UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

DAVID ARNOLD GRAY,

Plaintiff,

vs.

CASE NO.: 25-CV-25610-DPG

MIAMI-DADE COUNTY,
a political subdivision of the State of Florida;

CHRISTINA SALINAS-COTTER,
in her individual capacity;

NATHAN KOGON,
in his individual capacity,

Defendants.
_____/

PLAINTIFF'S RESPONSE IN OPPOSITION TO

DEFENDANTS' MOTION TO DISMISS

The Supreme Court has repeatedly held that speech or petitioning reporting discriminatory practices, misuse of governmental authority, or violations of law by public officials lies at the core of matters of public concern. *Lane v. Franks, 573 U.S. 228, 241 (2014); Akins v. Fulton County, 420 F.3d 1293, 1303 (11th Cir. 2005).* Consistent with that principle, a public employee's petition is protected under the First Amendment when it addresses a matter of public concern, rather than a purely personal grievance. *Borough of Duryea v. Guarnieri, 564 U.S. 379, 399 (2011).*

This action is therefore properly before the Court because Defendants' Rule 12(b)(6) motion rests on an improper characterization that Plaintiff seeks to constitutionalize his grievances. As *Guarnieri* explains, speech or petitioning that involves issues of widespread public concern or

that brings to light actual or potential wrongdoing or breach of public trust implicates the First Amendment. *Id.* Here, the record confirms Plaintiff's initial written email petition sought redress for Defendant Salinas-Cotter's discriminatory practices and misuse of authority, expressly invoking Miami-Dade County's anti-discrimination and anti-retaliation policy under Implementing Order No. 7-45, and that Defendant's response acknowledged allegations of unlawful harassment prohibited by that policy. *See First Amended Complaint ("FAC") Exhibit A [ECF No.: 6].*

Accordingly, Defendants' opening statement should be rejected and the motion to dismiss pursuant to Rule 12(b)(6) should be denied in its entirety and this action should proceed to discovery.

BACKGROUND

This suit concerns Miami-Dade County, a political subdivision of the State of Florida; Defendant Nathan Kogon, Director of Housing and Community Development ("HCD"); Defendant Christina Salinas-Cotter, Assistant Director-2 of HCD; and Plaintiff, a middle-aged Black male, a U.S. citizen, and a resident and registered voter in the State of Florida. *FAC ¶¶ 6-9.*

During Plaintiff's employment with HCD, he was subjected to disparate treatment involving a customary employment privilege established and routinely applied within the department. Specifically, Plaintiff was denied a customary privilege regularly conferred upon similarly situated senior-level employees and routinely granted to white male employees—without justification and without due process. *FAC ¶¶ 10–24.*

After raising concerns regarding suspected discriminatory and retaliatory employment practices through an email petition challenging the denial of a customary employment privilege, Defendant Salinas-Cotter responded in a manner reasonably likely to deter a reasonable employee

from engaging in protected activity. Plaintiff's petition was met with official threats of discipline, which plausibly interfered with and chilled his First Amendment right to petition HCD decision-makers for further redress. *FAC ¶¶ 25–50.*

On his own initiative, Plaintiff submitted a written and signed complaint disclosing suspected discriminatory and retaliatory misuse of delegated authority, in violation of Miami-Dade County Implementing Order 07-45 and protected by the First Amendment's Petition Clause, to the Miami-Dade County Commission on Ethics and Public Trust ("COE"), an agency possessing authority to investigate such county-law violations. *FAC ¶¶ 51–65.*

Immediately after the Commission on Ethics and Public Trust ("COE") notified the parties that it would dismiss the complaint for lack of jurisdiction over personnel matters, Defendant Kogon altered Plaintiff's supervisory reporting structure, reassigning Plaintiff to report directly to Defendant Salinas-Cotter—the official Plaintiff had previously reported to the COE for misconduct. *FAC ¶¶ 66–88.*

Following this reassignment, and while under Defendant Salinas-Cotter's supervision, Plaintiff alleges that he was subjected to a sustained pattern of retaliatory conduct, including—but not limited to—public undermining of his professional standing, restriction of his duties, exclusion from work-related functions, and reassignment of his core responsibilities. *FAC ¶¶ 89–115.*

Plaintiff alleges that Defendants' actions, taken under color of state law, were intended to chill further engagement in protected activity and to marginalize him professionally, thereby materially altering the terms, conditions, and privileges of his employment in retaliation for his protected disclosures. As a direct and proximate result of Defendants' acts and omissions, Plaintiff suffered emotional distress, anxiety, reputational harm, professional embarrassment, loss of status, and other non-economic damages. *FAC ¶¶ 116–153.*

With no adequate state or county administrative remedy available to investigate the conduct allegedly undertaken under color of state law by authorized Miami-Dade County decision-makers within HCD and the COE, Plaintiff filed the First Amended Complaint *[ECF No. 6]*. Defendants responded by filing a Motion to Dismiss under Rule 12(b)(6) *[ECF No.: 15]*, which improperly seeks to deconstitutionalize the FAC's well-pleaded allegations by reframing customary employment privileges as discretionary preferences, systemic patterns as isolated decisions, retaliatory conduct as benign managerial action, and misuse of delegated authority as permissible discretion—arguments untethered to the factual allegations pleaded and inconsistent with the governing Rule 12(b)(6) standard.

LEGAL STANDARD

Plaintiff incorporates by reference Defendants' statement of the governing legal standard under Federal Rule of Civil Procedure 12(b)(6), beginning with "For a complaint to withstand a Rule 12(b)(6) motion" and ending with "Campbell v. Air Jam. Ltd., 760 F.3d 1165, 1168–69 (11th Cir. 2014) (quoting GJR Invs., Inc. v. County of Escambia, 132 F.3d 1359, 1369 (11th Cir. 1998))." Plaintiff adopts the legal standard articulated therein but not Defendants' characterization or application of that standard to the allegations of the First Amended Complaint.

ARGUMENT

The Plaintiff's FAC satisfies the Rule 12(b)(6) standard because it pleads specific, chronological facts that plausibly allege the elements of the claims asserted. *Parziale v. HP, Inc., 445 F. Supp. 3d 435 (N.D. Cal. 2020).* The FAC does not rely on conclusory statements or legal labels but instead provides detailed factual allegations that demonstrate:

Disparate Treatment: FAC ¶¶ 10–21 alleges specific instances of differential treatment compared to similarly situated individuals, establishing a plausible claim of disparate treatment.

Protected Activity: FAC ¶¶ 37–41, 51–55 identifies specific actions taken by the Plaintiff that constitute statutorily protected activity under applicable anti-retaliation laws.

Retaliatory Motive: FAC ¶¶ 41, 66–69, 87–88 alleges facts that support a reasonable inference of retaliatory intent, including temporal proximity and other circumstantial evidence.

Materially Adverse Actions: FAC ¶¶ 41–44, 66–71, 84–87, 115 describes specific adverse actions taken against the Plaintiff that would dissuade a reasonable person from engaging in protected activity.

These allegations, when taken as true, allow the Court to draw the reasonable inference that the Defendants engaged in unlawful conduct, thereby satisfying the plausibility standard *Gissendaner v. Comm'r, Ga. Dep't of Corr., 803 F.3d 565 (11th Cir. 2015), Ashcroft v. Iqbal, 556 U.S. 662, 129 S. Ct. 1937 (2009)*.

While Defendants may attempt to recharacterize pro se factual allegations as routine workplace grievances, Plaintiff's factual allegations are specific, chronological, and supported by factual content, not mere labels or conclusions. Accordingly, the Court should deny Defendants' Motion to Dismiss under Rule 12(b)(6); and allow the case to proceed to discovery.

I. QUALIFIED IMMUNITY CAN'T BE RESOLVED AT THE PLEADING STAGE

Although Defendants invoke qualified immunity at the outset, [q]ualified immunity cannot be resolved at the pleading stage where intent, motive, and context are central to the claim. *See Harlow v. Fitzgerald, 457 U.S. 800 (1982); Crawford-El v. Britton, 523 U.S. 574, 585–86 (1998);*

Hope v. Pelzer, 536 U.S. 730, 741 (2002). The action before the Court plausibly places intent, motive, and context at the center of Plaintiff's claims:

1) The FAC plausibly alleges denial of a customary employment privilege routinely afforded to white male comparators, supporting discriminatory intent. *FAC ¶¶ 10–24.*

2) The FAC plausibly alleges that Defendant Salinas-Cotter responded to Plaintiff's email petition with disciplinary threats intended to deter protected activity. *FAC ¶¶ 25–50.*

3) Defendant Kogon reassigned Plaintiff to report directly to the official he had reported for misconduct—in spite full disclosure and knowledge. *FAC ¶¶ 89–115.*

Where, as here, the FAC pleads specific facts supporting discriminatory intent, retaliatory motive, and misuse of official authority under color of state law, qualified immunity cannot be resolved as a matter of law on the pleadings. *Chesser v. Sparks, 248 F.3d 1117, 1121 (11th Cir. 2001); see also Pembaur v. City of Cincinnati, 475 U.S. 469, 481–84 (1986).* Accordingly, the Court should deny Defendants' Motion to Dismiss under Rule 12(b)(6); and allow the case to proceed to discovery.

II. PLAINTIFF'S FAC PLAUSIBLY ALLEGES CONSTITUTIONAL VIOLATIONS

The allegations of a pro se litigant are held to less stringent standards than formal pleadings drafted by lawyers. *Campbell v. Air Jamaica Ltd., 760 F.3d 1165, 1168–69 (11th Cir. 2014) (quoting Haines v. Kerner, 404 U.S. 519, 520 (1972)).* This leniency, [h]owever, does not give a court license to serve as de facto counsel for a party or to rewrite an otherwise deficient pleading. *GJR Invs., Inc. v. County of Escambia, 132 F.3d 1359, 1369 (11th Cir. 1998).* Where, as here, the facts alleged plausibly establish a constitutional violation and dismissal is not warranted merely because the pleading uses labels or imperfect statements of legal theory; Rule 8 does not require "magic words." *Johnson v. City of Shelby, 574 U.S. 10, 11–12 (2014) (per curiam).*

Defendants' argument improperly focuses on the titles and labels used in the First Amended Complaint, rather than on the well-pleaded factual allegations themselves. When those allegations are accepted as true, the FAC plausibly alleges constitutional violations under 42 U.S.C. § 1983 in each count, as set forth below.

Count I. Unlawful Employment Practices (Equal Protection and Procedural Due Process)

42 U.S.C. § 1983—Fourteenth Amendment

FAC ¶¶ 116–124

Protected status and interest: Plaintiff is a black male employee promoted to a senior-level position subject to established departmental practices governing employment privileges. *Village of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 265–66 (1977).*

Disparate treatment: Plaintiff was denied a customary employment privilege routinely afforded to similarly situated qualified white male employees, without additional conditions imposed beyond promotion or hiring. *City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 439 (1985); Williams v. Consol. City of Jacksonville, 341 F.3d 1261, 1269 (11th Cir. 2003).*

Discriminatory intent: Discriminatory intent may be inferred from differential treatment, departure from established practices, and comparator evidence. *Village of Arlington Heights, 429 U.S. at 266; Lewis v. City of Union City, 918 F.3d 1213, 1223–24 (11th Cir. 2019) (en banc).*

Procedural due process deprivation: Plaintiff was deprived of a customary employment privilege arising from an established governmental practice without notice or an opportunity to be heard. *Bd. of Regents v. Roth, 408 U.S. 564, 577 (1972); Perry v. Sindermann, 408 U.S. 593, 601–02 (1972); Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 541 (1985).*

Constitutional violation: These allegations plausibly establish intentional race-based disparate treatment prohibited by Fla. Stat. § 760.10 and deprivation of a protected customary employment interest without due process, in violation of the Fourteenth Amendment. *Johnson v. City of Shelby, 574 U.S. 10, 11–12 (2014).*

Count II. **Petition Clause Violation (First Amendment)**

42 U.S.C. § 1983—First and Fourteenth Amendments

FAC ¶¶ 125–133 *& Exhibit A*

Protected activity: Plaintiff engaged in First Amendment–protected petitioning by submitting a written email petition to Defendant Salinas-Cotter pursuant to County policy under Implementing Order No. 07-45. *Borough of Duryea v. Guarnieri, 564 U.S. 379, 387–88 (2011); Givhan v. W. Line Consol. Sch. Dist., 439 U.S. 410, 414 (1979).*

Public concern: Plaintiff's petition disclosed alleged discrimination and abuse of governmental authority by a senior county official, matters that constitute public concern under the First Amendment. *Lane v. Franks, 573 U.S. 228, 241 (2014); Akins v. Fulton County, 420 F.3d 1293, 1303 (11th Cir. 2005).*

Official interference: Acting under color of state law, Defendant Salinas-Cotter responded to Plaintiff's petition with threats of disciplinary action, invoking official authority to impede redress under County policy. *Crawford-El v. Britton, 523 U.S. 574, 592–93 (1998).*

Chilling effect: Defendants' response to Plaintiff's protected activity would deter a reasonable employee from engaging in protected petitioning and in fact produced a chilling effect within Plaintiff's household. *Bennett v. Hendrix, 423 F.3d 1247, 1254 (11th Cir. 2005).*

Constitutional violation: These allegations plausibly establish governmental interference with Plaintiff's right to petition for redress of grievances under the First Amendment, actionable under

§ 1983 and incorporated against the states through the Fourteenth Amendment. *Guarnieri, 564 U.S. at 387–88; Johnson v. City of Shelby, 574 U.S. 10, 11–12 (2014).*

Count III. Retaliatory Reassignment (First Amendment Retaliation)

42 U.S.C. § 1983—First and Fourteenth Amendments

FAC ¶¶ 134–143 *& Exhibit B*

Protected activity: Plaintiff engaged in First Amendment–protected petitioning by reporting discriminatory treatment and misuse of delegated authority to the Miami-Dade County Commission on Ethics and Public Trust. *Borough of Duryea v. Guarnieri, 564 U.S. 379, 387–88 (2011); Lane v. Franks, 573 U.S. 228, 241 (2014).*

Knowledge: Defendants were aware of Plaintiff's protected petitioning to the Commission on Ethics and Public Trust when the challenged employment action was taken. *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle, 429 U.S. 274, 287 (1977).*

Adverse action: Defendants downgraded Plaintiff's employment status by altering his supervisory reporting structure, requiring him to report directly to a former peer whom he had reported for misconduct. *Rutan v. Republican Party of Illinois, 497 U.S. 62, 75–76 (1990).*

Causal connection: The reassignment occurred shortly after Plaintiff's protected disclosures and lacked a legitimate non-retaliatory justification, supporting an inference of retaliatory motive. *Beckwith v. City of Daytona Beach Shores, 58 F.3d 1554, 1564 (11th Cir. 1995); Bailey v. Wheeler, 843 F.3d 473, 480–81 (11th Cir. 2016).*

Deterrence: The reassignment materially altered the terms and conditions of Plaintiff's employment and would deter a reasonable employee from engaging in protected petitioning activity; and intensified the chilling effect within Plaintiff's household. *Bennett v. Hendrix, 423 F.3d 1247, 1254 (11th Cir. 2005).*

Constitutional violation: These allegations plausibly establish retaliatory misuse of governmental authority under color of state law in violation of the First and Fourteenth Amendments. *Pembaur v. City of Cincinnati, 475 U.S. 469, 481–84 (1986).*

Count IV. Retaliatory Hostile Environment (Pattern of First Amendment Retaliation)

42 U.S.C. § 1983—First and Fourteenth Amendments

FAC ¶¶ 144–153

Protected activity: Plaintiff engaged in First Amendment–protected petitioning by reporting discriminatory treatment and misuse of delegated authority through internal complaints and formal disclosures. *Borough of Duryea v. Guarnieri, 564 U.S. 379, 387–88 (2011); Lane v. Franks, 573 U.S. 228, 241 (2014).*

Knowledge: Defendants were fully aware of Plaintiff's protected petitioning activity at the time of the challenged conduct. *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle, 429 U.S. 274, 287 (1977).*

Adverse action: The record reflects that Plaintiff was subjected to repeated adverse employment actions, including restriction of duties, exclusion from work-related meetings and functions, reassignment of core responsibilities, and public undermining of his professional role. *Gowski v. Peake, 682 F.3d 1299, 1312–13 (11th Cir. 2012).*

Pattern of conduct: The alleged actions occurred over a period of time and collectively altered the terms, conditions, and privileges of Plaintiff's employment, rather than constituting isolated incidents. *Smith v. Mosley, 532 F.3d 1270, 1277–78 (11th Cir. 2008).*

Deterrence: The alleged pattern of conduct would deter a reasonable employee from engaging in protected petitioning activity; and intensified the chilling effect within Plaintiff's household. *Bennett v. Hendrix, 423 F.3d 1247, 1254 (11th Cir. 2005).*

Constitutional violation: These allegations plausibly establish a retaliatory hostile environment arising from a pattern of First Amendment retaliation under color of state law, in violation of the First and Fourteenth Amendments. *Pembaur v. City of Cincinnati, 475 U.S. 469, 481–84 (1986).*

The constitutional protections implicated here—freedom from race-based disparate treatment, deprivation of established employment interests without due process, and retaliation for protected petitioning on matters of public concern—have long been clearly established. *See Village of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 265–66 (1977); Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 541 (1985); Borough of Duryea v. Guarnieri, 564 U.S. 379, 387–88 (2011); Lane v. Franks, 573 U.S. 228, 241 (2014); Bennett v. Hendrix, 423 F.3d 1247, 1254 (11th Cir. 2005).* Because the FAC plausibly alleges conduct that violates these clearly established constitutional guarantees, dismissal—and any qualified-immunity defense premised on their absence—is unwarranted at this stage. *See Crawford-El v. Britton, 523 U.S. 574, 593 (1998); Bailey v. Wheeler, 843 F.3d 473, 480–81 (11th Cir. 2016).*

As demonstrated above, the First Amended Complaint plausibly alleges violations of clearly established constitutional rights under the First and Fourteenth Amendments, actionable under 42 U.S.C. § 1983. At the pleading stage, the Court must assess whether the well-pleaded facts, taken as true, state a plausible constitutional violation—not whether Plaintiff has employed preferred labels or ultimately can prove his claims. *Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009); Johnson v. City of Shelby, 574 U.S. 10, 11–12 (2014) (per curiam).* Accordingly, Defendants' threshold arguments under Argument I (A)(1-4) and (B) should be rejected; and the motion to dismiss under Rule 12(b)(6) should be denied.

III. PLAINTIFF'S PLAUSIBLY ALLEGES A CLAIM FOR MUNICIPAL LIABILITY

The Supreme Court has repeatedly held that municipal liability attaches when unconstitutional actions are taken by authorized policymakers. *Pembaur v. City of Cincinnati, 475 U.S. 469 (1986).* Consistent with *Monell*, [a] municipality may be held liable under 42 U.S.C. § 1983 when a constitutional violation is caused by official policy, custom, or the decisions of officials with final policymaking authority. *Monell v. Dep't of Soc. Servs., 436 U.S. 658, 694 (1978; Quinn v. Monroe County, 330 F.3d 1320, 1325–26 (11th Cir. 2003).*

Accordingly, Defendants' last threshold argument under Argument II should be rejected. As demonstrated above, the First Amended Complaint plausibly alleges discriminatory and retaliatory misuse of official authority under color of state law, resulting in adverse employment actions taken by officials with final policymaking authority without notice or due process, in violation of the First and Fourteenth Amendments which are actionable under 42 U.S.C. § 1983.

CONCLUSION

Defendants' thesis improperly asks this Court to deconstitutionalize well-pleaded factual allegations, impose heightened pleading requirements, import inapplicable Title VII standards, and resolve issues of intent, motive, and context that are inappropriate at the Rule 12(b)(6) stage. The First Amended Complaint pleads specific, chronological facts that, when accepted as true, plausibly allege violations of clearly established rights under the First and Fourteenth Amendments, actionable under 42 U.S.C. § 1983.

For the foregoing reasons above, Defendants' Motion to Dismiss pursuant to Rule 12(b)(6) should be denied in its entirety and this action should proceed to discovery.

Dated: February 2, 2026

Respectfully submitted,

David Arnold Gray
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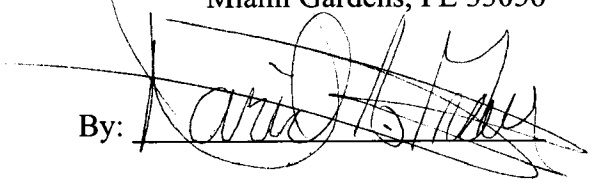
By: 

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of February 2026, I personally filed the foregoing with the Clerk of the Court. I also certify that the foregoing document is being served on this day on counsel identified on the Service List below via transmission of notices generated by CM/ECF system.

By: /s/ David Arnold Gray

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