SUPREME COURT OF FLORIDA

CASE NO. SC24-0099
FIRST DCA NO. 2D22-3465
L.T. NO. 20-CA-0811

STEAK N SHAKE, INC.,

***Petitioner*,**

v.

WILFRED W. RAMOS, JR.,

***Respondent*.**

RESPONDENT'S ANSWER BRIEF

Ashley N. Richardson
Marie A. Mattox, P.A.
203 North Gadsden Street
Tallahassee, FL 32301
(850) 383-4800
(850) 383-4801 (facsimile)
ashley@mattoxlaw.com
ATTORNEY FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF CITATIONS

Cases

Statutory Provisions

Rules

STATEMENT OF THE ISSUE

Whether the Second District correctly applied the statutory provisions of § 760.11, Fla. Stat., by concluding that the act of dual-filing a charge of discrimination with the Equal Employment Opportunity Commission and Florida Commission on Human Relations, setting forth facts and particulars alleging discriminatory conduct in the workplace, complies with the administrative requirements set forth in the Florida Civil Rights Act, Chapter 760, Fla. Stat. ("FCRA").

STATEMENT OF THE CASE AND FACTS

In the original action before the Circuit Court, Respondent, Wilfred Ramos, Jr., filed a two-count complaint setting forth causes of action for disability discrimination and retaliation in violation of the FCRA. [P. 8-16[1]]. Critical to the matter here, immediately prior to his termination, Ramos filed a charge of discrimination with the Equal Employment Opportunity Commission on November 14, 2017. [R. 151-152]. He "checked the boxes" for disability discrimination and retaliation, and provided a narrative

[1] References to the Record on Appeal prepared and submitted by the Thirteenth Judicial Circuit in and for Hillsborough County will be identified by "P" followed by the page number, as shown on the record itself. References to the Certified Copies of Appeal Papers submitted by the Clerk of the Second District Court of Appeal will be identified by "R" followed by the page number.

description of the facts supporting his belief that he had experienced workplace discrimination and retaliation. [Id.]. Ramos concluded the Charge by stating that "[he] believe[s] that [he] has disability and by retaliation for my request for reasonable accommodation in violation of the Americans with Disabilities Act of 1991, as amended." [R. 151-152]. As he predicted in his Charge, he was soon terminated.

Critically, immediately above his signature is the statement:

> I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

[R. 151]. The EEOC forwarded the charge to the Florida Commission on Human Relations on April 18, 2018, but indicated that it would conduct the initial investigation pursuant to the workshare agreement between the entities. [R. 179].

The EEOC dismissed the Charge on September 4, 2018, finding that it was unable to conclude that the information obtained during its investigation established any violation of law. [R. 241]. The notice further stated that the EEOC "does not certify that the respondent is in compliance with the statues." [Id.]. Ramos then filed the action below on January 27, 2020, asserting the same two causes of action – disability discrimination and

retaliation – pursuant to Chapter 760, Fla. Stat. [R. 8-16]. Of note, Ramos was not represented by counsel during the administrative proceedings that predated the action below. [R. 171-175, 240-243].

Petitioner, Steak N Shake, Inc., filed a Motion for Summary Judgment, arguing that Ramos failed to exhaust his administrative remedies. [P. 69-120]. The trial court agreed, granting summary judgment and finding that because Ramos' dual-filed charge of discrimination did not contain the words, "and the FCRA" or similar language at the end of the narrative "particulars" section, he failed to "invoke" or otherwise allege claim pursuant to the FCRA and his claims were procedurally barred. [P. 251-252]. Ramos filed a Motion for Reconsideration, which the trial court denied. [P. 253-262, 265].

On appeal, the Second District Court of Appeal reversed, finding that § 760.11(1), Fla. Stat., did not require such explicit or express language to exhaust administrative remedies. [R. 125-133]. The Second District further held that to require any such language would add a requirement not found anywhere within the statute, and would contravene the legislature's clear intent that the FCRA be interpreted liberally. [R. 131-132].

SUMMARY OF THE ARGUMENT

The matter before the Court remains a simple one: Ramos dual-filed his Charge with the EEOC and FCHR, clearly indicating that he wanted both agencies to investigate his claims. His claims – disability discrimination and retaliation – are the same factually as those identified in the narrative portion of his charges. In the original proceedings below, the only alleged failure was to state at the end of the narrative that he believed he was discriminated against in violation of the ADA and the FCRA.

The trial court held that because of the failure to include "and the FCRA" in the conclusion of his narrative, despite dual-filing and relying on the assistance of the EEOC investigator and not legal counsel, Ramos failed to exhaust his administrative remedies under the FCRA. The Second District Court of Appeal disagreed, as such a holding undermines the express purpose and intent of the FCRA itself, along with decades of jurisprudence supporting and furthering the "liberal construction" of the FCRA to provide aggrieved employees access to the court. Thus, for the reasons set forth fully herein, this Court should affirm the Second District's opinion, thus overturning the Fourth District's contrary opinion in Belony v. N. Broward Hosp. Dist., 374 So. 3d 5 (Fla. 4th DCA 2023).

ARGUMENT

THE SECOND DISTRICT COURT OF APPEAL CORRECTLY HELD DUAL-FILING A CHARGE OF DISCRIMINATION IS SUFFICIENT TO EXHAUST AN EMPLOYEE'S ADMINISTRATIVE REMEDIES PRIOR TO BRINGING SUIT PURSUANT TO THE FLORIDA CIVIL RIGHTS ACT, CHAPTER 760, FLA. STAT.

As stated within the FCRA itself, the purpose of the Act is "to secure for all individuals within the state freedom from discrimination because of race, color, religion, sex, national origin, age, handicap, or marital status." § 760.01(2), Fla. Stat. Relevant here, the Legislature specifically declared that the FCRA "shall be liberally construed to further the general purposes stated in this section." § 760.01(3), Fla. Stat.; Woodham v. Blue Cross & Blue Shield of Florida, Inc., 829 So. 2d 891, 894 (Fla. 2002). In Joshua v. City of Gainesville, 768 So. 2d 432 (Fla. 2000), the Florida Supreme Court explained:

> The statute's stated purpose and statutory construction directive are modeled after Title VII of the Civil Rights Act of 1964. Like Title VII, chapter 760 is remedial and requires a liberal construction to preserve and promote access to the remedy intended by the Legislature. Section 760.01(2) outlines the general purposes of the Act which include securing freedom from discrimination for all individuals and preserving the general welfare of all.

Id. at 435 (citations omitted). Here, in reversing the trial court's erroneous orders, the Second District Court of Appeal upheld this bedrock principle of

civil rights litigation, correctly finding that what could be considered, at best, a mere technicality, was insufficient to deny him access to the court. The trial court's orders, as well as Steak N Shake's interpretation of Chapter 760, is precisely the sort of nit-picky splitting of hairs creating unnecessary hurdles that Florida courts have expressly rejected in decades of FCRA and Title VII jurisprudence. Sheridan v. State, Dept. of Health, 182 So. 3d 787, 789 (Fla. 1st DCA 2016) ("By its express terms, the FCRA must be liberally construed to further its general purposes and the special purposes of the particular provision involved. § 760.01(3). As a corollary, the FCRA's administrative preconditions on an individual's right of access to courts to seek redress for unlawful discrimination must be narrowly construed in a manner that favors access.").

Although the Fourth District came to the opposite conclusion in its recent decision in Belony v. North Broward Hospital District d/b/a Broward Health, 374 So. 3d 5, 7 (Fla. 4th DCA 2023), the court's overly restrictive interpretation of Chapter 760 flies in the face of the statute itself, which requires liberal interpretation. There, the Fourth District added additional requirements to the administrative process not found in the statute, and for the reasons set forth herein, this Court should reject that holding and affirm the Second District's opinion below instead.

1. There is no statutory requirement to specifically invoke or otherwise reference the FCRA within the narrative portion of the charge where the aggrieved employee has elected to dual-file his charge with both administrative bodies.

In its Initial Brief, Steak N Shake argues that the Second District erred, as requiring an employee to specifically state in the narrative portion of his charge "and the FCRA" or similar language, does not add a requirement otherwise not found within the statute itself. [IB 17-18]. Steak N Shake then argues that the FCRA requires an employee to identify the statutory violation and the relief sought, and offers a dictionary definition of each phrase. [Id.]. Steak N Shake continues that because the FCRA and federal law provide different available damages, the "relief sought" must then specifically state - in the narrative portion - that the employee intends to invoke or otherwise bring claims pursuant to the FCRA. [IB 19-20]. These arguments fail, and the Second District correctly found them without merit. [P. 130-132].

Critical to the matter at hand, to initiate an action against an employer for discrimination or relation, Chapter 760 provides that:

> Any person aggrieved by a violation of ss. 760.01-760.10 may file a complaint with the commission within 365 days of the alleged violation, *naming the employer*, employment agency, labor organization, or joint labor-management committee, or, in the case of an alleged violation of s. 760.10(5), *the person responsible for the violation and describing the violation*.

> . . .
>
> *In lieu of filing the complaint with the commission, a complaint under this section may be filed with the federal Equal Employment Opportunity Commission.*
>
> . . .
>
> *The complaint shall contain a short and plain statement of the facts describing the violation and the relief sought.*

§ 760.11(1), Fla. Stat. (emphasis added). The phrase "under this section" clearly and without question refers to filing a charge of discrimination with the FCHR. There is no textual or even implied reference to any "magic words" or other necessary invocation.

The sentence containing the phrase "under this section" must be read as a complete sentence. The language is clear: if an aggrieved employee chooses not to file his charge of discrimination with the FCHR, he may instead file a charge with the EEOC. "Under this section" refers to the specific type of legal violation governed by §§ 760.01-760.11, the Florida Civil Rights Act. Chapter 760 contains several other acts, including the Fair Housing Act, found in §§ 760.20-760.37, Fla. Stat., which would clearly not be found "under this section." As the Second District correctly held, had the Legislature wanted "the aggrieved party specifically allege in the [charge] that his or her

claims were under the FCRA, then it could have said so, but it did not." [P. 131].

Here, Ramos timely dual-filed his charges naming his employer, the person responsible for the violation, and describing in a short and plain statement of the facts the violation. [R. 151-152]. Based on the plain language of the statute itself, Ramos complied with the provisions contained therein, and the Second District correctly agreed.

Briefly, as the Court is well aware, the FCRA prohibits workplace discrimination and retaliation. Sunbeam Television Corp. v. Mitzel, 83 So. 3d 865, 873-74 (Fla. 3d DCA 2012) (citing Fla. Stat. § 760.10). As noted above, an employee "must first file an administrative complaint with the FCHR within 365 days of an alleged violation and exhaust the administrative remedies provided by the Act before a civil action asserting discrimination may be brought." Sunbeam, 83 So. 3d at 873-74; Woodham, 829 So. 2d at 894 (Fla. 2002). Of critical importance, the purpose of these administrative requirements "is to notify the employer of discriminatory practices and to provide the FCHR with 'the first opportunity to investigate the alleged discriminatory practices to permit it to perform its role in obtaining voluntary compliance and promoting conciliation efforts.'" Sunbeam, 83 So. 3d at 874 (quoting Gregory v. Ga. Dep't of Human Res., 355 F.3d 1277, 1279 (11th

Cir. 2004)) "These purposes are, of course, frustrated when a claimant asserts one set of claims in the administrative proceedings but attempts to assert another set of unrelated claims in a subsequent civil action." Sunbeam, 83 So. 3d at 874 (citing Gregory, 355 F.3d at 1280). However, there can be no dispute that Ramos' claims and the facts supporting those claims at the administrative level and before the trial court were identical. No purpose was frustrated, and Steak N Shake was fully on notice as to the nature and substance of Ramos' claims.

Despite the identical claims - disability discrimination and retaliation - Steak N Shake argues again that Ramos did not exhaust his administrative remedies because the charge stated in the narrative portion that he believed he experienced discrimination and retaliation pursuant to the Americans with Disabilities Act. In support of this position, adopted by the trial court, Steak N Shake again relies upon several cases, none of which are binding precedent. [IB 22, citing Robles v. Baptist Health S. Fla., Inc., No. 15-CA-026943, 2016 WL 5279015, at *3 (11th Fla. Cir. Ct. Jan. 21, 2016); see also Kemper v. Nienhuis, No. 2019-CA-1230, at 2 (5th Fla. Cir. Ct. June 3, 2020) (relying on Robles to find that "while the charge may be filed with the FCHR or EEOC due to their work-sharing agreement, the cause of action before this Court must coincide with the legal violation asserted in the charge filed

with the FCHR or EEOC."); Casadesus v. Univ. of Miami, No. 12-23334 CA (32), at 6, ¶ 5 (11th Fla. Cir. Ct. Sept. 26, 2013) (stating that because the plaintiff "alleged a violation only of federal law [in the charge of discrimination], he failed to file a charge of discrimination 'under this section' -i.e., under the FCRA"), *per curiam aff'd*, 160 So. 3d 436 (Fla. 3d DCA 2015); and Karavas v. Board of Trustees, St. Petersburg College, Case No. 20-00618-CI, 2021 WL 7707377, at **3-4 (Fla. Cir. Ct. for 6th Cir., Mar. 17, 2021) *per curiam aff'd* 340 So. 2d 482 (Fla. 2d DCA 2022)][2].

Quite simply, these cases are wrong. They ignore the purpose and spirit of the FCRA entirely, focusing instead on a technicality to prevent an aggrieved employee from having his day in Court. Absent the recent Belony decision, there is no authority from the District Courts or the Florida Supreme Court supporting in any detail this absurd and restrictive reading of the FCRA. At most, the Third District Court of Appeal issued a per curiam

[2] In addition, Steak N Shake's reliance on Wester v. Datex, Inc., 2020 WL 6203530, at *3 (M.D. Fla. Oct. 22, 2020) and Huenefeld v. Nat'l Beverage Corp., 2017 WL 4838786, at *4 (S.D. Fla. Oct. 24, 2017) [IB 22], is entirely misplaced. Each held that the complaint failed to allege that the plaintiffs had exhausted their administrative remedies as to the FCRA, as each instead specifically alleged that the plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission, received a Notice of Right to Sue, and complied with the associated deadlines. Id. Neither plaintiff alleged exhaustion under the FCRA, thus resulting in the dismissal of their complaints. Thus, neither case is applicable nor offers this Court any guidance as to the issues present here.

affirmation of the dismissal with prejudice in Casadesus v. Univ. of Miami, 160 So. 3d 436 (Fla. 3d DCA 2015), and the Second District Court of Appeal issued a per curiam affirmation of the dismissal with prejudice Karavas v. Board of Trustees, St. Petersburg College, 340 So. 2d 482 (Fla. 2d DCA 2022).

Casadesus was the first of these problematic cases and formed the legal basis for the rulings in the others that followed. Casadesus, No. 12-23334 CA (32), at ¶¶ 5, 11. There, the trial court found that because the plaintiff "alleged a violation only of federal law [in the charge of discrimination], he failed to file a charge of discrimination 'under this section' -i.e., under the FCRA." Id. The trial court also found that regardless of what the charge of discrimination stated, the plaintiff failed to request a hearing before the Division of Administrative Hearings within thirty-five days of receipt of the FCHR's "no cause" determination, and thus the plaintiff had failed to exhaust his administrative remedies. Id. at ¶ 11. The Third District Court of Appeal issued a per curiam affirmation in 2015, and thus did not identify which of the two holdings it relied upon in issuing its affirmation. Casadesus, 160 So. 3d 436; see also White v. AutoZone Investment Corp., 345 So. 3d 284 (Fla. 3d DCA 2022) (noting that it is a "well-established rule

of jurisprudence [that] an unelaborated per curiam affirmation has no precedential value in any other case.").

The Robles court noted that the FCRA provides that "a complaint under this section may be filed with the federal Equal Employment Opportunity Commission or with any unit of government of the state which is a fair-employment-practice agency …" Robles, 2016 WL 5279015, at *3 (citing Fla. Stat. § 760.11(1)). It then continued that "[t]hus, in order to exhaust one's administrative remedies, the administrative charge of discrimination must allege a violation under the FCRA (i.e., "under this section")." Id. However, the Robles court then made an extraordinary leap, concluding that because the plaintiff only alleged a violation of the ADA and ADEA, the plaintiff failed to allege a violation of the FCRA. Id. The court noted that the plaintiff dual-filed his charge of discrimination with the EEOC and FCHR, but concluded that it essentially did not matter. Failure to use the "magic words" doomed the FCRA claims. Id.

In reaching the portion of its holding at issue here, the trial courts in Casadesus and Robles quoted and followed Walker v. Electrolux, 55 F.Supp.2d 501 (W.D. Va. 1999). The plaintiff in Walker stated in her narrative description that her employer discriminated against her in violation of both Title VII, 42 U.S.C. §§ 2000e et seq., and the Americans with Disabilities Act

("ADA"), 42 U.S.C. §§ 12101 et seq. Id. at 502. She requested that the charge be dual-filed with the Virginia Council on Human Relations. Id. The Walker court held that she failed to exhaust her administrative remedies with regards to her state-law claims because she failed to specifically invoke Virginia law in the particulars section – regardless of her intent to dual-file. Id. at 504.

However, a number of its sister courts distinguished and declined to follow Walker. Puryear v. County of Roanoke, 71 F.Supp.2d 551 (W.D. Va. 1999); Grimes v. Canadian American Trans., 72 F.Supp.2d 629 (W.D. Va. 1999); Carter v. Arlington Public School Syst., 82 F.Supp.2d 561 (E.D. Va. 2000); Smith v. Center Ford, 71 F.Supp.2d 530 (E.D. Va. 1999). In Flippo v. American Home Products Corp., 59 F.Supp.2d 571 (E.D. Va. 1999), the Eastern District of Virginia expressly disagreed with the Walker decision, noting that the Virigina Human Rights Act contains an explicit mandate that the courts construe the act liberally, noting that

> The Court concludes that a complainant need not cite specific state statutes to comply with § 706(c). Title VII is a remedial statute.
> . . .
> These canons of statutory and regulatory construction erase any remaining doubt about the sufficiency of plaintiff's charge of discrimination.

Id. at 577 (emphasis added). Florida's Act contains a similarly explicit mandate, and Courts have, since its inception, followed that mandate. Woodham, 829 So. 2d at 894; Joshua, 768 So. 2d at 435 ("The statute's stated purpose and statutory construction directive are modeled after Title VII of the Civil Rights Act of 1964. Like Title VII, chapter 760 is remedial and requires a liberal construction to preserve and promote access to the remedy intended by the Legislature.").

The Fourth Circuit did not formally resolve the issue that split its districts. However, in Dodge v. Phillip Morris, 175 F.3d 1014 (4th Cir. 1999) (unpublished), it addressed the issue in part, which is particularly instructive here, finding that a plaintiff who timely filed a complaint with the EEOC, but did not: check the box on the charge of discrimination form requesting that the EEOC file the charge with the appropriate state agency; alleged a state law claim; or take any steps to initiate state proceedings, had not stated a claim of discrimination under state law, and consequently failed to exhaust state remedies. 1999 WL 162955, *2 (emphasis added). Ramos clearly complied with the first option.

The holding in Dodge tracks the mandates of Florida law where the Second and Third DCA's per curiam affirmations did not, nor did the Fourth District in Belony. Chapter 760 itself contains an explicit provision that "[i]n

lieu of filing the complaint with the commission, a complaint under this section may be filed with the federal Equal Employment Opportunity Commission or with any unit of government of the state which is a fair-employment-practice agency . . . .” § 760.11(1), Fla. Stat. Read plainly, it is clear that an aggrieved employee can easily preserve his state-law remedies “under this section” by dual-filing his charge. Ramos did so, and the Second District disagreed with the trial court’s addition of requirements not found in the statute – express and specific language contained within the particulars section – that contravene the Legislature’s clear intent that the statute be interpreted liberally. See generally, Roeder v. Florida Dep't of Envtl. Prot., 303 So. 3d 979, 982 (Fla. 1st DCA 2020), review denied, SC20-1579, 2021 WL 6014950 (Fla. Dec. 21, 2021) (holding that “[i]t bears emphasizing that if the Legislature intended that the statutory language in section 760.11 establish that all time stamps—even if negligently or intentional erroneous—were to be conclusive and irrebuttable it could have said so, but it did not.”).

Such a narrow reading of “under this section” simply cannot stand. The fact that a Title VII claim and a FCRA claim are different is of no moment. See generally, Santini v. Cleveland Clinic Fla., 843 So. 2d 1029, 1033 (Fla. 4th DCA 2003); Najiy v. City of Miami, 980 So. 2d 1157, 1161 (Fla. 3d DCA 2008). To exhaust his or her administrative remedies, a plaintiff must include

the factual bases for all of his or her claims in the charge. Buade v. Terra Grp., LLC, 259 So. 3d 319, 222 (Fla. 3d DCA 2018) (emphasis added) (citing Houston v. Army Fleet Servs., L.L.C., 509 F.Supp.2d 1033, 1043 (M.D. Ala. 2007)). Unlike the Robles court, courts have, for decades, applied this requirement as broadly as possible to ensure that aggrieved employees have access to the courts.

For example, courts have held that where a plaintiff failed to "check the box" but included factual allegations that would support the unchecked claim, the plaintiff regardless satisfied the necessary administrative prerequisites. Gregory, 355 F.3d at 1280–81 (finding that where the narrative portion of the charge contained ample facts related to retaliation, the failure to check the "retaliation" box on the charge did not constitute a failure to exhaust administrative remedies); Francois v. Miami Dade County, Port of Miami, 432 Fed. Appx. 819, 822 (11th Cir. 2011) (holding that administrative remedies were not exhausted where the employee failed to check the national origin box and include any facts in the narrative section that could be construed to raise such a claim of discrimination) (emphasis added); see also, Jackson-Levarity v. Dep't of Children & Families, 92 Fair Empl. Prac. Cas. (BNA) 317, 2003 WL 21704323 (Fl. Cir. Ct. 2003) (The failure to provide specific facts within the body of a charge of discrimination "precludes the claimant from

later seeking judicial relief."). It is the narrative description that puts the employer on notice and guides the administrative investigation, not the checked boxes. To state a claim "under this section" requires an employee to describe incidents of illegal workplace discrimination and retaliation prohibited by the FCRA, which Ramos has done.

There is still more support for Ramos' position in the longstanding principle that a claim is considered properly before the court where it was "reasonably expected to grow" from an administrative charge. The Eleventh Circuit held that a "plaintiff's judicial complaint is limited by the scope of the EEOC investigation which can reasonably be expected to grow out of the charge of discrimination." Gregory, 355 F.3d at 1280 (internal citation omitted) (emphasis added); see also Sanchez v. Standard Brands, Inc., 431 F.2d 455, 466 (5th Cir. 1970) (same). "The proper inquiry…is whether [the Plaintiff's] complaint was like or related to, or grew out of, the allegations contained in her EEOC charge." Gregory, 355 F.3d at 1280 (emphasis added). "It has long been established in this circuit that the scope of a judicial complaint is defined by the scope of an EEOC investigation that 'can reasonably be expected to grow out of the charge of discrimination.'" Baker v. Buckeye Cellulose Corp., 856 F.2d 167, 169 (11th Cir. Ga. 1988), citing Sanchez, 431 F.2d at 466; see also Turner v. Orr, 804 F.2d 1223, 1226-7

(11th Cir. 1986). Thus, in instances where the employee failed to "check the box" for a particular type of discrimination or retaliation, including the claim in the narrative portion or expecting that a particular claim would grow out of the charge itself was sufficient to exhaust administrative remedies. Finding that the failure to state "and the FCRA" in the final line of the narrative portion of an administrative charge would run afoul of these precedents.

The Belony opinion upends decades of liberal construction to find that "when a discrimination charge only and specifically alleges a violation of federal law, the act of dually filing the charge with the [Commission] is insufficient to comply with the requirements of section 760.11, Florida Statutes (2019)." Belony, 374 So. 3d at 8. This additional requirement is not found anywhere within the plain language of § 760.11, Fla. Stat. Moreover, as shown above, considerable case law supports the requirements clearly stated within the statute, and not the additional ones Steak N Shake advocates for. Thus, this Court should affirm the Second District's opinion and decline to follow Belony.

2. The principals of "liberal construction" apply to the employee's rights, not those of the employer.

As noted above, the Legislature specifically declared that the FCRA "shall be liberally construed to further the general purposes stated in this section." § 760.01(3), Fla. Stat.; Woodham, 829 So. 2d at 894; Joshua, 768

So. 2d at 435; Sheridan, 182 So. 3d at 789. Regardless, Steak N Shake argues that the opinion below violates *its* rights, specifically to due process. [IB 23-27]. It argues that the statutory scheme requires that it receive a reasonable notice as to the claims it faces, and argues that Ramos' charges as drafted constitute "gamesmanship," denying it various opportunities to comply, conciliate, or defend against his claims. Given that Steak N Shake was given the option, as was Ramos, to participate in mediation, and thereafter prepared a position statement when Ramos declined to do so, it is unclear what opportunities Steak N Shake was allegedly denied.

In addition, Steak N Shake argues that Ramos' *pro se* status during the administrative process is immaterial and "does not excuse" him from complying with the administrative process. [IB 25-26]. This is false. Ramos' *pro se* status should have factored into the trial court's determination of whether he satisfied his administrative prerequisites. Danner v. Phillips Petroleum Co., 447 F.2d 159, 161–62 (5th Cir. 1971) (noting that employee filing an EEOC complaint without the assistance of counsel are to be construed liberally, and holding that EEOC charge complaining of discharge was "reasonably related" to Title VII complaint that "she was discharged"). This is particularly true where he clearly indicated that he wanted to dual-file his charge.

3. That the statutory schemes and administrative procedural requirements at issue are different and arise from different sovereigns is immaterial.

Perhaps acknowledging that there is no support for its position within the plain language of Chapter 760, Steak N Shake then argues that the Second District erred because the statutes at issue - the ADA and the FCRA - "emanate from different bodies of law and sovereigns". [IB 27, citing Belony, 374 So. 3d at 7]. However, because Ramos affirmatively requested that his charge be dual-filed with both agencies and thus pursuant to both statutes, this argument is entirely immaterial. Ramos fully exhausted his administrative remedies under each, he simply elected to bring only state-law claims before the trial court.

However, Steak N Shake asks this Court to make considerable assumptions, including that the FCHR may have investigated his charge and timely issued findings. [IB 32]. As he requested, his charge was dual-filed [R. 151] and the EEOC sent the charge to the FCHR. [R. 179]. The EEOC indicated that pursuant to the work-sharing agreement, the EEOC would conduct the initial investigation. [Id.]. As is evident from the plain language of the FCRA itself, the FCHR does not always successfully investigate charges within the statutorily allotted timeframe, and presuming that it would

have done so in this case is well beyond the scope of any analysis of whether Ramos exhausted his administrative remedies.

However, Steak N Shake argues that because Ramos, in its opinion, did not exhaust his administrative remedies with regards to the FCRA, he "frustrated" or avoided the requirements of the FCRA to avoid the limited judicial relief available or otherwise avoid dismissal of his claims. [IB 31-35]. This entire argument is undermined, however, by the plain and obvious fact that Ramos requested that the charge be dual-filed and that the EEOC did, in fact, provide the charge to the FCHR. That the FCHR chose to do nothing is not Ramos' fault, nor is there any reason to penalize Ramos now for the FCHR's decision not to investigate or issue findings. See generally, Joshua v. City of Gainesville, 768 So. 2d 432, 433 (Fla. 2000) ("the general four-year statute of limitations for statutory violations, section 95.11(3)(f), Florida Statutes (1995), applies to actions filed pursuant to chapter 760, Florida Statutes, if the Commission on Human Relations does not make a reasonable cause determination on a complaint within the 180 days contemplated by section 760.11(8)."); Robinson v. Dep't of Health, 89 So. 3d 1079, 1082 (Fla. 1st DCA 2012) (applying the four-year statute of limitations where the FCHR failed to timely issue findings); Williams v. Se. Florida Cable, Inc., 782 So. 2d 988, 991 (Fla. 4th DCA 2001) (same); Ellsworth v.

Polk County Bd. of County Com'rs, 780 So. 2d 903, 905 (Fla. 2001) (same); see also Roeder 303 So. 3d at 981 (Fla. 1st DCA 2020).

As it did before the Second District, Steak N Shake continues to throw accusations of gamesmanship, dilatory conduct, brinkmanship, and other alleged procedural failures that are entirely unrelated to the very limited issue at hand. Those accusations have no merit, nor should this Court reward them. The simple fact remains that there is no requirement within § 760.11, Fla. Stat., that where an employee dual-files his charge, he must then specifically reference the FCRA in the narrative portion of his charge of discrimination to exhaust his administrative remedies. Any argument that the statutory schemes at issue are different and thus determinative on some issue here is essentially a red herring.

4. The Second District did not improperly rely on evidence not in the record nor did it misapprehend Ramos' charge.

Finally, Steak N Shake takes issue with the Second District's reference to the workshare agreement between the EEOC and the FCHR, arguing that the Second District improperly cited to and relied on the agreement where it was not found in the record below. [IB 35-36]. While this argument in no way supports Steak N Shake's interpretation of § 760.11, Fla. Stat., it is worth noting that the agreement is referenced in case law quite regularly. For

example, the Middle District of Florida explained the workshare agreement, albeit in evaluating another aspect of administrative exhaustion, noting

> Under both state and federal law, the burden is upon the complainant to exhaust the administrative process before bringing suit. At the outset of any claim, the complainant has the choice of initiating a federal claim, a state claim, or both. The process is relatively simple in Florida, and by reason of the aforementioned workshare agreement, both a federal and a state claim may be initiated by the filing of a single form charge of discrimination which identifies both the EEOC and the Florida Commission and which affirmatively indicates an intention to proceed before both agencies. In this court's view, regardless of the workshare agreement, to initiate the administrative process of both agencies effectively, the complainant must affirmatively indicate the intention to do so . . . .

Armstrong v. Lockheed Martin Beryllium Corp., 990 F. Supp. 1395, 1400 (M.D. Fla. 1997) (emphasis added). Requesting that both agencies investigate a charge of discrimination and retaliation triggers claims under both federal law and the FCRA. Moreover, the Armstrong court explained that identifying the administrative agencies - not the applicable statutes - indicated the intention to proceed before both agencies, lending further support to the Second District's opinion below. As the charge here requested investigation by both agencies, Ramos may proceed with his FCRA claims.

Steak N Shake then argues that pursuant to the workshare agreement it cites in the Initial Brief, both the EEOC and the FCHR are to provide the

parties with "affirmative notice within [ten] days of any dual-filing." [IB 36]. It then claims that it did not receive that notice, regardless of the fact that that the EEOC did transmit the charge to the FCHR. [IB 37]. However, as Steak N Shake noted earlier in its Initial Brief, the agency's failure should not be imputed to the parties. [IB 26, citing Roeder, 303 So. 3d at 981].

Finally, Steak N Shake argues that the Second District presumes the "facts" contained within the charge are the same as those made in the complaint below, and that they are not, in fact, the same. [IB 37, citing P. 130-131]. While this argument is once again irrelevant to the determination of the ultimate issue, Steak N Shake is incorrect. [P. 8-15, 79-80]. He makes numerous accusations about ongoing harassment by "Marina" following an accident that left him with persistent pain. [Id.]. He also specifically stated that he was removed from the schedule without notice, and that Marina threatened to terminate him. [Id.]. Although the complaint expands upon this brief narrative, the allegations are the same. [Id.]. Steak N Shake was on notice of the nature and substance of Ramos' claims.

CONCLUSION

Simply put, Steak N Shake has repeatedly failed to show how adding the phrase "and the Florida Civil Rights Act" at the end of the narrative portion contained within a dual-filed charge of discrimination is a failure to exhaust the administrative requirements clearly identified in Chapter 760. Neither the statute nor any interpretation of § 760.11 could lead to such a conclusion. This Court should thus affirm the Second District's opinion and decline to follow the Fourth District's contrary opinion in Belony.

Respectfully submitted,

s/ Ashley N. Richardson
Ashley N. Richardson
Florida Bar No. 42003
Marie A. Mattox, P.A.
203 North Gadsden Street
Tallahassee, FL 32301
(850) 383-4800 (telephone)
(850) 383-4801 (facsimile)
ATTORNEY FOR RESPONDENT

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with Rules 9.045(b) and (e), and 9.210(A)(2)(a), Fla. R. App. P. In addition, this brief was typed in Arial, size 14 font and complies with all applicable word count limitations. Specifically, this brief contains 6517 words.

s/ Ashley N. Richardson
Ashley N. Richardson

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent via electronic filing to all parties of record on this 25th day of June 2024.

/s/ Ashley N. Richardson
Ashley N. Richardson