Olawole et al v. Actionet, Inc.

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IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division CHARLES OLAWOLE et al., Plaintiffs,

v. ACTIONET, INC., Defendant.

Case No. 1:17-cv-408

MEMORANDUM OPINION At issue in this this removed and transferred breach-of-contract and employment motion to dismiss pursuant to Rule 12(b)(6), Fed. R. Civ. P. The AC alleges three Counts: (1) Breach of contract (on behalf of one plaintiff), (2) National origin discrimination, in violation of Montgomery Cnty. Code § 27- 19(a)(1) (on behalf of both plaintiffs) and (3) Race discrimination, in violation of 42 U.S.C. § 1981 (on behalf of both plaintiffs). For the reasons that follow, the motion to dismiss must be granted in part and denied in part.

I. 1 Plaintiffs are (1) Charles Olawole), a Maryland resident and network engineer of Nigerian national origin, and (2) his closely-held family corporation, Graffiti Consulting, Inc. , an IT 2

consulting company incorporated and headquartered in Maryland. Defendant is ActioNet, Inc. , an IT security and

1 The facts recited here are derived solely for the purpose of resolving the motion to dismiss. See, e.g., Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). 2 nformation technology.

software development company that previously employed Olawole. Although both plaintiffs were formerly represented by counsel, they are currently proceeding pro se because their counsel withdrew on the ground that he is not licensed to practice in Virginia or in this district.

The AC alleges that on January 6, 2014, ActioNet hired Olawole as an at- will employee Senior Network Engineer to work in Silver Spring, Maryland contract with the National Weather Service. AC ¶ 4-6. $127,500 per year. Id. ¶ 6. The AC further alleges that his supervisor, William Hall, frequently s work. Id. ¶ 7. Yet, the AC also alleges that despite this praise, and although Olawole speaks English fluently, Hall noticeable foreign accent. Id. ¶ 8.

In the Spring of 2014, ActioNet and Graffiti Consulting agreed on a new contract, the which gave Olawole a $40,000 raise and contemplated (1) that both companies would jointly employ Olawole and (2) that ActioNet could terminate employment, without cause, provided that ActioNet gave Olawole written notice. Id. ¶¶ 10, 12 & 13. Importantly, the Consultant Agreement included a choice-of-law provision designating Virginia as the source of law governing the contract, and an exclusive forum-selection clause identifying state and federal courts in Virginia. See Consultant Agreement (Doc. 11-2) ¶¶ 18-19. 3

The Consultant Agreement further provided that ActioNet could terminate its contract with Graffiti Consulting without notice, but only r for the

3 The Consultant Agreement is in the record and was the subject of a motion to transfer pursuant to 28 U.S.C. § 1404(a). Thus, although the Consultant Agreement is not attached to the AC, it is appropriate to consider that document because the AC terms and there is no dispute regarding authenticity. See Goines v. Valley Cmty. Servs. Bd., 822 F.3d 159, 166 (4th Cir. 2016) (holding that a document may be considered on a motion to dismiss if, among other things, the document was integral to the complaint and there authenticity); Am. Chiropractic Inc., 367 F.3d 212, 234 (4th Cir. 2004) (noting that a

AC ¶ 14. According to the AC, ActioNet dictated the terms supervised Olawole, had authority to

Id. ¶ 10.

According to the AC, on May 9, 2014 just one week after the parties signed the Consultant Agreement ActioNet terminated the contract without just cause or prior notice. Id. ¶¶ 14, 21. The AC alleges that AcioNet instead provided a pretextual ground for termination, namely that tly with Id. ¶ 20 (quotation marks omitted). That same day, May 9, 2014, , Hall, informed Olawole that Olawole had been fired, demanded badge and laptop, and escorted him out of the building in view of several coworkers. Id. ¶ 15.

Thereafter, on May 5, 2015, Olawole filed a charge with the Montgomery County Office of Human Rights, alleging that ActioNet had discriminated against him on the basis of national origin, in violation of the Montgomery County Human Rights Act. See id. ¶ 16; see also Montgomery Cnty. Code § 27-19(a)(1) (prohibiting employers from discriminating . A little more than a year later, on June 23, 2016, the Montgomery County Office of Human Rights issued a letter notifying Olawole that the county agency had terminated administrative proceedings. AC ¶ 17. Four days later, on June 27, 2016, plaintiffs filed suit in Maryland state court. Subsequently, on March 24, 2017, plaintiffs were granted leave to file the AC.

The AC alleges the following Counts:

Breach of contract (on behalf of Graffiti Consulting), for terminating the Consulting Agreement without cause and without providing 10- ¶¶ 20-22;

National origin discrimination, in violation of Montgomery Cnty. Code §

27-19(a)(1) (on behalf of both plaintiffs), id. ¶¶ 24-26; and Race discrimination, in violation of 42 U.S.C. § 1981 (on behalf of both plaintiffs), id. ¶¶ 28-30.

Graffiti Consulting is a plaintiff on all three Counts, while Olawole is a plaintiff only on Counts II and III. The AC seeks compensatory and punitive damages, back pay owing to Olawole, and reinstatement to a previous or a substantially equivalent position.

ActioNet successfully removed the action from state court to the United States District Court for the District of Maryland. Thereafter, the District of Maryland granted a motion to transfer pursuant to 28 U.S.C. § 1404(a) . See Olawole v. ActioNet, Inc., No. 1:17-cv-408 (D. Md. Apr. 4, 2017). After the matter was transferred from the District of Maryland to the Eastern District of Virginia, counsel for plaintiffs withdrew, noting that he is licensed to practice only in Maryland, and that he is not admitted to practice in this district. 4

In response, Olawole represented that he will proceed pro se. 5

Thus, on June 5, 2017, an Order issued, warning would be dismissed if the corporation did not obtain counsel by the June 16, 2017 hearing on the motion to dismiss. Despite that Order, Graffiti Consulting remains unrepresented.

Now, ActioNet has moved to dismiss with prejudice each Count, arguing: (1) because the corporation

counsel and 4

made any attempt to appear pro hac vice or to retain local counsel. See Rule 83.1(D), E.D. Va. Local Civ. R. 5 Olawole has been urged repeatedly to retain new counsel.

(2) that claims for breach of contract (Count I) and national origin

discrimination (Count II) are time-barred under Maryland law, and (3) that the AC lacks sufficient factual allegations to state a § 1981 claim. Each argument is separately addressed below.

II. To survive a Rule 12(b)(6) motion Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). And although c Thomas v. Salvation

Army S. Territory, 841 F.3d 632, 637 (4th Cir. 2016) (quotation marks omitted). In this respect, the

factual allegations must be more than Iqbal, 556 U.S. at 678. Neither a

formulaic recitation of the elements of a cause of action nor unadorned conclusory allegations are sufficient to survive a Rule 12(b)(6) motion to dismiss. Twombly, 550 U.S. at 555; Iqbal, 556 U.S. at 678-79. line fro Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc., 591 F.3d 250, 255-56 (4th Cir. 2009) (quotation marks omitted).

III. To begin with, all three of Graffiti Consul are nonstarters because (1) the company does not have counsel and (2) the company filed this action while it had a legally inoperative corporate charter.

First, to permit Graffiti Consulting to appear pro se in this action would violate the centuries- that a corporation may appear in the federal courts only through licensed

506 U.S. 194, 202 (1993). Indeed, a comply with this rule despite fair warning constitutes See, e.g., , 115 F.

admonition). Nor is there any doubt plaintiffs received such a warning; on June 5, 2017, an Order issued, notifying plaintiffs

obtain counsel for Graffiti Consul Olawole, No.1:17-cv-408 (E.D. Va. June 5, 2017) (Order). Because Olawole and Graffiti Consulting received fair and adequate warning, and because G dismissed on this ground without prejudice.

Second, because Graffiti Consulting filed this action while its corporate charter was invalid, 6

its claims in the complaint and AC are null and void under Maryland law. 7

Indeed, without a valid charter, a corporation loses standing to sue.

-103 (right to sue); 3-503 (providing that failure to maintain

6 It is appropriate to take judicial notice of this fact, which is memorialized in a public record See Rule 201, Fed. R. Evid. (governing judicial notice); Tellabs, Inc. v. Makor Issues & Rights, Ltd. , 551 U . S. 308 (2007) (holding that 12(b)(6) motion to dismiss); Hanks v. Wavy Broad., LLC , No. 2:11CV439, 2012 WL 405065, at *4 (E.D (collecting cases)). 7 Maryland law applies to the question whether Graffiti Consulting may sue because the AC alleges that the company is a Maryland corporation. See AC ¶ 4; Rule 17(b)(2), Fed. R. Civ. P. (providing [the corporation] was or

- s granted to [the corporation] by law, including the power to sue or be sued, [a]re Dual v. Lockheed Martin Corp., 383 Md. 151, 162-3 (2004). r is forfeited is null Tri-Cnty. Unlimited, Inc. v. Kids First Swim Sch. Inc., 191 Md. App. 613, 624 (2010); see also Auto USA, Inc. v. DHL Express (USA), Inc., No.

ELH-16-3580, 2017 WL 839525, at *5 (D. Md. Mar. 3, 2017) (relying on Tri-Cnty. Unlimited

forfeited [and] th

The same result obtains even where, as here, the corporation renews its charter after filing the complaint. 8

A Guy Named Moe, LLC v. Chipotle Mex.

Grill of Colo., LLC, 223 Md. App. 240, 252 (2015) (quoting Tri-Cnty. Unlimited, 191 Md. App. at 621). Maryland law instead instructs such corporations to refile their claims. Tri-Cnty. Unlimited, 191 Md. App. at 621. To be sure, this approac because with its renewed charter, Graffiti Consulting, through duly-licensed counsel, would now be able to file a viable breach-of-contract claim. But the Federal Rules of Civil Procedure dictate

8 In opposition to the motion to dismiss, Olawole filed an exhibit representing that Graffiti Consulting recently renewed its charter. Even assuming without deciding that this exhibit is properly considered at this stage, a renewed charter, as noted infra, does not rescue the

that Maryland law controls whether Graffiti Consulting has standing to sue, and Maryland law requires Graffiti Consulting to refile. See Rule 17(b)(2), Fed. R. Civ. P.

its lack of counsel and its lapsed corporate charter without prejudice.

IV. The non-prejudicial dismissal does not end the analysis, however, ActioNet argues that Counts I and II must be dismissed as time-barred. 9

Although the motion to dismiss invoked two Maryland statutes of limitations, the parties overlooked and did not address critical choice-of-law questions that must be answered here. Indeed, simply because the AC purports to allege counts pursuant to Maryland law does not necessarily mean that Maryland law supplies the governing limitations periods.

To be sure, it is apparent that state law, as opposed to federal law, provides the appropriate limitations periods for Counts I and II, as those counts assert state-law claims. This conclusion follows from the well-settled Erie 10

doctrine requiring federal courts to substantive law and federal procedural law when reviewing state-Kerr v. Marshall

Univ. Bd. of Governors, 824 F.3d 62, 74 (4th Cir. 2016). In this respect, a statute of Erie; thus, if the statute of

9 Typically, a claim should not be dismissed at the Rule 12(b)(6) stage based on an affirmative defense, such as a statute of limitations. But where, as here, the facts necessary to support the defense appear on the face of the complaint, dismissal is appropriate. Goodman v. Praxair, Inc., defense are alleged in the complaint, the defense may be reached by a motion to dismiss filed 10 Erie R.R. Co. v. Tompkins, 304 U.S. 64 (1938).

Bonham v. Weinraub 011) (quoting Guaranty Trust Co. v. York, 326 U.S. 99, 110 (1945)).

But this conclusion that state law, as opposed to federal law, supplies the limitations periods for Counts I and II does not end the inquiry. Rather, it is necessary to determine which state supplies the relevant statutes of limitations. To do so, it is imperative to ascertain the appropriate choice-of-law rules. , the choice-of-law rules must be applied to identify the governing statutes of limitations. Analysis therefore turns to the following tasks: (1) identifying the governing choice-of-law rules, (2) determining which limitations period applies to Count I, and (3) determining limitations period Count II.

A. The first analytical step is to identify the correct choice-of-law rules. Here, rules apply because a federal court sitting in diversity applies the choice- of-law rules of the forum state. See, e.g., Klaxon Co. v. Stentor Elec. Mfg. Co., 313 U.S. 487, 496 (1941). This is so despite the fact that this case originated in Maryland and was transferred here pursuant to 28 U.S.C. § 1404(a). To be sure, the standard Van Dusen rule provides that a § 1404(a) transfer carries wi -of-law rules. See Van Dusen v. Barrack, 376 U.S. 612 (1964). But as Supreme Court precedent teaches, the Van Dusen rule does not apply where, as here, a party bound by a forum- selection clause flouts its contractual obligation and files suit in a different forum[.] Atl. Marine Constr. Co. v. U.S. Dist. Ct. for the W. Dist. of Tex., 134 S. Ct. 568, 582 (2013). Rather, in such a scenario, 1404(a) transfer of venue will not carry with it the origina -of-law rules. Id. 11

-of-law rules therefore apply.

11

agreed to a forum-selection clause designating a different forum. Atl. Marine, 134 S. Ct. at 583.

Given this conclusion, analysis next turns to identifying the governing limitations periods. Importantly, -of-law rules occasionally require the application of a Virginia statute of limitations to a cause of action arising under a foreign In this -of-law rules d limitations periods. cause of action substantive, then limitations period applies to that claim; but if

limitations period on a Maryland claim statute of limitations will generally govern that claim. See Jones v. R.S. Jones & Assocs., Inc., 246 Va. 3 (1993).

The s can be nebulous in some cases. Statutes of limitations often straddle the line between substance and -of-law rules recognize three limitations statutes: (1) See Commonwealth v. Owens-Corning Fiberglas, Corp., 238

Va. 595, 598-99 (1989). First, a run[s] from some legislatively selected point policy determination that a time should come beyond which a potential defendant will be

immune Id. -restrict[s] the assertion of a Id. at 598. Last, a substan is

in statutes [that] create a new right become[s] [an] element[] of that newly-created right, restricting its availability. Id. [substantive] statute is a condition precedent to maintenance of a claim. Id.

In other words, a statute of limitations is substantive -of-law rules if the statute limitatio Jones, 246 Va. at 7 (holding that a statute of limitations on a

wrongful death action was substantive for choice-of-law purposes). This is especially so if the legislature created a right of action that did not exist at common law. See id. right of action for wrongful death existed at common law, statutes that created the right usually

see also Overstreet v. Ky. Cent. Life Ins. Co. legislature creates a right of action that did not exist at common law, the limitations specified in

Dowell v. Cox, 108 Va. 460 (1908)). Thus, the Jones court held that a Florida statute of limitations requiring that a was substantive because the

limitations period was directed specifically to the right to bring a wrongful death action. Jones, 246 Va. at 7.

These principles, applied to the AC state-law claims, point persuasively to the conclusion that the limitations period on Count I, the breach-of-contract claim, is procedural and thus governed by Virginia law. The limitations period for Count II, the state-law national origin discrimination claim, requires a different conclusion; it is substantive and thus governed by Maryland law. As explained below, the limitations period has not yet expired on the breach-of- contract claim, but the claim of national origin discrimination is time-barred. Thus, Count I must be dismissed without prejudice, whereas Count II must be dismissed with prejudice.

B. Virginia law provides the limitations period on the breach-of-contract claim in Count I. Indeed, when a party sues for breach-of contract issue governed by Hunter Innovations, 753 F. Supp. 2d at 602 (citing Hansen v. Stanley Martin Cos., 266 Va. 345 (2003); Hospelhorn v. Corbin, 179 Va. 348 (1942)). Virginia provides two statutes governing the limitations period for claims alleging breach of a written contract. The first, Va. Code § 8.01-246(2), provides a five-year window. The second, Va. Code

§ 8.01-247, is a , which of another state to the limitations period of that state if its time limit is more restrictive than Virginia Hansen, 266 Va. at 352 to a breach-of-contract claim). 12

Pursuant to The law governing a contract is the law relating to the validity and interpretation of the contract itself, rather than the law regard Fiberlink Commc ns Corp. v. Magarity, 24 F. Appx 178, 2001 WL 1658914, at *3 (4th Cir. Oct. 16, 2001); see also Hunter Innovations, 753 F. Supp. 2d at 602 (same); Johnson v. Brown, 372 F. Supp. 2d 501, 508 (E.D. Va. 2005) (same). Thus, -year limitations period governs pursuant to the borrowing statute, turns on which law governs the contract.

Here, Virginia law governs the allegedly breached contract, the Consultant Agreement, because that contract includes a choice-of-law provision identifying Virginia as the source of governing law. See Consulting Agreement ¶ 18. five-year period therefore controls. To be sure, the AC intimates that the parties executed the Consultant Agreement in Maryland,

12 No action shall be maintained on any contract which is governed by the law of another state or country if the right of action thereon is barred either by the laws of such state or country or of this Comm -247.

and ce-of-law rules provide that nature, validity, and interpretation [] are governed by Lexie v. State Farm Mut. Auto. Ins. Co., 251 Va. 390, 395 (1996). But Virginia law also provides that where, as

Settlement Funding, LLC v. Von Neumann-Lillie, 274 Va. 76, 81 (2007); see also Hitachi Credit Am. Corp. v. Signet Bank, 166 F.3d 614, 624 (4th Cir. 1999) law clauses in a contract, giving them full ef . 13

Because the Consultant Agreement at issue has a choice-of-law provision designating Virginia as the source of governing law, is therefore inapplicable. Rather, -year limitation period governs.

Thus, ActioNet Count I is time-barred and must be dismissed with prejudice is incorrect. Rather, if Graffiti Consulting obtains counsel and files within five years of May 9, 2014 the date the contract was terminated and thus the date a breach-of-contract claim accrued the claim would be timely.

C. By contrast, Count II, national origin discrimination claim pursuant to the Montgomery County Code. This is so because the limitations period on this claim is substantive, as it Jones, 246 Va. at 7. In this

regard, Maryland law provides that a perso [Montgomery] county code may bring and maintain a civil action against the person that

13 This mean that Virginia govern breach-of-contract claims Settlement Funding, 274 Va. at 81.

-1202(b). The very next section in that very under subsection (b) of this section shall after the

occurrence of Id. § 20-1202(c)(1) (emphasis added). Thus, like the Florida statute at issue in Jones, the limitations period state-law claim is directed so specifically to the cause of action here, a discrimination claim under the Montgomery County Codethat the limitations period qualifies the right to sue and is therefore substantive. See Jones, 246 Va. at 7 (holding that the requirement that be s was a substantive limitations period); Owens-Corning Fiberglas, 236 Va. at 598-99 substantive s of limitations often appear in statutes [that] create a new right and become elements of that newly-created right, restricting its availability). Accordingly, the two-year statute of limitations in § 20-1202(c)(1) applies to Count II.

Given two-year statute of limitations, Count II must be dismissed with prejudice as time-barred. Indeed, Maryland law provides that a claim pursuant to § 20-1202(b) must be filed within two years of the -1202(b). In this respect, the AC alleges that the discriminatory act occurred on

May 9, 2014, which gave plaintiffs until May 9, 2016 to file their claim. laintiffs did not file their complaint until June 27, 2016. Count II must be dismissed with prejudice as time-barred.

It is important to note that § 20-1202(b) does not include any tolling provisions that could rescue Count II. To be sure, § 20-1202 includes a partial exhaustion requirement, providing that the aggrieved person files a complaint with the county unit responsible for handling violations of the county discrimination laws. Id. § 20-1202(c)(2)(i). Conspicuously missing from the statute is (1) any provision that tolls the two-year limitations period while the administrative process unfolds, or (2) any requirement that the plaintiff wait for an administrative decision. Thus, a -year limitations period bars relief even if the two-year window closes while plaintiff awaits the results of a state or county administrative decision. See, e.g., Ward v. STG Int l, Inc., No. PWG- 14-4040, 2016 WL 3257823, at *6 n.5 (D. Md. June 14, 2016); Westmoreland v. Prince , No. TDC-14-821, 2015 WL 996752, at *13 (D. Md. Mar. 4, 2015). Here,

plaintiffs did not file occurrence of the alleged discriminatory 20-1202(c)(1).

Nor does the doctrine of equitable tolling apply. See Ward, 2016 WL 3257823, at *6 n.5 (holding in analogous circumstances that the plaintiff could not rely on equitable tolling to excuse a failure to comply with § 20--year limitations period). Indeed, plaintiffs are entitled to equitable tolling (l) that [they] ha[ve] been pursuing [their] rights diligently, and (2) that some extraordinary circumstance stood in [their] way and prevented Holland v. Florida, 560 U.S. 631, 649 (2010) (quotation marks omitted). Plaintiffs fail to show any extraordinary circumstances that prevented them from timely filing. Rather, the only appare negligence or misunderstanding regarding the statute of limitations. 14

But it is well-settled that mere negligence

14 T limitations period is two years, not one. See Md. Code. § 20-1202(c)(1) 2 years emphasis

added)). Second, as detailed above, the statute does not include a tolling provision. In this regard,

or misunderstanding is to warrant equitable tolling. See id. at 651-)); see

also Rouse v. Lee, 339 F.3d 238, 248 (4th s counsel in interpreting a statute of limitations does not present the extraordinary circumstance beyond the partys control where equity should step in to give the party the benefit of his erroneous oting Harris v. Hutchinson, 209 F.3d 325, 331 (4th Cir. 2000)). Thus, Count II is time-barred. In sum, Count I must be dismissed without prejudice, and Count II must be dismissed with prejudice because the limitations period has expired.

V. last argument is that Count III, which alleges a wrongful termination of contract in violation of 42 U.S.C. § 1981, must be dismissed with prejudice for failure to state a claim. 15

For the reasons stated above, s failures to obtain counsel or to file

the Maryland statute differs from Title VII, which requires a complainant to wait court. See 42 U.S.C. § 2000e-5(f)(1).

15 Although the parties did not address the applicable statute of limitati claim, it is worth noting that 28 U.S.C. § 1658, which applies a four-year residual statute of limitations, applies to that claim. Granted, courts evaluating claims under § 1981 a statute guaranteeing to ll perso to

Thorn v. Jefferson-Pilot Life Ins. Co., 445 F.3d 311, 320 (4th Cir. 2006). But in 1990 Congress general, 4-year limitations period for any federal statute N. Star Steel Co. v. Thomas, 515 U.S. 29, 34 n. * (1995). A year later, in 1991, Congress amended § 1981 to provide additional protections to the right to make and enforce contracts, including protection from the wrongful termination of contracts. See Jones v. R.R Donnelley & Sons Co., 541 U.S. 369, 382-83 (2004). And where, as here, a plaintiff relies on § 1981 to allege wrongful termination of a contra

this claim with a valid corporate charter are sufficient grounds to dismiss § 1981 claim without prejudice. be dismissed without prejudice .

within the jurisdiction of the United States shall

all benefits, Id. § 1981(b). To prevail on a § 1981 claim of race discrimination, Olawole must ultimately prove (1) that ActioNet his ation Denny v. Elizabeth Arden Salons, Inc., 456 F.3d 427, 434 (4th Cir. 2006). Notably, however, § 1981 does not recognize a claim for national origin discrimination. St. Francis Coll. v. Al-Khazraji, 481 U.S. 604, 606 (1987) (holding that § 1981

Here, § 1981 allegations relate to national origin discrimination, not race discrimination. The only mention of race is a conclusory allegation that the conduct giving rise to Counts I (breach of

contract) and Count II (national origin discrimination) AC ¶ 30. And although courts have struggled to discern the indistinct line between national origin and race for purposes of § 1981 claims, 16

this conceptual distinction is largely academic in this case because Olawole will be afforded leave to amend. 17

-year statute of limitations. Id. at 383. Accordingly, the § 1981 claim is not time-barred. 16 Compare Guzman v. Concavage Marine Constr. Inc., 176 F. Supp. 3d 330, 335 (S.D.N.Y. 2016) (denying a motion to dismiss a § 1981 claim because

VI. In sum, the motion to dismiss must be granted in part and denied in part. Specifically, the motion will be granted insofar as (1) Count I, brought by Graffiti Consulting, must be dismissed without prejudice for failure to appear through counsel and as legally inoperative; (2) Count II, brought by both plaintiffs, must be dismissed with prejudice as time-barred; and (3) Count III must be dismissed without prejudice as to Graffiti Consulting for failure to appear through counsel and as legally inoperative, and dismissed with leave to amend as to Olawole. The motion to dismiss must be denied in all other respects. 18

that , ather than their geographic sense, , and Ihekwu v. City of Durham, N.C., 129 F. Supp. 2d 870, 887 (M.D.N.C. 2000) (denying summary judgment because of a factual dispute whether a Nigerian-born plaintiff had been discriminated against on the basis of race where most of the allegations related to national origin), with Quraishi v. Kaiser Found. Health Plan of the Mid-Atl. States, Inc., No. CIV. CCB- 13-10, 2013 WL 2370449, at *2 (D. Md. May 30, 2013) (dismissing a § 1981 claim because the s adverse action), Akinjide v. Univ. of Md. E. Shore, No. DKC 09-2595, 2011 WL 4899999, at *9 (D. Md. Oct. 13, 2011) (granting defendant summary judgment on a § 1981 claim because the and Perkins v. Kaiser Found. Health Plan of Mid Atl. States, Inc., No. DKC 08 3340, 2010 WL 889673, at *5 (D. Md. Mar. 5, 2010) (dismissing a § 1981 discrimination devoid of 17 ActioNet asserts, without citation to any authority, that dismissed with prejudice for failure to state a claim. But Rule 15(a)(2), Fed. R. Civ. P. provides

And ActioNet has not indicated that amendment would be unjust or futile. See GE Inv. Private Placement Partners II v. Parker, 247 F.3d 543, 548 (4th Cir. 2001) (Leave to amend may . 18 In addition to filing a motion to dismiss, at motion currently lacks any arguments to support it.

See Doc. 46 at 9. Filing a formal motion and memorandum is the proper indeed, required course of action. See, e.g., motions shall state with particularity the grounds therefor and shall set forth the relief or order