IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

RICHARD GILLILAND,

Plaintiff,

v. **Case No. 1:15cv100-MW/GRJ**

OPEN ARMS MEDICAL CENTER AT HAWTHORNE, LLC, and BRIAN C. CREGHAN,

Defendants.
_____/

ORDER ON MOTION FOR SUMMARY JUDGMENT

Defendants in this Fair Labor Standards Act ("FLSA") case move for summary judgment, ECF No. 18, and Plaintiff opposes, ECF No. 19. For the reasons set forth below, Defendants' motion is **DENIED**. This case will proceed to trial.

Plaintiff Richard Gilliland worked for Defendant Open Arms Medical Center at Hawthorne, LLC ("Open Arms") for a few months in early 2015. ECF No. 18, at 2. Defendant Brian C. Creghan is the co-owner and operator of Open Arms. *Id.* at 14. Gilliland claims that he was fired from Open Arms for objecting to what he perceived as an unlawful overtime policy. ECF No. 19, at 9. Defendants argue that they are entitled to summary judgment

because (1) Gilliland's perception that its overtime policy was unlawful was not reasonable, and therefore his objection did not constitute protected activity under the FLSA, ECF No. 18, at 7–10; and (2) Gilliland "manufactured" his termination and was thus not really fired, *id.* at 10–11. Defendants also argue that at the very least they are entitled to partial summary judgment on the issue of damages because Gilliand found a new job shortly after leaving Open Arms. *Id.* at 11. Defendants are wrong on all points.

First, a reasonable jury could find Gilliland's belief that Defendants were asking him to agree to unlawful employment terms was objectively reasonable. The Employee Hiring Policy Agreement ("Agreement")—which appears to be the product of haste, incompetence, or both—could be construed to require 42.5 hours of work a week with *no* overtime. *See id.* at 19. This is perhaps not the most natural interpretation of the Agreement, but a reasonable jury could find that it was an objectively reasonable interpretation, especially in light of the high number of hours Gilliland had worked in prior weeks. *See* ECF No. 16-2, at 10, 14. Furthermore, Gilliland's complaint was not so "amorphous" as to constitute a "generalized work grievance," *see Barquin v. Monty's Sunset LLC*, 975 F. Supp. 2d 1309, 1312 (S.D. Fla. 2013). Rather, viewed in the

light most favorable to him, the concerns Gilliland expressed about the Agreement clearly put Defendants on notice that he was specifically objecting to being forced to agree to what he perceived as a potentially unlawful overtime practice. *See* ECF No. 16-1, at 43–46.

Second, a reasonable jury could easily conclude that Gilliland was terminated. "An employer need not use the term 'fired' in order for a discharge to occur. The test of whether an employee was discharged depends upon the reasonable inferences that the employee[] could draw from the language used by the employer." *NLRB v. Ridgeway Trucking Co.*, 622 F.2d 1222, 1224 (5th Cir. 1980).[1] Here, Gilliland asked twice if he was fired; in response, he was asked to hand over his keys. ECF No. 16-1, at 47–49. It would be eminently reasonable for an employee in Gilliland's position to believe he had been fired. *See Andazola v. Logan's Roadhouse Inc.*, 871 F. Supp. 2d 1186, 1210 (N.D. Ala. 2012) (finding it not unreasonable as a matter of law for employee-plaintiff to believe she had

[1] Decisions of the Fifth Circuit prior to October 1, 1981 are binding within the Eleventh Circuit. *Bonner v. City of Pritchard*, 661 F.2d 1206, 1207 (11th Cir. 1981) (en banc).

been fired based in part on the fact that employer asked for employee-plaintiff's keys).

Finally, because "the kinds of relief that a district court may need to award to compensate the plaintiff fully [in an FLSA retaliation case] will vary with the facts of each case," Defendants are not entitled to partial summary judgment on the issue of damages. *See Snapp v. Unlimited Concepts, Inc.*, 208 F.3d 928, 937 (11th Cir. 2000). Depending on the evidence introduced at trial, Gilliland may be entitled to damages for emotional distress, *see Bogacki v. Buccaneers Ltd. Partnership*, 370 F. Supp. 2d 1201, 1205–06 (M.D. Fla. 2005), or some form of equitable relief, *see Snapp*, 208 F.3d at 937.

For the reasons set forth below,

IT IS ORDERED:

1. Defendants' Motion for Summary Judgment, ECF No. 18, is **DENIED**.
2. This case remains set for trial on **February 23, 2016**.

SO ORDERED on January 14, 2016.

s/Mark E. Walker
United States District Judge