IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Southern Division

JAMES ELLIS HALL, II, *

Plaintiff, *

v. **Case No.: GJH-20-1960**

*

VERIZON COMMUNICATIONS, INC.,

*

Defendants.

*

* * * * * * * * * * * * *

MEMORANDUM OPINION

Plaintiff James Ellis Hall II, proceeding *pro se*, brought this civil action against Defendant Verizon Communications, Inc. ("Verizon"), alleging that Defendant unlawfully, and without an investigation, terminated Plaintiff's employment based on Plaintiff's publication of two articles on social media. ECF No. 1; ECF No. 28-2. Pending before the Court is Defendant's Motion to Dismiss Plaintiff's Complaint, ECF No. 20, and Plaintiff's Motion to Amend Pleading, ECF No. 28. No hearing is necessary. *See* Loc. R. 105.6 (D. Md. 2021). For the following reasons, Plaintiff's Motion to Amend is denied, and Defendant's Motion to Dismiss is granted.

I. BACKGROUND[1]

Defendant Verizon employed Plaintiff James Ellis Hall II from 2002 until 2018. ECF No. 1 at 4;[2] *see also* ECF No. 28-2 ¶¶ 11, 14. During Plaintiff's employment with Defendant,

[1] Unless otherwise stated, the background facts are taken from Plaintiff's Complaint, ECF No. 1 and Plaintiff's proposed Amended Complaint, ECF No. 28-2, and are presumed to be true.

[2] Pin cites to documents filed on the Court's electronic filing system (CM/ECF) refer to the page numbers generated by that system.

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Plaintiff worked in billing, customer service, pricing, and solutions architecture. ECF No. 1 at 4. Throughout his employment, Plaintiff supported the Department of Homeland Security, the Department of Defense, and "the federal healthcare vertical market." *Id.* Plaintiff's last position at Verizon was as a senior solutions architect supporting the Department of Homeland Security, including working on the EINSTEIN 3A, a "sole-source" contract involving a cybersecurity application. *Id.*; ECF No. 28-2 ¶ 14. Plaintiff had an exemplary professional record at Verizon. ECF No. 28-2 ¶ 15.

"Plaintiff is [also] a published author, with credits related to translation of the Bhagavad Gītā, the Hindu Bible—as well as with comparative work in Chinese scripture, Old English literature, as well as Old Icelandic." ECF No. 1 at 5. In 2018, in his role as an author, Plaintiff wrote and published two articles on a Facebook page. ECF No. 1 at 4–5; ECF No. 28-2 ¶ 18. The Facebook page to which Plaintiff published these articles is not a personal page or account, but instead is a page listed as "being for the purpose of promoting traditional Hindu theology and spirituality." ECF No. 28-2 ¶ 18. Both articles were also shared to Plaintiff's personal Facebook feed. *Id.*

Plaintiff's first article, published on May 15, 2018, included content reporting on a retired federal executive's alleged sexual abuse of a child. *Id.* ¶¶ 13, 19; ECF No. 1 at 5, 7. Plaintiff's second article, published on June 14, 2018, promoted the first article and included content reporting on alleged misconduct in the administration of a federal contract—*e.g.*, wasted spending and program mismanagement. ECF No. 1 at 5, 7; ECF No. 28-2 ¶¶ 13, 20. Both articles reference Hindu beliefs and spiritual practices, Sanskrit literature, and Plaintiff's translations of that literature. ECF No. 1 at 5, 7; ECF No. 28-2 ¶¶ 13, 19–20. Defendant Verizon "was aware of the content of the subject articles, including the religious content, the Plaintiff's reports on

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criminal activity, as well as the disclosures concerning gross mismanagement, and gross waste of funds." ECF No. 28-2 ¶ 22.

On June 18, 2018, following Plaintiff's publication of the two articles on social media, Defendant held a call with Plaintiff concerning Plaintiff's social media activity and informed him that he would be suspended pending an internal investigation. ECF No. 1 at 6; ECF No. 28-2 ¶ 12. Plaintiff indicated that he would cooperate with the investigation but asserted "that communication must be documented in writing[.]" ECF No. 1 at 6. Nonetheless, on June 19, Defendant terminated Plaintiff's employment due to Plaintiff's publication of the two articles. *Id.*; ECF No. 28-2 ¶ 12. Plaintiff's termination was not due to his performance. ECF No. 28-2 ¶ 16. Additionally, Defendant "did not perform an investigation to determine whether the articles included protected speech, whether there was, or would have been, any actual adverse impact, and/or whether there was any actual violation of policy." ECF No. 28-2 ¶ 21. In fact, Plaintiff's social media articles "did not adversely impact the Defendant's workplace environment, operations, customer[s], or business, nor did the same impact the Plaintiff's effectiveness to perform his assigned duties or roles, either in employment by the Defendant, or in his support of the federal government." *Id.* ¶¶ 24, 31, 43, 51. Plaintiff further alleges that he was injured by Defendant's unlawful termination of Plaintiff's employment. *Id.* ¶¶ 26, 33, 46, 58.

Plaintiff originally challenged Defendant's wrongful termination of his employment in the Eastern District of Virginia, bringing a First Amendment claim. ECF No. 1 at 14; ECF No. 23-1.[3] The United States District Court for the Eastern District of Virginia (the "Eastern District of Virginia") dismissed Plaintiff's complaint without prejudice for failing to state a claim upon which relief could be granted. ECF No. 1 at 14; ECF No. 23-1. Specifically, the Eastern District

[3] The Court "may take judicial notice of matters of public record, including court and administrative filings." *Dyer v. Md. State Bd. of Educ.*, 187 F. Supp. 3d 599, 608 (D. Md. 2016).

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of Virginia held that:

> Plaintiff's claim fails as a matter of law because "the constitutional guarantee of free speech is a guarantee only against abridgment by government, federal or state." *Hudgens v. NLRB*, 424 U.S. 507, 513 (1976). "The Constitution does not protect or provide redress against a private corporation which abridges the free expression of others." *McIntyre-Handy v. APAC Customer Servs., Inc.*, 422 F. Supp. 2d 611, 626 (E.D. Va. 2006) (citing *Hudgens*, 424 U.S. at 513). Because Verizon is not a government actor, and Plaintiff's claim deals solely with private parties, Plaintiff has failed to state a claim upon which relief can be granted.

ECF No. 23-1 at 2–3. Plaintiff then appealed the Eastern District of Virginia's dismissal to the United States Court of Appeals for the Fourth Circuit, which found that the order being appealed was not final because Plaintiff "could cure the defects in his complaint through amendment," and therefore "dismiss[ed] the appeal for lack of jurisdiction, and remand[ed] the case to the district court with instructions to allow [Plaintiff] to file an amended complaint." ECF No. 23-2 at 3; ECF No. 1 at 14. On remand, the Eastern District of Virginia issued an Order instructing Plaintiff to amend his Complaint within 30 days and informing him that, if he failed to do so, "the case will be dismissed with prejudice." ECF No. 23-3 at 2; ECF No. 1 at 14. Plaintiff failed to amend his complaint, ECF No. 1 at 14, and, thus, the Eastern District of Virginia dismissed Plaintiff's action with prejudice on April 20, 2019, *see* ECF No. 23-3 at 2; Order at 1, *Hall v. Verizon Commc'ns, Inc.*, No. 1:18cv1080 (E.D. Va. Apr. 29, 2019), ECF No. 37.

Over a year later, on July 2, 2020, Plaintiff, proceeding *pro se*, initiated the instant action. ECF No. 1. Defendant responded by filing a Motion to Dismiss on January 7, 2021. ECF No. 20. Plaintiff opposed Defendant's Motion on January 28, 2021, ECF No. 23, and Defendant replied on February 12, 2021. ECF No. 24. Plaintiff then filed a Motion to Amend Pleading on June 17, 2021. ECF 28. Defendant opposed Plaintiff's Motion on July 6, 2021, ECF No. 29, and Plaintiff replied on July 15, 2021, ECF No. 30.

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II. STANDARD OF REVIEW

Federal Rule of Civil Procedure 15(a)(2) provides that courts "should freely give leave" to parties to amend pleadings "when justice so requires." Fed. R. Civ. P. 15(a)(2). "This liberal rule gives effect to the federal policy in favor of resolving cases on their merits instead of disposing of them on technicalities." *Laber v. Harvey*, 438 F.3d 404, 426 (4th Cir. 2006). The Fourth Circuit has "interpreted Rule 15(a) to provide that 'leave to amend a pleading should be denied only when the amendment would be prejudicial to the opposing party, there has been bad faith on the part of the moving party, or the amendment would have been futile.'" *Id.* (quoting *Johnson v. Oroweat Foods Co.*, 785 F.2d 503, 509 (4th Cir. 1986)); *see also Mayfield v. Nat'l Ass'n for Stock Car Auto Racing, Inc.*, 674 F.3d 369, 379 (4th Cir. 2012). "Futility is apparent if the proposed amended complaint fails to state a claim under the applicable rules and accompanying standards," and would therefore not survive a motion to dismiss pursuant to Rule 12(b)(6). *Davison v. Randall*, 912 F.3d 666, 690 (4th Cir. 2019) (quoting *Katyle v. Penn Nat'l Gaming, Inc.*, 637 F.3d 462, 471 (4th Cir. 2011)).

To survive a motion to dismiss under Fed. R. Civ. P. 12(b)(6), "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Twombly*, 550 U.S. at 556). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* (citing *Twombly*, 550 U.S. at 555).

The purpose of Fed. R. Civ. P. 12(b)(6) "is to test the sufficiency of a complaint and not

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