APPENDIX

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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 18-30900
Summary Calendar

[Filed May 1, 2019]

SHAMBRIA NECOLE SMITH,	)
	)
Plaintiff - Appellant	)
	)
v.	)
	)
KANSA TECHNOLOGY, L.L.C.,	)
	)
Defendant - Appellee	)
	)

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:16-CV-16597

Before JONES, HIGGINSON, and OLDHAM Circuit Judges.

PER CURIAM:[*]

[*] Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

While working for the Hammond Daily Star Publishing Company, Inc. ("Hammond Daily Star"), Appellant Shambria Smith was involved in a machinery accident where she lost a portion of her left "pinky" finger. Smith claims that she lost her finger while operating the Kansa 480 Newspaper Inserter ("Kansa Inserter"). She sued both Hammond Daily Star and Kansa Technology, LLC ("Kansa"), alleging—among other things—that the Kansa Inserter was unreasonably dangerous due to a design defect and inadequate warnings. The district court dismissed the claims against Hammond Daily Star based on tort immunity under Louisiana's Workers' Compensation Act. The claims against Kansa proceeded to a jury trial, which resulted in a verdict for Kansa and a final judgment dismissing Smith's claims.

Thereafter, Smith filed a Motion for Leave to Interview Jurors, claiming that juror interviews were needed to discover potential jury taint. Smith also filed a Motion for Relief under Federal Rule of Civil Procedure 60(b), challenging the jury verdict. The district court denied both motions. Smith now appeals.

This court reviews the denial of a Motion for Leave to Interview Jurors and the denial of a Motion for Relief under Rule 60(b) for abuse of discretion. *See United States v. Booker*, 334 F.3d 406, 416 (5th Cir. 2003) (Motion for Leave to Interview Jurors); *Flowers v. S. Reg'l Physician Servs., Inc.*, 286 F.3d 798, 800 (5th Cir. 2002) (Rule 60(b) Motion). Having carefully reviewed the briefing and pertinent portions of the record, we conclude that the district court did not abuse its discretion. Therefore, the district court's

orders denying Smith's Motion for Leave to Interview Jurors and Smith's Rule 60(b) Motion are **AFFIRMED** for essentially the same reasons articulated by that court.

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

CIVIL ACTION
No. 16-16597

SECTION I

[Filed July 2, 2018]

SHAMBRIA NECOLE SMITH	)
	)
VERSUS	)
	)
KANSA TECHNOLOGY, L.L.C.	)
	)

ORDER & REASONS

Before the Court is a motion[1] for relief from judgment[2] pursuant to Federal Rule of Civil Procedure 60(b) filed by plaintiff Shambria Necole Smith ("Smith"). For the following reasons, the motion is denied.

[1] R. Doc. No. 94.

[2] R. Doc. No. 87.

I.

In 2015, Smith was injured at work while using a newspaper inserter manufactured by defendant Kansa Technology, L.L.C. ("Kansa").[3] At the time, Smith was employed by Hammond Daily Star Publishing Company, Inc. ("the Hammond Daily Star").[4] Smith filed a lawsuit against Kansa and the Hammond Daily Star in Louisiana state court.[5] The case was eventually removed to federal court and tried by another section of this Court. The sole defendant at trial was Kansa because the Court had previously granted a motion for summary judgment dismissing Smith's claims against the Hammond Daily Star.[6]

At the conclusion of trial, the jury rendered a verdict in favor of Kansa, finding that the inserter that injured Smith was not unreasonably dangerous.[7] Smith then timely filed a motion for new trial, which the Court denied.[8] Shortly thereafter, the case was reassigned to this section, which now considers Smith's motion for relief from the earlier judgment.

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[3] R. Doc. No. 1-3, at 1; R. Doc. No. 32-1, at 2.

[4] R. Doc. No. 12-1, at 1.

[5] R. Doc. No. 1, at 1–2.

[6] R. Doc. No. 1; R. Doc. No. 13.

[7] R. Doc. No. 87; R. Doc. No. 85, at 1.

[8] R. Doc. No. 89; R. Doc. No. 91.

II.

Federal Rule of Civil Procedure 60(b) provides for relief from a final judgment, order, or proceeding in the following limited circumstances:

> (1) mistake, inadvertence, surprise, or excusable neglect;
>
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
>
> (3) fraud (whether previously called intrinsic or extrinsic),misrepresentation, or misconduct by an opposing party;
>
> (4) the judgment is void;
>
> (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
>
> (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b). Rule 60(b) relief is "uncommon" and "will be afforded only in unique circumstances.'" *Lowry Dev., L.L.C. v. Groves & Assocs. Ins., Inc.*, 690 F.3d 382, 385 (5th Cir. 2012); *Pryor v. U.S. Postal Serv.*, 769 F.2d 281, 287 (5th Cir. 1985)(quoting *Wilson v. Atwood Group,* 725 F.2d 255, 257, 258 (5th Cir. 1984)). "The Rule is to be 'liberally construed in order to do substantial justice,' but at the same time, 'final

judgments should [not] be lightly reopened.'" *Lowry Dev., L.L.C.*, 690 F.3d at 385 (citation omitted).

III.

Smith argues that relief is warranted under Rule 60(b) for three reasons. First, Smith contends that the Court erred in allowing the jury to "consider Hammond Daily Star, by allowing Exhibit 7 to be used at trial."[9] Second, Smith argues that the evidence presented at trial could not possibly support the jury's conclusion regarding whether the inserter was unreasonably dangerous. And finally, Smith argues that consideration of new information discovered after the conclusion of trial requires granting her relief from the judgment. The Court addresses each of these arguments in turn.

A.

According to Smith, the Court was mistaken to expose the jury to any reference to workers' compensation or the Hammond Daily Star at trial.[10] Specifically, Smith refers to the Court's decision to include any mention of the Hammond Daily Star on the jury verdict form and the jury's exposure to a report from the Hammond Daily Star's workers' compensation insurer detailing the incident (marked as Exhibit 7 at trial, "Exhibit 7").[11] Smith argues that Exhibit 7 and

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[9] R. Doc. No. 94-1, at 7.

[10] *Id.* at 5.

[11] *Id.*; R. Doc. No. 94-2. In its opposition, Kansa notes that the version of Exhibit 7 attached to Smith's motion (R. Doc. No. 94-2)

the jury verdict form—which, as written, required the jury to assess whether the Hammond Daily Star was at fault if it determined the inserter was unreasonably dangerous—"misled the jury [into rendering] a verdict in favor of the defense."[12]

Smith asserts that these alleged mistakes permit the Court to grant her relief under Rule 60(b)(1). Under that clause, a court may grant a moving party relief from an earlier judgment because of "mistake, inadvertence, surprise, or excusable neglect." Fed. R. Civ. Pro. 60(b)(1). However, "these terms are not wholly open-ended. Gross carelessness is not enough." *Pryor*, 769 F.2d at 287 (internal quotations and citation omitted). Because Rule 60(b)(1) "affords extraordinary relief," Smith must "make a sufficient showing of unusual or unique circumstances justifying such relief." *Id.* at 286. The Court concludes that Smith has failed to make such a showing.[13]

As the court that presided over the trial discussed in its order denying Smith's motion for a new trial ("Judge Engelhardt's order"),[14] Louisiana's comparative

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is the unredacted version—not the version introduced into evidence at trial. R. Doc. No. 103, at 6.

[12] R. Doc. No. 94-1, at 5.

[13] Despite three full pages dedicated to "legal arguments" in her motion, Smith does not cite one case to support her contention that the Court should grant her relief from the judgment pursuant to Rule 60(b).

[14] R. Doc. No. 91, at 4 (noting that, contrary to Smith's argument that the court should not have included the Hammond Daily Star

fault statute requires apportioning fault among all tortfeasors, including those that are not parties to the action. La. Civ. Code Ann. art. 2323; *see also McAvey v. Lee*, 58 F.Supp.2d 724, 725 (E.D. La. Oct. 30, 1998) (Lemmon, J.) (explaining that the 1996 amendment to Louisiana's comparative fault statute "revised the substance and procedure to require the allocation of fault to nonparties"). Any reference to the Hammond Daily Star on the jury verdict form cannot be considered a "mistake, inadvertence, or excusable neglect" under 60(b)(1): the reference was appropriate.[15] Moreover, Smith never objected to the final jury instructions or to the final jury verdict form.[16]

Smith's brief makes it difficult for the Court to ascertain exactly what Smith is arguing with respect to Exhibit 7; however, Smith does contend that its use at trial was "prejudicial."[17] In her motion, Smith refers to an April 24, 2018 written objection—which predates the trial—filed in response to Kansa's proposed jury verdict form.[18] According to Smith, this objection

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on the jury verdict form, Smith "cites a Louisiana Supreme Court case recognizing that the 1996 revisions to Article 2323 *require* the Court to consider and quantify the fault of each non-intentional tortfeasor").

[15] *Id.* at 4 n.5.

[16] *Id.* at 3–4.

[17] R. Doc. No. 94-1, at 5.

[18] R. Doc. No. 66.

evidences the fact that she objected to Exhibit 7.[19] That document, however, never mentions Exhibit 7. To the contrary, Exhibit 7 was listed in the joint pre-trial order proposed by both parties, which states that the exhibit was "to be admitted *without objection*" (emphasis added).[20] Despite being given multiple opportunities, Smith did not object to the admission of Exhibit 7 into evidence at trial.[21]

B.

Smith also argues that relief is proper because the jury's findings were"contrary to law."[22] According to Smith, the jury could not have properly concluded that the inserter was not unreasonably dangerous as a result of inadequate warning because there was "no evidence of any warning labels on the . . . equipment."[23] Smith does not specify which Rule 60(b) clause provides a basis for relief encompassing this alleged error, so the Court will assume that Smith is asserting that point under the"catch-all" clause, Rule 60(b)(6).

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[19] R. Doc. No. 94-1, at 4.

[20] R. Doc. No. 91, at 2 (citing R. Doc. No. 61, at 15). Additionally, Judge Engelhardt ordered the parties not to mention workers' compensation at trial, and Exhibit 7 was redacted to exclude any workers' compensation references.

[21] *Id.* at 2–3. This Court independently reviewed Exhibit 7 as it was admitted into evidence at trial. All references to workers' compensation and the insurance company were redacted.

[22] R. Doc. No. 94-1, at 2.

[23] *Id.* at 8.

Edward H. Bohlin Co. v. Banning Co., 6 F.3d 350, 357 (5th Cir. 1993).

Rule 60(b)(6) permits a court to grant relief from an earlier judgment for "any other reason that justifies relief" besides those articulated in clauses (1) through (5).Fed. R. Civ. Pro. 60(b)(6). This clause "provides a grand reservoir of equitable power to do justice in a particular case.'" *Government Fin. Servs. One Ltd. P'ship v. Peyton Place, Inc.*, 62 F.3d 767, 774 (5th Cir. 1995) (citation omitted). However, relief may only be granted "if extraordinary circumstances are present." *Hess v. Cockrell*, 281 F.3d 212, 216 (5th Cir. 2002) (quoting *Batts v. Tow–Motor Forklift Co.*, 66 F.3d 743, 747 (5th Cir. 1995)). "[T]he movant must show 'the initial judgment to have been manifestly unjust.'" *Edward H. Bohlin*, 6 F.3d at 357.

Smith offers no evidence of "extraordinary circumstances" warranting relief under Rule 60(b)(6). In Judge Engelhardt's order, the Court concluded that it could not "find that the jury's verdict was contrary to the weight of the evidence. Upon evaluating the evidence for itself, the Court finds sufficient evidence to support the jury's verdict."[24] Judge Engelhardt conducted an independent review of the record, and he was unable to conclude that the jury's findings were unsubstantiated. That court was undoubtedly in a better position than this Court is to now analyze the issues presented at trial, evaluate the proffered evidence, and determine the credibility to be given each witness. Consequently, this Court defers to the findings

[24] R. Doc. No. 91, at 5.

in Judge Engelhardt's order[25] and concludes that Smith has not established the existence of "extraordinary circumstances" or shown that the judgment rendered against her was "manifestly unjust." *Hess*, 281 F.3d at 216; *Edward H. Bohlin Co.*, 6 F.3d at 357.

C.

Finally, Smith claims that the jury was potentially "taint[ed]" during trial.[26] According to Smith, her expert witness observed one of defense counsel's staff members

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[25] *See generally* R. Doc. No. 91.

[26] In a memorandum filed in support of her motion, Smith states that she seeks relief "at a minimum under FRCP 60(b)1-3 and 6" without specifying which of her arguments correspond with those four bases for relief. R. Doc. No. 94-1, at 7. Some of Smith's arguments use language taken directly from particular clauses.

For example, Smith argues that it was "mistake, inadvertence and/or excusable neglect" for the court to allow the jury to consider the Hammond Daily Star during its deliberations at trial. This language mirrors the language in Rule 60(b)(1), so the Court is able to deduce that Smith seeks relief pursuant to clause (1) with respect to that argument. Regarding her argument that the jury was possibly tainted, however, Smith does not specify which clause warrants relief. Under "Legal Issues Presented," she asks, "Does the evidence support potential misconduct by the staff of opposing counsel?" R. Doc. No. 94-1, at 2. This would seem to suggest Smith is requesting relief under 60(b)(3) (fraud, misrepresentation, or misconduct by an opposing party). But in her concluding paragraph, she asserts that "the potential jury taint could not have been discovered in time to move for a New Trial." This borrows language from 60(b)(2) (newly discovered evidence). Notwithstanding Smith's poorly written submission, the Court will address both bases for relief, but it urges Smith's counsel to better articulate his legal grounds in future filings.

interacting with someone Smith identifies as "Ms. Hydel" ("Hydel"), a supposed "courier" for one of the jurors. Kansa does not deny the interaction occurred, but it argues that the conversation between its staff member, Tammi Miller("Miller"), and Hydel was not improper and that it did not influence any juror.[27] According to Miller's affidavit, Hydel exited the courtroom into the hallway where Miller was sitting, and she stated that she had been asked to leave Judge Engelhardt's courtroom because she was drinking from a water bottle.[28] Miller asserts that she responded by commenting that Judge Engelhardt had instructed her to sit down when she was handing defense counsel a document.[29] Smith contends that this interaction is "new evidence" that warrants relief under Rule 60(b)(2).[30]

"To succeed on a motion brought under 60(b)(2) based on newly discovered evidence, the movant must demonstrate (1) that it exercised due diligence in obtaining the information and (2) the evidence is material and controlling and clearly would have produced a different result if presented before the

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[27] R. Doc. No. 103, at 9.

[28] R. Doc. No. 101-1, at 1.

[29] *Id*.

[30] The Court questions whether the fact that Smith's witness allegedly observed a defense counsel staff member speak to a "courier" for one of the jurors may be considered "evidence" under Rule 60(b)(2). Smith has produced no support for such contention, but the Court need not decide that issue because Smith's argument fails for other reasons.

original judgment."*Government Fin. Servs.*, 62 F.3d at 770–71 (internal quotations and citations omitted). "As the party seeking relief, [Smith] must bear the burden of showing that [the rule] applies." *Frew v. Janek*, 780 F.3d 320, 327 (5th Cir. 2015).

Smith's only issue with this alleged interaction is that it "*potentially* led to influence and juror conduct" (emphasis in original).[31] She does not suggest that Miller interacted with a juror. In fact, it is undisputed that whomever Miller spoke with was not a member of the jury.[32] Even then, Smith does not argue that their conversation was inappropriate or that it pertained to the trial. In Miller's affidavit—submitted by Kansa in support of its opposition to Smith's motion—she states that she never "discuss[ed] with [Hydel] any aspect of the trial proceedings."[33] Smith has not refuted that assertion or disputed any portion of Miller's account. Accordingly, Smith has not demonstrated that any evidence of the alleged interaction is "material" and "controlling," or that it would have produced a different result had it been presented before the judgment. *Government Fin. Servs.*, 62 F.3d at 771.

Alternatively, Smith argues that this new information suggesting possible jury tampering warrants relief under 60(b)(3). Rule 60(b)(3) permits relief from a judgment because of "fraud . . ., misrepresentation, or misconduct by an opposing

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[31] R. Doc. No. 94-1, at 6.

[32] *Id.*

[33] R. Doc. No. 101-1, at 2.

party." A party is entitled to relief under Rule 60(b)(3) if (1) the opposing party"engaged in fraud or misconduct" and (2) the misconduct "prevented the moving party from fully and fairly presenting his case." *Hesling v. CSX Transp., Inc.*, 396 F.3d 632, 641 (5th Cir. 2005) (citing *Government Fin. Servs.*, 62 F.3d at 772). The moving party bears the burden of proving the fraud, misrepresentation, or misconduct "by clear and convincing evidence." *Id.* (citation omitted).

Smith has offered nothing—not even an anecdotal suggestion—to show that Kansa or its attorneys engaged in misconduct. However, even assuming Smith can establish misconduct or misrepresentation—which would require clear and convincing evidence—Smith has not offered any evidence to establish that she was unable to fully and fairly present her case as a result. *Williams v. Thaler*, 602 F.3d 291, 312 (5th Cir. 2010) (affirming the district court's denial of the plaintiff's motion for reconsideration under 60(b)(3) because—even though the opposing party conceded misconduct—the plaintiff did not "demonstrate[] how the violation prevented him from fully and fairly presenting his case"). Her arguments under 60(b)(3) thus fail.

Having considered each of Smith's arguments, the Court is unpersuaded that it should exercise its discretion to grant her relief from the earlier judgment.

Accordingly,

IT IS ORDERED that Smith's motion is **DENIED.**

New Orleans, Louisiana, July 2, 2018

_____/s/_____
LANCE M. AFRICK
UNITED STATES DISTRICT JUDGE

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

CIVIL ACTION
No. 16-16597

SECTION I

[Filed June 28, 2018]

SHAMBRIA NECOLE SMITH	)
	)
VERSUS	)
	)
KANSA TECHNOLOGY, L.L.C.	)
	)

ORDER & REASONS

Before the Court is a motion[1] for leave to interview jurors filed by plaintiff Shambria Necole Smith ("Smith"). Defendant Kansa Technology, L.L.C. ("Kansa") opposes the motion.[2] For the following reasons, the motion is denied.

[1] R. Doc. No. 97. Smith correctly notes that the local civil rules prohibit attorneys from speaking with, examining or interviewing any juror regarding the proceedings, except with leave of court." E.D. La. L.R. 47.5.

[2] R. Doc. No. 101.

In April of 2018, Smith was the plaintiff in a trial before another section of this Court. At the conclusion of trial, the jury rendered a verdict in favor of Kansa.[3] In her motion, Smith—without a single citation to any case law—requests leave to permit her counsel to interview the jurors from her case and "obtain any additional information that may or may not support a finding of a jury taint along with evidentiary issues."[4]

According to Smith, her expert witness observed one of defense counsel's staff members interacting with someone Smith identifies as "Ms. Hydel" ("Hydel"), a supposed "courier" for one of the jurors, during trial.[5] Kansa does not deny the interaction occurred, but it argues that the conversation between its staff member, Tammi Miller ("Miller"), and Hydel was not improper and did not influence Hydel or any member of the jury.[6] According to Miller's affidavit, Hydel walked out of the courtroom into the hallway where Miller was sitting and stated that she had been asked to leave Judge Engelhardt's courtroom because she was drinking from a waterbottle.[7] Miller claims that she responded by commenting that Judge Engelhardt had instructed her to sit down when she was handing defense counsel a

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[3] R. Doc. No. 87.

[4] R. Doc. No. 97, at 2.

[5] *Id.* at 2.

[6] R. Doc. No. 103, at 9.

[7] R. Doc. No. 101-1, at 1.

document.[8] Smith does not contest Miller's account of the conversation.

"Federal courts have generally disfavored post-verdict interviewing of jurors."*Haeberle v. Tex. Int'l Airlines*, 739 F.2d 1019, 1021 (5th Cir. 1984). The Fifth Circuit has "repeatedly refused to 'denigrate jury trials by afterwards ransacking the jurors in search of some new ground, not previously supported by evidence, for a new trial.'"*Id.* (quoting *United States v. Riley*, 544 F.2d 237, 242 (5th Cir. 1976), *cert. denied*, 430 U.S. 932 (1977)). A district court has discretion over a party's request to interview jurors post-trial. *Abel v. Ochsner Clinic Found.*, No. 06-8517, 2010 WL 1552823, at *1 (5th Cir. 2010) (citing *United States v. Booker*, 334 F.3d 406, 416 (5th Cir. 2003)); *see also Green Constr. Co. v. Kan. Power & Light Co.*, 1 F.3d 1005, 1012 (10th Cir. 1993)("District courts have 'wide discretion' to restrict attorney-juror contact in order to shield jurors from post-trial 'fishing expeditions' by losing attorneys."). Any party questioning the integrity of a jury on prejudice grounds bears the burden of proving prejudice by a preponderance of the evidence. *United States v. Riley*, 544 F.2d 237, 242 (5th Cir. 1976). Smith has not met her burden because she has offered no compelling reason for the Court to permit her counsel to interview the jurors.

She does not suggest that Miller interacted with a juror. Rather, it is undisputed that whomever Miller

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[8] *Id.*

spoke with was not a member of the jury.[9] Even then, Smith does not argue that their conversation was inappropriate or that it pertained to the trial. In her affidavit, Miller attests that she never "discuss[ed] with [Hydel] any aspect of the trial proceedings," a contention Smith does not refute.[10]

Smith has likewise not provided any evidence demonstrating prejudice to her case as a result of the alleged conversation.[11] Smith's allegations of potential jury taint are thus wholly speculative, and any suggestion of jury misconduct is unsubstantiated. Without any additional evidence that the interaction between Hydel and Miller tainted or improperly influenced the jury or the jury's verdict, the Court declines to upset this Circuit's general rule disfavoring post-trial jury interviews.

The Court similarly declines to authorize a juror interview based on the amorphous allegation that such an interview might glean information regarding "evidentiary issues."[12] Smith has not articulated any legal basis or support that persuades this Court to exercise its discretion and grant her request.

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[9] R. Doc. No. 94-1, at 6.

[10] R .Doc. No. 101-1, at 2.

[11] Nothing prevents Smith's counsel from speaking with the "courier."

[12] R. Doc. No. 94-1, at 2.

For the foregoing reasons,

IT IS ORDERED that Smith's motion is **DENIED.**

New Orleans, Louisiana, June 28, 2018.

_____/s/_____
LANCE M. AFRICK
UNITED STATES DISTRICT JUDGE

APPENDIX D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

CIVIL ACTION
No. 16-16597

SECTION "N" (4)

[Filed May 3, 2018]

SHAMBRIA NECOLE SMITH	)
	)
VERSUS	)
	)
KANSA TECHNOLOGY, LLC	)
	)

JUDGEMENT

Considering the verdict rendered by the Jury on May 2, 2018, accordingly;

IT IS ORDERED, ADJUDGED, AND DECREED that there be judgement in favor of the defendant, Kansa Technology, LLC, and against the plaintiff, Shamberia Necole Smith, dismissing plaintiff's claims with prejudice.

New Orleans, Louisiana this 3rd day of May, 2018.

/s/
KURT D. ENGELHARDT
UNITED STATES DISTRICT JUDGE

APPENDIX E

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 18-30900

[Filed June 18, 2019]

SHAMBRIA NECOLE SMITH, Plaintiff - Appellant

v.

KANSA TECHNOLOGY, L.L.C., Defendant - Appellee

Appeal from the United States District Court for the Eastern District of Louisiana

ON PETITION FOR REHEARING EN BANC

(Opinion 5/1/19, 5 Cir., _____ , _____ F.3d _____)

Before JONES, HIGGINSON, and OLDHAM, Circuit Judges.

PER CURIAM:

(X) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. No member of the

panel nor judge in regular active service of the court having requested that the court be polled on Rehearing En Banc (FED. R. APP. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

( ) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. The court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service and not disqualified not having voted in favor (FED. R. APP. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

_____/s/_Edith H Jones_____
UNITED STATES CIRCUIT JUDGE

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* Judge Kurt D. Engelhardt did not participate in the consideration of the rehearing en banc.

APPENDIX F

U.S. Constitutional Amendment XIV

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2.

Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens

shall bear to the whole number of male citizens twenty-one years of age in such state.

Section 3.

No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4.

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5.

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.