retaliate Claims (Counts VII and VIII) Are Barred By The Intracorporate Conspiracy Doctrine And Fail To State Claims And Have Not Been Sufficiently Amended Since Being Dismissed**

Although Plaintiff amended the factual background relating to her conspiracy allegations, Plaintiff did not amend the text of Counts VII and VIII in the Third Amended Complaint. Therefore, Counts VII and VIII are the *exact same* as they appeared in the Second Amended Complaint. In its prior Order, the Court recognized:

> Counts VII and VIII are each based on the same alleged conspiracy "to retaliate against Ms. Janning for her role in reporting the Incident and the FBI Investigation by grounding her and making it extremely difficult to fly, among other things." (Second Amended Complaint at ¶¶ 248 and 261).[4] However, the alleged overt acts differ. Count VII is based on SWAPA's assistance of Haak in the criminal action. Count VIII is more tethered to the actual asserted conspiracy. That is, it is based on the grounding of Plaintiff five weeks after reporting the incident.

Order No. 2 at 3. The Court dismissed Count VII against SWA and SWAPA because it was not "clear, positive and specific" and "it fails to state a claim for conspiracy." *Id.* Given that Plaintiff has failed to change any of the allegations, Count VII should be dismissed again. Count VIII was dismissed against the individual defendants because "[t]he intracorporate conspiracy doctrine bars the claim against them." *Id.* at 4. The same remains true. Plaintiff has repeatedly disregarded this Court's Orders and has again pleaded a conspiracy claim involving SWA, SWAPA, and individual defendants, Captain Newton and Captain Hawkes. This Court's Order No. 1 granted leave for Plaintiff to plead "a conspiracy count." Order No. 1 at 6. The Court has specifically noted that "if there is any conspiracy at all, **it would be one conspiracy. And it would not include the individual employees who cannot conspire with their employer or union.**" *Id.*

[4] These same allegations appear in the Third Amended Complaint at ¶¶ 276 and 289.

(emphasis added). Nonetheless, for the *second* time since Order No. 1, Plaintiff pleads two conspiracy counts and pleads a conspiracy against SWA, SWAPA, Captain Newton, and Captain Hawkes. Despite the Court's generosity in allowing Plaintiff a *fourth* opportunity to plead her claims, the Court should dismiss Count VIII against all of the defendants because Plaintiff has failed to follow the Court's instructions to plead a single actionable conspiracy claim not involving the individual defendants. Without a doubt, Count VIII should again be dismissed against the individual defendants.

Count VIII in the Third Amended Complaint should also be dismissed against SWA and SWAPA because it violates the intracorporate conspiracy doctrine. In Order No. 2, the Court ruled that Count VIII stated a claim for conspiracy against SWA and SWAPA because "Plaintiff alleges a specific agreement amongst identifiable individuals at SWAPA and Southwest to retaliate against Plaintiff," that "an overt act – the 'collective decision' to ground Plaintiff" occurred, that the "alleged retaliation 'was implemented by Southwest, at the direction of SWAPA, [Captain] Newton, and [Captain] Hawkes," and Plaintiff alleges damages." *Id.* at 3-4. However, the claims should be dismissed because "[u]nder the intracorporate conspiracy doctrine, a corporation's employees, acting as agents of the corporation, are deemed incapable of conspiring among themselves or with the corporation. This doctrine stems from basic agency principles that attribute the acts of agents of a corporation to the corporation, so that all of their acts are considered to be those of a single legal actor." *Dickerson v. Alachua Cnty. Comm'n*, 200 F.3d 761, 767 (11th Cir. 2000) (citation omitted). Put simply, **"[a] corporation cannot conspire with its employees** and its employees, when acting within the scope of their employment,

cannot conspire among themselves." *McPhie v. Yeager*, 819 F. App'x 696, 701 (11th Cir. 2020) (emphasis added).

Here, Count VIII alleges exactly that – an intracorporate conspiracy. Plaintiff's Count VIII conspiracy claim is based on the alleged intent of SWA senior management, SWAPA (SWA's union comprised of SWA employees) senior management, Captain Newton (a SWA employee), and Captain Hawkes (a SWA employee) to retaliate against her, specifically by making an alleged "collective decision" "to remove Ms. Janning from flight status effective immediately and indefinitely after being made aware of a 'possible lawsuit.'" 3rd Am. Compl. ¶¶293–294. Consequently, the claim alleges an intracorporate conspiracy. *See, e.g., Bishop v. Lipman & Lipman, Inc.*, No. 2:12-CV-562-FTM-29, 2013 WL 2190784, at *3 (M.D. Fla. May 21, 2013)) (dismissing conspiracy claim where "[t]he factual allegations pertaining to [the Count] can only be fairly read to implicate [defendant's] employees, and there are no plausible allegations which suggest that these employees had a personal stake in the retaliation conspiracy.").

Importantly, Plaintiff has added new factual allegations into the Third Amended Complaint, which undermine and refute the alleged conspiracy. Plaintiff alleges that "SWAPA's Helen Yu, and Southwest's Mr. Kuwitzky, [Captain] Hawkes, and [Captain] Newton all agreed and conspired to retaliate against Ms. Janning for her role in reporting the Incident and the FBI Investigation by grounding her and making it extremely difficult to fly, among other things." 3rd Am. Compl. ¶276; *see also* 3rd Am. Compl. ¶184 ("Mr. Kuwitsky, Cpt. Hawkes and Cpt. Newton then brought Ms. Yu into the agreement to protect Cpt. Haak and to retaliate against Ms. Janning by grounding her from flight duty . . ."). Plaintiff specifically alleges that the grounding occurred "on December 9, 2020."

3rd Am. Compl. ¶248. Plaintiff also alleges that on this same day, "December 9, 2020, Marsha Kinsley, a manager with Southwest Labor Relations, published the 2C Letter to more than twenty-five employees at Southwest." 3rd Am. Compl. ¶249. Critically, Plaintiff adds to the Third Amended Complaint that, on December 14, 2020, Helen Yu stated "I just wanna make sure that you know, that when I read the letter, I actually didn't know, one way or the other what the FBI Investigation was about. . . . I just knew there was an FBI investigation, so I don't know what information Hawkes may have, but when I read that letter, that was about the 2.C. pull that was my only reaction." 3rd Am. Compl. ¶399. Thus, Plaintiff's pleaded statement by Ms. Yu *directly* refutes any allegation that Ms. Yu on behalf of SWAPA participated in a conspiracy with Captain Hawkes and his employer, SWA. Ms. Yu, as alleged by Plaintiff, did not know as of December 14, 2020 "what information Hawkes may have," and thus, there cannot have been any conspiracy based on the allegations within the four corners of the Complaint. Accordingly, the Court should dismiss Count VIII.

C. Plaintiff's Defamation Claims Are Deficiently Pleaded And Have Not Been Cured

Plaintiff again asserts two slander claims (Counts IX and XI) and two libel claims (Counts X and XII). Despite prior dismissals for pleading time-barred claims, Plaintiff *again* pleads claims based in part on allegations that Captain Newton and Captain Hawkes, in their individual capacities and in their capacities as SWA senior employees, published statements about Ms. Janning ***before*** the August 10, 2020 incident and Plaintiff's contention that Captain Haak allegedly relied on these statements before the incident. *See* 3rd Am. Compl. ¶¶305–307; 316–318. Specifically, Plaintiff's Slander / Slander Per Se (Count XI) claim alleges "[Captain] Newton and [Captain] Hawkes stated

that Ms. Janning was a 'slut' and a 'whore' orally to Cpt. Haak ***prior to the Incident on August 10, 2020."*** 3rd Am. Compl. ¶363 (emphasis added). Plaintiff's Libel / Libel Per Se (Count XII) claim alleges "[Captain] Newton and [Captain] Hawkes stated that Ms. Janning was a 'slut' and a 'whore' in writing to Cpt. Haak ***prior to the Incident on August 10, 2020.***" 3rd Am. Compl. ¶383 (emphasis added). These alleged statements are clearly time-barred because they occurred before September 2020 (two years before the Complaint was filed). *See* Order Nos. 1 and 2; *Ashraf v. Adventist Health Sys./Sunbelt, Inc.*, 200 So. 3d 173, 174 (Fla. 5th DCA 2016) ("Florida law establishes a two-year statute of limitations for actions for "libel and slander").

Florida law also requires a plaintiff state her pleadings with sufficient particularity to allow the defendants to prepare their defenses. But Plaintiff has failed to meet her burden *again*. She has not removed allegations that have been ruled deficient, but instead adds new allegations about statements alleged to have occurred after September 2020 in the hopes of avoiding dismissal again. Consequently, SWA incorporates by reference all of its prior arguments and the Court's prior Orders addressing Plaintiff's vague claims that "fail[] to meet Florida's fact pleading standard." Order No. 1 at 7; Order No. 2 at 6 ("The Second Amended Complaint remains too imprecise to meet the fact pleading standard"). Plaintiff's new allegations still fail to state a claim for slander or libel.

i. Counts IX and XI: Slander/ Slander Per Se[5]

In the Third Amended Complaint, Plaintiff adds allegations that SWA Captain Mike Bleau told former SWA Captain Jeff Hefner that Ms. Janning was "a terrible pilot," "slut,"

[5] Count IX is nearly identical to Count XI, except the latter adds claims against Captain Newton and Captain Hawkes in their individual capacities.

and a "whore," 3rd Am. Compl. ¶¶315, 367. Plaintiff also adds that Captain Bleau "had been told the same sentiment" by Captain Newton and Captain Hawkes. 3rd Am. Compl. ¶¶316, 368. Plaintiff also alleges that "[a]ll three Captains further stated, including to Mr. Hefner, that Ms. Janning needed 'to be fired' because she was 'not good for this airline' and that she 'shouldn't be here.'" 3rd Am. Compl. ¶¶317, 369.

Plaintiff fails to state a claim against SWA because the Complaint lacks specific allegations of how these alleged statements occurred in the individuals' official capacities as agents of SWA. Plaintiff only generally alleges "each Captain made these comments in the course of his duty as a SWA pilot." 3rd Am. Compl. ¶¶319, 371. However, these allegations are insufficient. Plaintiff's pleading is notably devoid of any allegation that SWA ordered, directed, orchestrated, was aware, or was otherwise involved with the making of these purported statements. Plaintiff also fails to identify any third party to whom the statements were published — as each person allegedly involved is a Captain of SWA. *See Sirpal v. Univ. of Miami*, 684 F. Supp. 2d 1349, 1360 (S.D. Fla. 2010) ("to state a claim for defamation, a plaintiff must plead that the defendant published a false statement about plaintiff to a third party."). Thus again, "the critical element of publication is not sufficiently alleged." Order No. 1 at 8.

Additionally, Plaintiff's allegation that "[Captains] Bleau, Hawkes and Newton had discussed this exact series of lies with many people, both with SWA and SWAPA and without," (3rd Am. Compl. ¶¶321, 373) is insufficiently pleaded and reminiscent of the claims this Court has repeatedly dismissed. Order Nos. 1 and 2 (rejecting allegation that SWA "published numerous oral statements to numerous parties" as "too generic to state a claim for slander or libel."); *see also Buckner v. Lower Florida Keys Hosp*, 403 So. 2d

1025, 1027 (Fla. 3d DCA 1981) (finding defamation pleading deficient where plaintiff alleged remarks were made to "numerous third parties on numerous occasions.").

As to the individual defendants, the Third Amended Complaint alleges statement by Captain Bleau, who is not a named defendant, and vaguely alleges that Captain Newton and Captain Hawkes expressed "the same sentiments," which fails to meet the pleading standard. The Third Amended Complaint also states that Captain Newton and Captain Hawkes called Ms. Janning a "slut" and a "whore" "prior to the Incident on August 10, 2020." 3rd Am. Compl. ¶¶363, 383. Thus, these alleged statements are timebarred. The Court has already ruled that Plaintiff's allegation that they "published these statements orally … from March of 2020 … through present" is an attempt "to overcome the statute of limitations" and are "too generic to state a defamation claim." Order No. 2 at 6. Plaintiff's new allegations that Captain Bleau, Captain Newton, and Captain Hawkes called Ms. Janning a "terrible pilot," stated she needed "to be fired," is "not good for this airline," and "shouldn't be here" are not defamatory. As pleaded, these are opinions not false statements – and again, publication is not properly pleaded. Accordingly, the Court should dismiss Counts IX and XI.

ii. Counts X and XII - Libel[6]

To support her libel claims in the Third Amended Complaint, Plaintiff adds a number of paragraphs and trumped up allegations that the 2C letter amounted to "witness tampering." 3rd Am. Compl. ¶¶352, 407. These allegations, however, do not provide the detail this Court previously said it needed, and thus the allegations remain too generic

[6] Count X is nearly identical to Count XII, except the latter adds claims against Captain Newton and Captain Hawkes in their individual capacities.

to state a claim for libel. The Court dismissed Plaintiff's libel claim based on the 2C Letter for the following reasons:

> First, the 2C Letter is generically alleged and it is unclear what the specific defamatory statements are. Plaintiff alleges the letter includes Plaintiff's "name, employee number, home address, and made baseless allegations about Ms. Janning's competency to fly." (Second Amended Complaint at ¶ 97). She also vaguely asserts that the letter gives "the false impression that Ms. Janning was the subject of an FBI investigation." (Second Amended Complaint at ¶ 95). The closest Plaintiff gets to actually saying what the alleged defamatory statement was is the allegation that the letter stated that she "was mentally unstable and incapable of being trusted with an aircraft." (Second Amended Complaint at ¶ 295). But even that is not a direct quote of the actual statement. These allegations do not identify the precise libelous statements on which Plaintiff sues.

Order No. 2 at 7. The Third Amended Complaint only adds the following direct quote from the 2C Letter, **"This letter is to notify you that you are pulled Company Convenience per Section 2.C of the Agreement on December 9, 2020 in order to afford you the opportunity to participate in an ongoing FBI Investigation."** 3rd Am. Compl. ¶¶101, 336, 391. Plaintiff, thus again, fails to identify a precise libelous statement.

To plead a claim for libel or defamation *per se*, Plaintiff must identify alleged statements "that tend to degrade [her], bring [her] into ill repute, destroy confidence in [her] integrity," *Axelrod v. Califano*, 357 So. 2d 1048, 1050 (Fla. 1st DCA 1978), or "which impute to another characteristics or conditions incompatible with the proper exercise of one's business, trade, profession or office." *Spears v. Albertson's, Inc.*, 848 So. 2d 1176, 1179 (Fla. 1st DCA 2003) (citation omitted). The Third Amended Complaint includes allegations showing that the 2C Letter could not be interpreted to impute any characteristics or provide details that would degrade, bring ill repute, or destroy Ms. Janning's integrity. Plaintiff alleges that Ms. Yu stated, "when I read that letter, that was about the 2.C. pull that was my only reaction. I didn't think one way or the other, I was

wondering, I didn't know, but I was wondering if you were the subject or just a witness, but **from that letter I couldn't tell."** 3rd Am. Compl. ¶¶109, 344, 399 (emphasis added). Thus, no conclusions could be drawn from the letter, as alleged in the four corners of the Complaint. Moreover, to the extent Plaintiff claims that the letter did not clarify that she was not the subject of the FBI investigation and included her name, address and phone number, these allegations do not amount to false statements or libel.[7] Accordingly, the Court should dismiss Counts X and XII.

V.

CONCLUSION

For the reasons stated above, Defendants Southwest Airlines Co. and Michael Hawkes respectfully request that this Court dismiss Counts I, II, VII, VIII, IX, X, XI, and XII of the Third Amended Complaint and for any other relief that is necessary to protect Southwest Airlines Co. and Michael Hawkes' rights and interests.

Dated: December 20, 2023

Respectfully submitted,

/s/ Catherine H. Molloy
Catherine H. Molloy
Florida Bar No. 33500
Email: molloyk@gtlaw.com
Raymond D. Jackson
Florida Bar No. 1028350
Email: jacksonra@gtlaw.com
GREENBERG TRAURIG, P.A.
101 E. Kennedy Boulevard
Suite 1900

[7] The 2C Letter, which was issued pursuant to the Collective Bargaining Agreement (3rd Am. Compl. ¶95), raises issues of RLA Preemption that SWA will address in a summary judgment motion with evidence beyond the four corners of the complaint.

Tampa, Florida 33602
(813) 318-5700 – Telephone
(813) 318-5900 – Facsimile
Attorneys for Defendants
Southwest Airlines Co. and
Michael Hawkes

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been filed electronically and served by email from the Court's E-Filing Portal System on all counsel or parties of record on this 20th day of December, 2023.

/s/ Catherine H. Molloy
Attorney