UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LAURA HORNE,

Plaintiff,

v.

PENTASTAR AVIATION, LLC,

Defendant.
_____/

Case No. 23-11439

Sean F. Cox
United States District Court Judge

OPINION & ORDER
DENYING DEFENDANT'S MOTION TO DISMISS

Plaintiff alleges that her former employer terminated her in violation of Title VII and Michigan's Elliott-Larsen Civil Rights Act ("ELCRA"). Plaintiff alleges that she incurred religious discrimination in violation of Title VII and asserts those claims under both a disparate-treatment and failure-to-accommodate theory. She also asserts a disparate treatment claim under the ELCRA. The claims are based upon Plaintiff's allegations that her former employer failed to accommodate her sincere religious belief against being vaccinated against COVID-19, and treated other non-protected employees more favorably than her by allowing them to work without being vaccinated. Plaintiff also asserts claims against her former employer under the Fair Labor Standards Act and seeks to assert those claims as a collective action. She alleges that Defendant violated the Act by failing to pay her, and other flight attendants, overtime pay. The matter is currently before the Court on Defendant's Motion to Dismiss, brought under Fed. R. Civ. P. 12(b)(6). The parties have briefed the issues and the Court heard oral argument on April 9, 2024. For the reasons set forth below, the Court denies the motion.

BACKGROUND

A. Procedural Background

Plaintiff Laura Horne filed this action against Defendant Pentastar Aviation, LLC on June 19, 2023. The action was filed in federal court based upon federal-question jurisdiction and Plaintiff asks the Court to exercise supplemental jurisdiction over her state-law claim.

After Defendant filed a Motion to Dismiss, this Court issued its standard order, giving Plaintiff the option of responding to the motion or filing an amended complaint in order to attempt to cure any pleading deficiencies. Plaintiff opted to file an amended complaint.

Plaintiff's September 27, 2023 "First Amended Complaint" (ECF No. 11) asserts the following claims against Defendant: 1) "Violation of Title VII, 42 U.S.C. § 2000e, *et seq*. Religious Discrimination – Failure to Accommodate and Disparate Treatment" (Count I); 2) "Violation of Elliott-Larsen Civil Rights Act ('ELCRA') Religious Discrimination – Disparate Treatment" (Count II); 3) "Violation of the Fair Labor Standards Act" (Count III). Plaintiff seeks to assert her Fair Labor Standards Act ("FLSA") claim as a collective action. (*See* Am. Compl. at 30).

On October 11, 2023, Defendant filed the instant Motion to Dismiss, brought under Fed. Civ. P. 12(b)(6). Defendant attached the following as exhibits to its motion: 1) what it purports to be Plaintiff's September 8, 2021 letter to Defendant; and 2) "PDF copies" of various websites.

Plaintiff's brief in opposition to the motion attached the following as exhibits: 1) what she purports to be her September 8, 2021 letter to Defendant; 2) Defendant's letter in response; and 3) a copy of a news article, titled "General Motors and Ford won't mandate Covid-19 vaccination for employees."

B. Standard Of Decision

"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, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)). A claim is facially plausible when a plaintiff pleads factual content that permits a court to reasonably infer that the defendant is liable for the alleged misconduct. *Id.* When assessing the sufficiency of a plaintiff's claim, this Court must accept the complaint's factual allegations as true. *Ziegler v. IBP Hog Mkt., Inc*., 249 F.3d 509, 512 (6th Cir. 2001). "Mere conclusions," however, "are not entitled to the assumption of truth. While legal conclusions can provide the complaint's framework, they must be supported by factual allegations." *Iqbal,* 556 U.S. at 664, 129 S.Ct. 1937.

"Generally, in considering a motion to dismiss, the district court is confined to considering only the pleadings, or else it must convert the motion into one for summary judgment under Rule 56. *See Wysocki v. Int'l Bus. Mach. Corp*., 607 F.3d 1102, 1104 (6th Cir. 2010)." *Electronic Mech. Sys., LLC v. Gaal*, 58 F.4th 877, 883 (6th Cir. 2023). "However, the court may, in undertaking a 12(b)(6) analysis, take judicial notice of 'matters of public record, orders, items appearing in the record of the case, and exhibits attached to the complaint.' *Golf Vill. North, LLC v. City of Powell*, 14 F.4th 611, 617 (6th Cir. 2021) (quoting *Meyers v. Cincinnati Bd. of Educ*., 983 F.3d 873, 880 (6th Cir. 2020))." *Id*. This Court "may consider public records for the truth of the statements contained within them only when the 'contents prove facts whose accuracy cannot reasonably be questioned.'" *Id.* (citing *Passa v. City of*

Columbus, 123 F. App'x 694, 697 (6th Cir. 2005)).

Here, both parties have attached, as an exhibit to their respective briefs, what they identify as Plaintiff's religious exemption letter that was sent to Defendant. Notably, however, the letters submitted by the parties are different. (Compare ECF No. 14-2 with 15-1). While the Court may generally consider such a letter in ruling on motion to dismiss, because it is central to the complaint and referenced in it, that is the general rule that applies when there is no dispute about the actual document. Thus, while this Court may consider the portions of the letters that are the same, it will not consider the portions of the letter that differ.

Both parties have also attached other exhibits that should not be considered by the Court, unless the Court converts the pending motion into a summary judgment motion. This includes pdf print-outs of unspecified websites that contain language Defendant contends Plaintiff copied and then used in her religious exemption letter. (*See* Def.'s Exs. 2, 3 & 4). Plaintiff has likewise attached an article about GM's practices during COVID. When the parties do this (ie., ask the Court to consider such materials when ruling on a motion to dismiss), the Court should clarify whether it intends to convert the motion in to a summary judgment motion. This Court declines to convert the motion into a summary judgment motion and will not consider these materials.

Because at the motion-to-dismiss stage, the Court is considering the allegations in the complaint, a 12(b)(6) motion is generally an "inappropriate vehicle" for dismissing a claim based upon a statute of limitations. *Snyder-Hill v. Ohio State Univ.,* 48 F.4th 686, 698 (6th Cir. 2022). (quoting *Cataldo v. U.S. Steel Corp*., 676 F.3d 542, 547 (6th Cir. 2012)). However, dismissal is warranted if the allegations in the complaint "affirmatively show that the claim is time-barred. "

Id.

C. Relevant Factual Allegations

Plaintiff Laura Horne was employed by for Defendant Pentastar Aviation, LLC for more than thirty-eight years. (Am. Compl. at ¶¶ 2 & 14).

Allegations Regarding FLSA Claims

Plaintiff was employed as a flight attendant for Defendant. (Am. Compl. at ¶¶ 2 & 14). "The basic duties of a Flight Attendant are primarily made up of non-managerial and non-administrative tasks." (Am. Compl. at ¶ 92).

Plaintiff alleges that, at all relevant times, Defendant has been "a private non-commercial airline." (Am. Compl. at ¶ 92). She alleges that Defendant "exclusively services General Motors and does not offer commercial airline services to the general public." (Am. Compl. at ¶ 15). Plaintiff alleges that the "common carrier" exemption to the FLSA "does not apply because Defendant is a private non-commercial airline." (Am. Compl. at ¶ 93).

Plaintiff alleges that "[p]rior to May 5, 2003, Plaintiff was properly classified as eligible for overtime pay." (Am. Compl. at ¶ 96).

"On May 12, 2003," however, "Defendant without justification 'reclassified [Plaintiff] from hourly nonexempt to salaried exempt,' whereupon she was no longer 'eligible for overtime pay for time worked in excess of 40 hours in a work week.'" (Am. Compl. at ¶ 97). She alleges that Defendant implemented policies and practices "to prevent Plaintiff and other similarly situated individuals from being compensated overtime hours despite working over 40 hours a week." (Am. Compl. at ¶ 98).

Plaintiff alleges that she was "misclassified exempt from overtime and unlawfully

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