

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

Barbara Andreas, et al.,	:	
	:	
Plaintiffs,	:	CASE NO.: 6:23-cv-00107-ACC-EJK
vs.	:	
	:	
The Walt Disney Company, et al,	:	
	:	
Defendants.	:	

PLAINTIFFS’ MOTION FOR CLARIFICATION AND RECONSIDERATION

COME NOW, by and through undersigned counsel, Barbara Andreas, Stephen J. Cribb, Adam Pajer, Steven Gibbons, Cheron Hayes, Catheryn Koepke, and Seth Schmidt (hereinafter referred to collectively as "Plaintiffs"), and file this Motion for Clarification and Reconsideration, and request relief as follows:

FACTUAL BACKGROUND

On December 23, 2022, Plaintiffs filed the First Amended Complaint and Demand for Jury Trial (the “Amended Complaint”) in the Circuit Court of Osceola County, Florida, Case No. 2022-CA-001697. In the Amended Complaint, Plaintiffs asserted the causes of action against Defendants, The Walt Disney Company (“TWDC”), Disney Parks, Experiences And Products, Inc. (“DPEP”), Reedy Creek Improvement District (“RCID”), Walt Disney Parks And Resorts U.S., Inc. (“WDPR”), Disney Gift Card Services, Inc. (“DGCS”), Disney Human Resources Services Co., LLC (“Disney HR”), and Disney Vacation Club Management, LLC (“DVCM”).

Hereinafter, Defendants are referred to, collectively, as “Disney”.

The causes of action are summarized as follows:

Count	Issue	Plaintiffs	Defendants
Count I (pp 41-43)	Private employer Whistleblower Act – retaliation	Andreas, Cribb, Pajer, Gibbons, Schmidt	TWDC, RCID, WDPR, DVCM, DPEP
Count II (43-46)	Public employer Whistleblower Act - retaliation	Andreas, Cribb, Pajer, Gibbons, Schmidt	TWDC, RCID, WDPR, DVCM, DPEP
Count III (46-50)	FL CRA – discrimination	All Plaintiffs	All Defendants
Count IV (50-52)	FL CRA – retaliation	Andreas, Cribb, Pajer, Gibbons, Schmidt	TWDC, RCID, WDPR, DVCM, DPEP
Count V (52-54)	Title VII – discrimination	All Plaintiffs	All Defendants
Count VI (55-57)	Title VII – retaliation	Andreas, Cribb, Pajer, Gibbons, Schmidt	TWDC, WDPR, DVCM, DPEP ¹
Count VII (57-60)	ADA – discrimination	All Plaintiffs	All Defendants
Count VIII (60-63)	ADA – retaliation	Andreas, Cribb, Pajer, Gibbons, Schmidt	TWDC, WDPR, DVCM, DPEP ²
Count IX (63-65)	Declaratory Judgment, re: violation of Florida constitution Art 1, sec 23.	All Plaintiffs	All Defendants

Only two plaintiffs, Hayes and Koepke, are not claiming retaliation under any of the four theories presented in the complaint, as they were terminated from their

¹ The caption of this Count inadvertently failed to include RCID as a necessary defendant to this claim, as all Disney companies are Florida state actors due to TWDC ownership and control over a Florida local government, RCID. Plaintiffs will seek leave to amend to include RCID, should the case remain consolidated as currently filed.

² Id.

employment prior to engaging in protected activity (other than requesting exemption/accommodation) under the relevant statutes. The Disney subsidiaries that were their direct employers, DGCS and Disney HR, respectively, are likewise not listed in these counts. All plaintiffs make a claim for discrimination and wrongful termination under the ADA and for disability under FL CRA, being perceived by Disney as disabled for their status as unvaccinated for Covid-19. In addition to these common claims, plaintiffs Hayes and Koepke also have an additional claim under these statutes for failure to accommodate. Other than these two types of variances involving only these two plaintiffs, the plaintiff profile regarding material facts to establish the asserted claims is specifically coordinated across claims, as seen in the table above.

On January 20, 2023, Defendants filed a Notice of Removal. On January 24, 2023, this Court entered an order severing Plaintiffs' claims, providing, in pertinent part:

1....The claims of Plaintiff Barbara Andreas shall remain in the instant case. On or before February 14, 2023, Plaintiff Andreas shall file an amended pleading in this case that asserts only her claims. 2. On or before February 14, 2023, the other six Plaintiffs shall file separate actions asserting only their claims. Each case shall consist of only one Plaintiff, and a filing fee shall be paid for each new case. 3. All cases filed pursuant to the preceding paragraphs shall be assigned to the undersigned judge and Magistrate Judge Embry J. Kidd. At the time each new case is filed, Plaintiff's counsel shall provide the Clerk with a copy of this Order and shall notify the Clerk that, pursuant to this Order, the case is to be assigned to undersigned judge and Magistrate Judge Embry J. Kidd.

Order to Sever, at 5.

The Court identified that "Plaintiffs generally allege that Defendants wrongfully terminated their employment after Plaintiffs requested exemptions from Defendants' COVID-19 vaccine mandates...[and] Plaintiffs also assert a claim against all Defendants

seeking a declaratory judgment...” (Order at 2-3), but determined that presenting the evidence required to prove Plaintiffs’ claims “could lead to a logistical nightmare at trial.” (Order at 5). Presentation at trial was the only stated concern of this Court within the Order regarding management of this case as currently presented in order to “best serve[s] judicial economy and the interests of justice.” *Id.*

STANDARD

Motions for clarification and for reconsideration are not expressly authorized in the Federal Rules of Civil Procedure, but are routinely recognized and allowed by federal courts. *Casequin, et al., v. CAT 5 Contracting Inc., et al.*, 2:18-cv-588-JLB-MRM, 2021 U.S. Dist. LEXIS 196000 at *1-2 (MDFL October 12, 2021), citing *United States v. Philip Morris USA, Inc.*, 793 F. Supp. 2d 164, 168 (D.D.C. 2011) (citation and internal quotation omitted). “The general purpose of a motion for clarification is to explain or clarify something ambiguous or vague, not to alter or amend.” *Philip Morris USA, Inc.*, 793 F. Supp. 2d, at 168. The motion may also be analyzed under Rule 60(a) “for clarification and explanation...even in the absence of ambiguity, if necessary for enforcement.” *Casequin*, 2021 U.S. Dist. LEXIS 19600 at *2, (October 12, 2021) quoting *Garamendi v. Henin*, 683 F.3d 1069 (9th Cir. 2012), and citing *Sartin v. McNair L. Firm PA*, 756 F.3d 259, 266 (4th Cir. 2014). However, clarification under Rule 60(a) should only seek correction “to reflect what was intended at the time of the ruling” and not legal or factual errors that “affect substantial rights of the parties.” *Weeks v. Jones*, 100 F.3d 124, 128 (11th Cir.

1996) (internal citations omitted).

Motions for reconsideration are reviewed generally under Fed. R. Civ. P. 59 and 60 standards. Rule 59(e) motions to alter or amend a judgment are properly granted if “the district court finds that there is an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice.” *Firestone v. Firestone*, 76 F.3d 1205, 1208-09 (D.C. Cir. 1996) (per curiam). Federal Rule of Civil Procedure 60(b) “has vested the district courts with the power ‘to vacate judgments whenever such action is appropriate to accomplish justice.’” *Griffin v. Swim-Tech Corp.*, 722 F.2d 677, 680 (11th Cir. 1984) (internal citations omitted). Rule 60(b) provides that courts may provide relief from an order for reasons of “mistake, inadvertence, surprise, or excusable neglect” as well as “any other reason that justifies relief.” Federal courts have recognized that the rule’s reference to a “mistake” encompasses not only mistakes made by litigants, but also mistakes made by the Court. *See, e.g., D.C. Fed’n of Civic Ass’ns v. Volpe*, 520 F.2d 451, 453 (D.C. Cir. 1975) (per curiam) (holding that district court abused its discretion by failing to correct a legal error pursuant to Rule 60(b)(1)); 11 Charles Alan Wright, et al., *Federal Practice and Procedure* § 2858.1 (4th ed. 2012) (discussing relief under Rule 60(b)(1) for “Court Errors and Mistakes”). The last clause of the Rule, although an extraordinary remedy to be provided under exceptional circumstances at the discretion of the court, “is a broadly drafted umbrella provision which has been described as a ‘grand reservoir of equitable power to do justice in a particular case when relief is not warranted by the preceding clauses.’” *Griffin*, 722

F.2d at 680; see also *Booker v. Singletary*, 90 F.3d 440, 442 (11th Cir. 1996).

ARGUMENT

Federal Rule of Civil Procedure 42(a) provides for consolidation of actions that involve a common question of law or fact. This rule is one of convenience and exists to give the court discretion to decide how cases on its docket are to be handled so that the business of the court may be dispatched with expedition and economy while providing justice to the parties. See *Miller v. U.S. Postal Service*, 729 F.2d 1033, 1036 (5th Cir. 1984); *Miller Brewing Co. v. Meal Co.*, 177 F.R.D. 642, 643 (E.D. Wis. 1998). Factors the court must consider are:

Whether the specific risks of prejudice and possible confusion [are] overborne by the risk of inconsistent adjudications of common factual and legal issues, the burden on parties, witnesses and available judicial resources posed by multiple lawsuits, the length of time required to conclude multiple suits as against a single one, and the relative expense to all concerned of the single-trial, multiple-trial alternatives.

Hendrix v. Raybestos-Manhattan, Inc., 776 F.2d 1492, 1495 (11th Cir. 1985) (quoting *Arnold v. Eastern Air Lines, Inc.*, 681 F.2d 186, 193 (4th Cir. 1982)).

Here, all factors weigh in favor of preserving the current consolidated form of the case. Severance severely prejudices the plaintiffs, each of which have been terminated from their employment and face financial hardship and who would nonetheless be individually responsible for their legal costs and fees. The court has expressly ordered that Plaintiffs must each pay the new case filing fees for the additional six cases to be severed. In significant imbalance of equities, Disney and its subsidiaries, including the wholly owned and controlled RCID are collectively a multi-billion dollar

corporation/corporate network with extraordinary resources for defense of legal challenges, including presumably, liability insurance to pay for legal costs. .

The common factual and legal issues are rooted in a single set of actions by the Defendants. Summarized, Disney operated in Florida throughout its Florida enterprises for a year under universal protocols for safety regarding Covid-19 concerns. These policies were universally required and enforced even when vaccines became available, until suddenly Disney changed course and mandated the Covid-19 shots in the summer of 2021. At that time, based solely on its mandate, Disney engaged in a concerted scheme of coercion, threat of termination, actual termination, harassment and undue delay in the accommodations/exemption process, and discriminatory, non-uniform, and targeted enforcement of “Augmented Health & Safety Protocols” (through DPEP). Cast members who “spoke up” according to Disney’s compliance policy against Disney’s own discrimination were punished, including terminated. From the outset, all of these actions forming the basis of plaintiffs’ claims are constitutionally prohibited in Florida, as Disney is a local government as owner and sole controller of the special district Reedy Creek Improvement District. While some nuance exists in the facts regarding each plaintiff’s experience of these acts as herein summarized, this is the cohesive foundation for all of plaintiffs’ claims against all defendants.

Severance of the claims and parties could create inconsistent adjudication of common legal issues and create a needless resource burden on the parties, the witnesses and the Court, resulting in unnecessary redundancy in pre-trial motion practice and

discovery. Defendants' counsel has suggested to undersigned counsel by email at the end of January the consolidation and coordination of discovery depositions: "On a related front, in the interests of judicial economy, to the extent that overlapping depositions are taken in the multiple individual cases, we are confident the parties will be able to agree upon the use of such depositions in the multiple cases." This signals, indeed, the significant overlap of witnesses and issues in this case.

Severing of all claims into one case per plaintiff will result in seven federal cases with *four defendants* in each: each plaintiff's direct employer entity plus DPEP, RCID and the parent Disney, TWDC. In fact, Andreas, Pajer, Gibbons, and Schmidt were all employed by Defendant WDPR. Hayes was employed by Disney Gift Card Services, Koepke was employed by Disney HR, and Cribb was employed by Disney Vacation Club. The ordered seven lawsuits would break down according to this table, which does not significantly simply or streamline claims:

Plaintiff	Counts	Disney Defendant Entities
Andreas	1 through 9	WDPR, TWDC, DPEP, RCID
Schmidt	1 through 9	WDPR, TWDC, DPEP, RCID
Pajer	1 through 9	WDPR, TWDC, DPEP, RCID
Gibbons	1 through 9	WDPR, TWDC, DPEP, RCID
Hayes	3,5,7,9	DGCS, TWDC, DPEP, RCID
Koepke	3,5,7,9	Disney HR, TWDC, DPEP, RCID
Cribb	1 through 9	DVCM, TWDC, DPEP, RCID

All cases involve DPEP, as this is the entity, upon information and belief, that was the Disney subsidiary charged with all or most Health & Safety policy and implementation/enforcement, including but not limited to the Covid-19 policies, any

exemptions requested thereto, and accommodations allotted for those with exemptions. DPEP was also the entity which instituted and enforced the discriminatory Augmented Protocols which were instituted solely against those who were unvaccinated, particularly those with religious exemptions. As a result, all federal cases, as severed, will generate potentially up to 28 answers, up to 28 motions from defendants, and potentially double that number up to 56 discovery *sets* of requests to Plaintiffs, including production requests and interrogatories, at minimum. Whereas Plaintiffs were contemplating seven responses from defendants in this case, now Plaintiffs each face up to four responses in each of their severed cases, and the matter will require significant time to schedule seven full cases with motions practice, discovery, and pretrial administration. “District court judges in this circuit have been urged to make good use of Rule 42(a)...in order to expedite the trial and eliminate unnecessary repetition and confusion.” *Young v. City of Augusta ex rel. DeVaney*, 59 F.3d 1160, 1169 (11th Cir. 1995).

It is unclear to the plaintiffs how the severance of the case into seven separate cases will promote the Court’s goals of efficiency, consistency, convenience, and the interests of justice as expressed in Rule 1.01(a) of the local rules. Severance will create the need for multiple, largely duplicative filings (for example, twenty-eight separate answers and/or motions to dismiss instead of one answer and/or motion to dismiss per defendant), redundant discovery and overly burdensome administration of discovery, and financial prejudice against the plaintiffs.

Because all causes of action are premised on the same or closely related legal

theories; it is appropriate that they remain consolidated. The witnesses and evidence are expected largely to overlap. Adjudicating the case in its present posture will preserve judicial resources, avoid prejudice to the plaintiffs, facilitate witness convenience, minimize the cost of litigation, and eliminate any potential confusion and inconsistencies in outcome. Thus, pursuant to Fed. R. Civ. P. 42, it is appropriate to vacate the January 24, 2023 Order and allow the claims of all plaintiffs to remain consolidated as one case. Given this Court's stated concern relates to trial of these matters, Rule 42(b) also allows for separation of trials on distinct issues and claims.³

LOCAL RULE 3.01(g) CERTIFICATION

Counsel has sought consent from Defendants' counsel for this motion for clarification and reconsideration. Counsel for RCID has not yet entered a notice of appearance in this case, and thus no position is known regarding RCID as to this motion. Counsel for the remaining Defendants has indicated their clients' opposition to this motion by email response to undersigned counsel on January 30, 2023.

RELIEF SOUGHT

³ Indeed, this Court has addressed a highly complex, multi-district litigation, including between 2006-2010 against Astra-Zeneca for their drug Seroquel in which all roughly 200 matters were handled in a consolidated fashion throughout the pre-trial litigation, and only upon termination thereof, were all couple hundred cases remanded by this Court to their respective jurisdictions for trial. While the instant case presents as "consolidated" upon initiation and is hardly as administratively complex as 200 injured plaintiffs with varying degrees of injury and with different medical expert analysis, the principle remains that the claims can be separated at trial for clarity, while allowing consolidated litigation through the pre-trial period for the sake of judicial economy and the interests of justice to all parties.

WHEREFORE, Plaintiffs respectfully request this Court:

1. Clarify its finding that “severing each Plaintiff’s claims best serves judicial economy and the interests of justice” in light of judicial administration of seven prospective separate federal cases with four defendants in each case;
2. Clarify whether new service is contemplated by the Court in the six opened cases pursuant to its Order; and/or
3. Vacate the Order and allow all Plaintiffs’ claims asserted in the Amended Complaint to remain consolidated as one case, at least through pre-trial litigation; or
4. In the alternative, allow four plaintiffs employed by WDPR – Andreas, Pajer, Gibbons, and Schmidt who all have claims under current counts 1-9 to remain in the above captioned case and allow Plaintiffs Cribb, Koepke, and Hayes who were employed by other Disney subsidiaries to file severed complaints on their own claims, resulting in 4 federal cases with four defendants each, instead of 7 cases with four defendants in each case; and/or
5. Grant relief to plaintiffs filing severed complaints from paying the filing fee in each severed, new case as proposed by this Court’s Order.

Dated this 9th day of February, 2023.

/S/ Rachel L. T. Rodriguez
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CERTIFICATE OF SERVICE

I hereby certify that on February 9, 2023, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system which will send a notice of electronic filing to Paul Scheck, Esq., Mary Ruth Houston, Esq., and Reed Sebastian Arroyo, Shutts & Bowen, LLP, 300 S Orange Ave., Suite 1600, Orlando, FL 32801, via pscheck@shutts.com, mhouston@shutts.com and SArroyo@shutts.com.

/S/ Rachel L.T. Rodriguez
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