UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:20-cv-01052-SKC

RAVERRO STINNETT

Plaintiff,

v.

REGIONAL TRANSPORTATION DISTRICT, a political subdivision of the State of Colorado;
UNIVERSAL PROTECTION SERVICE, LP, d/b/a ALLIED UNIVERSAL SECURITY SERVICES, a California corporation;
SERGEANT TAYLOR TAGGART, in his official capacity;
OFFICER JAMES HUNTER, in his official capacity;
OFFICER VICTOR DIAZ, in his official capacity;
OFFICER AARON FOUGERE, in his official capacity.

Defendants.

DEFENDANT UNIVERSAL PROTECTION SERVICE, LP d/b/a ALLIED UNIVERSAL SECURITY SERVICES' MOTION TO DISMISS PLAINTIFF'S FOURTH CLAIM FOR RELIEF

Defendant Universal Protection Service, LP d/b/a Allied Universal Security Services ("Allied"), by and through undersigned counsel, and pursuant to Fed. R. Civ. P. 12(b)(6), submits this Motion to Dismiss Plaintiff's Fourth Claim for Relief, and in support therefore, states as follows:

I. INTRODUCTION

In this lawsuit, Plaintiff Raverro Stinnett ("Plaintiff" or "Stinnett") alleges he was physically assaulted while waiting for a train at Denver's public transportation hub, Union Station, by James Hunter, a RTD Transit Security Officer ("TSO"). Plaintiff alleges a variety of federal law claims against Defendants stemming from this alleged assault, including claims for Excessive Force, Substantive Due Process, and Race Discrimination. Plaintiff alleges only one federal claim

against Allied for Race Discrimination pursuant to 42 U.S.C. § 1981. Plaintiff also alleges state law claims against Allied for: Negligent Hiring, Negligent Supervision or Retention, Negligent Training, and Negligent Failure to Summon Medical Aid.

While Allied denies any liability under either state or federal law, this Motion focuses on Plaintiff's Fourth Claim for Relief under 42 U.S.C. § 1981 – Race Discrimination ("1981 Claim"), the sole federal law claim against Allied. Plaintiff's Complaint is devoid of any allegation, beyond a conclusory statement that Plaintiff is black, to support Plaintiff's 1981 Claim. Therefore, this claim should be dismissed. Further, because the sole federal claim against Allied should dismissed, the Court should decline to exercise supplemental jurisdiction pursuant to 28 U.S.C. § 1367 over the remaining state law claims against Allied.

II. STATEMENT OF FACTS

For the purposes of the determination of this Motion only, Allied submits the following statement of facts to be accepted as true.

1. Regional Transportation District ("RTD"), a political subdivision of the State of Colorado, contracted with Allied to provide RTD Transit Security Officers ("TSOs") at all times relevant to this litigation. *See* Plaintiff's Complaint, *Doc. 1*, at ¶¶ 5, 7-8.

2. Defendants Taylor Taggart, James Hunter, Victor Diaz, and Aaron Fougere (the "TSO Defendants") were all employed as TSOs at the time of the alleged incident on April 20, 2018. *Id*. at ¶¶ 10-13,

3. As TSOs, RTD directed, controlled, engaged, and employed the TSO Defendants as its employees or agents at all times relevant to this litigation. *Id*. at ¶ 16.

4. The TSOs performed work solely for and on behalf of RTD, including enforcing RTD policy and state law. *Id*. at ¶ 9.

5. Early in the morning on April 20, 2018, Plaintiff Stinnett entered Union Station to wait for the next A-Line Train. *Id*. at ¶¶ 40-43.

6. While at Union Station, Plaintiff was approached by TSOs and told that, per RTD policy, he was not permitted to wait for his train on the train platform. *Id*. at ¶ 45.

7. Plaintiff Stinnett then went down an escalator to the RTD bus concourse to wait for his train. *Id*. at ¶ 47.

8. Plaintiff Stinnett was again approached by a group of TSOs while in the bus concourse around 2:15 am. *Id*. at ¶ 50.

9. Plaintiff Stinnett told these TSOs that he was waiting for the A-Line train to the airport, which was not scheduled to arrive until 3:15 am. *Id*. at ¶¶ 43, 54.

10. Defendant Taggart told Plaintiff that could not remain in the bus concourse to wait for his train, again citing RTD policy, and ordered Plaintiff to leave. *Id*. at ¶¶ 55-57.

11. Instead of leaving the bus concourse as requested, Plaintiff Stinnett sat down on a bench near a different gate of the same bus concourse. *Id*. at ¶ 58.

12. At least five other individuals were also waiting or sleeping on nearby benches. The race and/or ethnicity of these individuals is not known. *Id*. at ¶¶ 60-62.

13. When the TSOs noticed Plaintiff Stinnett had not left the concourse as requested, Defendant Hunter handed Plaintiff a copy of the RTD Code of Conduct, and Defendant Taggart again ordered him to leave the bus concourse. *Id*. at ¶¶ 63-65.

14. Instead of immediately complying with the TSOs order to leave the concourse, Plaintiff engaged in a conversation with Defendant Hunter. *Id*. at ¶ 70.

15. The situation between Defendant Hunter and Plaintiff escalated, and Defendant Hunter began antagonizing Plaintiff, saying: "So you think you're tough?" and challenged Plaintiff to a fight. *Id*. at ¶¶ 71, 75.

16. Defendant Hunter then escorted Stinnett to the concourse bathroom, where Defendant Hunter assaulted Stinnett. *Id*. at ¶¶ 85, 89-90.

17. The TSO Defendants did not use racial slurs or epithets or any language indicating racially-based motivations during their interactions with Plaintiff Stinnett on the night of the incident. *See, generally*, Complaint at ¶¶ 1 – 456.

III. ARGUMEMT

A. Motion to Dismiss Standard

Defendant Allied moves this Court to dismiss Plaintiff's Fourth Claim for Relief pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim. To survive a Rule 12(b)(6) motion to dismiss, the Complaint must contain "enough facts to state a claim to relief that is plausible on its face." *Ridge at Red Hawk, L.L.C. v. Schneider*, 493 F.3d 1174, 1177 (10th Cir. 2007) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A plausible claim is one that "allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). While the Court must accept the well-pleaded allegations of the complaint as true and construe them in the light most favorable to the plaintiff, *Robbins v. Wilkie*, 300 F.3d 1208, 1210 (10th Cir. 2002), purely conclusory allegations are not entitled to be presumed true, *Iqbal*, 556 U.S. at 681. "[C]onclusory allegations or legal conclusions masquerading as factual conclusions will not suffice to prevent a motion to dismiss." *Fernandez-Montes v. Allied Pilots Association*, 987 F.2d 278, 284 (5th Cir. 1993).

B. 42 U.S.C. § 1981 Elements and Burden of Proof

Section 1981, in pertinent part, states, "All persons … shall have the same right in every State and Territory to make and enforce contracts … to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens." 42 U.S.C. §

1981(a). Stated differently, Section 1981 prohibits racial discrimination in "the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship." 42 U.S.C. § 1981(a) & (b); *see also Reynolds v. Sch. Dist. No. 1*, 69 F.3d 1523, 1532 (10th Cir. 1995).

To state a claim for a violation of Section 1981, a plaintiff must allege facts showing that (1) he is a member of a protected class; (2) the defendant intended to discriminate against him on the basis of race; and (3) the discrimination related to one or more activities enumerated in the statute, including the right to make or enforce contracts. *See Hampton v. Dillard Dept. Stores, Inc.*, 247 F.3d 1091, 1101-02 (10th Cir. 2001). To make out a claim under Section 1981, a plaintiff must show intentional or purposeful discrimination against him. *Reynolds*, 69 F.3d 1523 at 1532; *see also Guardians Asso. of New York City Police Dept., Inc. v. Civil Service Com.*, 633 F.2d 232 (2d Cir. 1980), *aff'd*, 463 U.S. 582 (1983) ("Discriminatory purpose must be pleaded and proven in actions brought under 42 USC §1981.").

In a recent March 2020 decision, *Comcast Corp. v. Nat'l Ass'n of African Am.-Owned Media*, 140 S. Ct. 1009, 1019 (2020), the United States Supreme Court further clarified the applicable pleading standard for Section 1981 claims. "To prevail, a plaintiff must ***initially plead*** and ultimately prove that, ***but for race***, [he] would not have suffered the loss of a legally protected right." *Id*. (emphasis added). The plaintiff bears the burden of showing that race was a but-for cause of his injury. *Id*. The Court further held that nothing in the statute signals that this but-for test applies in the face of a motion to dismiss. *Id*. at 1015.

C. Plaintiff fails to state a claim under Section 1981 against Allied.

Plaintiff pled no facts showing an intent to discriminate by Allied. Plaintiff states that he is a black man, but makes no allegation that racial discrimination played any role in the unfortunate assault he suffered. There is no allegation that Allied intentionally discriminated against Plaintiff

based on race, only that actions were allegedly taken against Plaintiff, and that he is black. Plaintiff's Complaint, therefore, fails to comply with the pleading standards under Section 1981, *Twobly*, *Ibqual*, and Rule 12(b)(6).

Plaintiff's Complaint does not assert any factual basis for concluding the existence of racial animus on the part of Allied, through the TSO Defendants, in their interactions with him. *See Grambling Univ. Nat. Alumni Ass'n v. Bd. of Sup'rs for Louisiana Sys.*, 286 Fed.Appx. 864, 870 (5th Cir. 2008) (*per curiam*) (plaintiff made no showing of racial animus as a motivating factor in holding that section 1981 claim was "implausible" under pleading requirements of *Twombly*). Plaintiff's Fourth Claim for Relief states: "As described herein, Sergeant Taggart, Officer Hunter, Officer Diaz, and Officer Fougere deliberately and maliciously targeted and confronted Mr. Stinnett on the basis of his race, depriving him of his federally-protected rights." *See* Complaint at ¶ 411. However, this is but a bare recitation of an element of a Section 1981 claim. Glaringly absent from the Plaintiff's lengthy Complaint are any fact which, if proven, would show that Allied or the TSO Defendants were motivated by racial animus.

"Disputes generally arise out of the mutual misunderstanding, misinterpretation and overreaction, and without more, such disputes do not give rise to an inference of discrimination." *Alexis v. McDonald's Rests.*, 67 F.3d 341, 347-48 (1st Cir. 1995) (affirming entry of summary judgment in favor of defendant on plaintiff's § 1981 claim). In the instant case, Plaintiff alleges no specific facts to support that the incident between him and the TSO Defendants was either racially motivated or anything more than an overreaction. For example, there is no allegation that the TSO Defendants used racial slurs or epithets in their interactions with Plaintiff. Indeed there is no claim that the TSO Defendants said ***anything*** at all about Plaintiff's race. Plaintiff alleges there were other people in the concourse that night, but provides no information regarding their race. The Court should not infer racial motivation where there are no facts to support racial animus

was involved in any way, and when there are myriad other possible motivations that may have spurred the TSO Defendants' confrontation of Plaintiff that night. *See Miller v. Kemp*, No. 11-CV-0530-CVE-FHM, 2012 U.S. Dist. LEXIS 62529, at *15-17 (N.D. Okla. May 4, 2012) ("Plaintiff's mere conjecture, subjective belief, and conclusory allegations that actions were taken based on race are not sufficient to state a claim for relief under either § 1981 or § 1983."); *see also Lindsey v. Thomson*, 275 F. App'x 744, 746 (10th Cir. 2007) (unpublished) (affirming dismissal of § 1983 claim that contained "nothing other than conclusory allegations as to the violation of the Plaintiff's civil rights"); *Crawford v. Frasier*, 21 F. App'x 883, 885 (10th Cir. 2001) (unpublished) (affirming dismissal of § 1983 claim where "plaintiff's broad and conclusory allegations of racial discrimination … would not state a claim for relief"); *Lee v. Swanson Servs., Inc.*, No. CIV-10-1083-HE, 2011 U.S. Dist. LEXIS 39717, 2011 WL 1375871, at *2 (W.D. Okla. Apr. 12, 2011) (granting motion to dismiss § 1981 claim where complaint contained "no non-conclusory, factual allegations" of unlawful discrimination); *Kelley v. N.Y. Life Ins. & Annuity Corp.*, No. 07-cv-01702-LTB-BNB, 2008 U.S. Dist. LEXIS 83966, 2008 WL 1782647, at *3 (D. Colo. Apr. 16, 2008) (granting motion to dismiss § 1981 claim where complaint "provides only speculative, generalized and conclusory allegations that fail to suggest or support a plausible claim of race discrimination").

In order to make a *prima facie* claim of Defendants' intent to discriminate against him on account of race, Plaintiff has to allege direct evidence of that fact, such as statements by the TSO Defendants demonstrating their actions were racially motivated (which are not alleged) or indirect evidence, such as proof that Plaintiff was treated differently than similarly-situated patrons who were not African-American or that all African-Americans were asked to the leave concourse (also not alleged).

Here, Plaintiff's allegations of racial discrimination are based solely on his personal, subjective experience. Plaintiff's Complaint does not plausibly plead that Allied or the TSO Defendants acted with "discriminatory intent" and that such intent was the "but-for" cause of the any adverse action against Plaintiff. *See Parks v. Buffalo City Sch. Dist.*, No. 17-CV-631S, 2020 U.S. Dist. LEXIS 76469, at *21 (W.D.N.Y. Apr. 30, 2020) (dismissal of § 1981 claim is appropriate where a "causal connection" is not alleged or reasonably inferred from the complaint.) Accordingly, the Complaint fails to state plausible facts, which even when taken as true, suggest discrimination on account of Plaintiff's race. Because Plaintiff has failed to state a plausible claim of a racial discrimination, Plaintiff's 1981 Claim against Allied should be dismissed under Fed. R. Civ. P. 12(b)(6).

D. Allied is not vicariously liable for the actions of the TSO Defendants.

Even if, *assuming arguendo*, the TSO Defendants targeted Plaintiff on the basis of race, these actions by the TSO Defendants cannot be attributed to Allied. An employer is only responsible for "those intentional wrongs of [its] employees that are committed in furtherance of the employment; the tort-feasing employee must think (however misguidedly) that he is doing the employer's business in committing the wrong." *Fitzgerald v. Mountain States Tel. & Tel. Co.*, 68 F.3d 1257, 1262-63 (10th Cir. 1995) (internal citations omitted). As a matter of law, even when taken as true, the actions of the TSO Defendants were not within the scope of their employment with Allied.

Plaintiff's Complaint specifically states that ***Defendant RTD*** "directed, controlled, engaged, and employed" the TSO Defendants as its employees or agents at all times relevant to this litigation. *See* Complaint at ¶ 16. Further, Plaintiff alleges the TSOs performed work solely for and on behalf of ***RTD,*** including enforcing ***RTD policy*** and state law. *Id*. at ¶ 9. As such, if the TSO Defendants were acting within the scope of their agency or employment, which Allied

expressly denies, Plaintiff's own allegations are that such agency relationship was with Defendant RTD, not Allied.

Further, other than a bare recitation of the elements of vicarious liability, Plaintiff's Complaint is devoid of any factual allegations that the TSO Defendants' actions fall within their scope of employment with Allied. *See, generally,* Complaint at ¶¶ 410-417. Plaintiff admits that the TSO Defendants deliberately and purposefully attempted to cover up the alleged altercation with Plaintiff, and that the none of the TSO Defendants reported the incident or mentioned it to Allied. *See* Complaint at p. 3. Under these circumstances, the TSO Defendants' actions cannot be imputed to Allied. Thus, Allied cannot be held vicariously liable for the conduct of the TSO Defendants. For this reason, as well, Plaintiff's Fourth Claim for Relief against Allied fails to state a claim upon which relief can be granted, and must be dismissed under Fed. R. Civ. P. 12(b)(6).

E. The Court Should Decline to Exercise Supplemental Jurisdiction over the State Law Claims upon Dismissal of the Sec. 1981 Claim against Allied.

If the Court grants the Motion and dismisses the 1981 Claim against Allied, it should also decline to exercise supplemental jurisdiction over Plaintiff's state law claims against Allied for Negligent Hiring, Negligent Supervision or Retention, Negligent Training, and Negligent Failure to Summon Medical Aid. While federal courts may exercise supplemental jurisdiction over state law claims if there is a jurisdictional basis for doing so, 28 U.S.C. § 1367(c)(3) states that a court may decline to exercise jurisdiction over such claims if "the district court has dismissed all claims over which it has original jurisdiction." When § 1367(c)(3) is implicated in the Tenth Circuit, courts are advised to dismiss pendent state law claims "'absent compelling reasons to the contrary.'" *Brooks v. Gaenzle*, 614 F.3d 1213, 1230 (10th Cir. 2010).

IV. CONCLUSION

For the foregoing reasons, Defendant Universal Protection Service, LP d/b/a Allied Universal Security Services respectfully requests that the Court enter an order dismissing Plaintiff's Fourth Claim for Relief, decline to exercise supplemental jurisdiction over the remaining state law claims against Defendant Allied, and for such other and further relief as this Court deems just and proper.

Dated this 15th day of June, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2020, a true and correct copy of the foregoing was filed with the Court via CM/EFC and served to all parties of record.

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