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RULES

To: Justice Samuel A. Alito, Jr., Associate Justice and Justice for the Fifth Circuit

Applicant and non-prevailing party below, Symon Mandawala, asks that enforcement of the underlying judgment and current district court preceedings be stayed pending the disposition of this case in this court, subject to Symon Mandawala believed that the respondents failed timely to file responsive pleading for the amended complaint in district court. See Appendix D, dist.dkt 22 dated 5/20/2020 its pleading response is Appendix D, dist.dkt 39 dated 09/17/2020 (120days instead of 14 days)

The question presented raised this application is relate to Fed.R.Civ.P12(g)(2)&(h)(2),(3) this: Whether a defendant file a rule 12(b)6 motion to dismiss amended complaint (Appx D. dist.dkt 23) automatically extend/toll/stay the time for filing responsive pleading or replaces the answer (Appx D. dist.dkt 39) to the amended complaint? (Appx D. dist.dkt22)

A number of Federal circuits has already hold that motion to dismiss, Motion for summary judgement is not a responsive pleading that are said in Fed.R.Civ.P 8 and 15. 2nd circuit, (motion to dismiss not responsive pleading for the purpose of Fed.R.Cv.P. 8) see Miller v. American export Lines, inc.,313F.2d 218 n.1(2d cir.1963). 10th

circuit (motion to dismiss not responsive pleading for the purpose of Fed.R.Cv. R. 15) see Hanraty v Ostertag, 470 F.2d 1096 (10th Cir. 1973). 11th circuit on Chilivis v. SEC, 673 F.2d 1205, 1209 (11th cir. 1982)

As you may notice or see that other circuits considers motion to dismiss amended complaint not an answer to the amended complaint for the purpose of federal Rules of civil procedure. Letting the district court proceed with court mandatory mediation or waiting for parties discovery and trial as the district judge told parties on the conference when he sent the case for mediation is a denial of fair court preceding to Applicant.

A. Mandawala has satisfied the procedural prerequisites of Supreme Court Rule 23.

Upon realize that the district presiding judge is appearing having problematic fair view (bias) on parties as you may see his reaction to a ghost motion (motion that is not filed yet in court). see petition's appendix *infra* 59a The judge immediately without being requested or consult applicant the need of court appointed attorney, he appointed one and prohibit applicant form contact/filing anything with the court. See Petition's appendix *infra* 52a.

Applicant then requested the Presiding judge himself and 5th circuit to ask the presiding judge to recuse himself from the case and

stay the district court proceedings pending a writ of Mandamus. It was turned to be a notice of appeal upon died a writ by 5th circuit. The 5th circuit dismissed the writ citing that appeal was the best avenue of addressing the merit of the request and the views of dismissing the petition for writ of mandamus are not based on merit which will considered on appeal review.

As noted on Appendix A 18a, the 5th circuit is turning its back pushing that applicant allegations of judge bias including those of petition's Appendix A 52a and 59a as frivolouse despite that its judge's orders not applicant's letter of hearsay. The 5th Circuit then denied a stay as unnecessary. See Appendix D at Dist.Dkt 73

B. The on going district court preceding are fruit of bias and applicant is being prejudice and letting the district proceed will create ockward, continuation of prejudice and unfair outcome to applicant.

Applicant filed suit in Federal district court because he feared the Texas state court of appeals will deny his appeal of state action for lack of jurisdiction. The fear come because the state district court expertly granted out - of - time motion to dismiss amended complaint then fraudulently enter a document titled "case dismissed by Plaintiff" despite it was the defense's out of time

motion to dismiss was granted. The so called "case dismissed by plaintiff" document was raising an impression of plaintiff voluntarily dismiss the case in order to manufacture appellate jurisdiction*.

That was when the federal district court original complaint was filed on December 5, 2019 alleged the issue above including other federal law questions and state law claims.

It was unclear what is Tenet's business with the Baptist System School of health Professions at the time of original complaint.

Respondents then filed Rule 12(b)6 motion to dismiss (Appx D, dist.dkt6) the original complaint (Appx D, dist.dkt1) Applicant by then did not found that the school is part of Tenet health care corporation (AKA, Tenet or Just Tenet corporation). Applicant then file a motion for leave to amend the complaint with a proposed amendment attached. The district court granted the leave to amend the complaint(Appx D, dist.dkt19) and ordered applicant not to reference any material or pleadings in original complaint and applicant complied with that order at the time of amending the complaint. Applicant serve the amended complaint (Appx D,

dist.dkt22) to the respondent counsel with her name on envelope "attention Mrs. Elgie."

Although Mrs. Elgie after failed to claim insufficiency of service in respondents motion to dismiss amended complaint (Appx D, dist.dkt23), she later claimed and request to dismiss her through case schedule and management (Appx D, dist.dkt27) which the district court pretext claim suo-ponty (Appx D, dist.dkt34).

Though it is a federal standard for all district court preceding that when the district court grant a leave for a plaintiff to amend the complaint, defendant has 14 days (or any length upon court order) to file responsive pleading (an answer) if the motion to dismiss has been denied like it is Appx D, dist.dkt19. So that the defenses' response can avoid the consequence Fed.R.Civ.P12(g)(2)&(h)(2),(3) which is a waiver of defense.

Unfortunately, this case, the district court biasly waived Fed.R.Civ.P12(g)(2)&(h)(2),(3) where rule 12(b) were used twice (see Appx D, dist.dkt 6 and 14-17)before the responsive pleading (Appx D, dist.dkt39 &40) was filed. After the district court entertained the second Rule 12(b)6 motion to dismiss (Appx D, dist.dkt 34)the amended complaint(Appx D, dist.dkt22).

C. A stay is warranted here.

First, As noted above, applicant has satisfy the prerequisite of staying the proceedings from the lower courts (Appx D, dist.dkt73).

Second reason, warrant a stay is based on the question of this application in which it has also been include in the petition itself: **Whether a defendant file a motion to dismiss amended complaint automatically extend/toll/stay the time for filing a responsive pleading or replaces the answer to the amended complaint?**

Because the outcome of deposing this question undisputedly respondent must have filed a responsive pleading in dist.dkt 23 or else motion to dismiss in Appx D, dist.dkt 23 must have a court leave to file out -of-time (untimely) responsive pleading. Since there is no district court docket showing respondents seeking a leave to file an Answer/responsive pleading (Appx D, dist.dkt 39 &40). the outcome of deposition is immediately termination of this case and only remaining part of preceding is applicant providing proof of his claims court assessing the damage (damage discovery).

Muchmore, such outcome is not favoring of court mandatory mediation as it brings more and more appearance of denying applicant a fair court preceedings and justice.

Third, possibility of **all chambers** agree to take up this case is 99.9% because the 5th Circuit court reasoning/objections (Mistake of proper party identity) to dismiss Tenet was rejected already by anonymously court decision in Krupski v. Costa Crociere 130 S. Ct. (2010) in which you, yourself was part of rejecting the dismissal of parties mistakenly unidentified, applicant believe your view on that has not changed since 2010.

Respondents is not going to suffer any correlate injury by this court's staying the district proceedings, because respondents has been requesting a stays and all the time were granted by district court only applicant was denied his one time request stay and was denied as unnecessary. See Appx D, dist.dkt 73

CONCLUSION

For the reasons above, Mr. Symon Mandawala asks that the judgment and orders of the district court for mandatory mediation or further proceedings to stayed conditioned to automatically resume when the U.S. Supreme Court depoistions are completed or petition has been denied.

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Pro-se Applicant

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United States Court of Appeals For the Fifth Circuit

No. 20-50981

Symon Mandawala

v

Northeast Baptist Hospital, Counts 1, 2, and 11; Blaine Holbrook, Counts 4, 5, 6, and 11; North Central Baptist Hospital; St. Luke's Hospital; Baptist Medical Center; Resolute Hospital; Mission Trails Baptist Hospital; Tenet; Nicki Elgie

Before Jones, Smith, and Haynes, Circuit Judges.*

Jerry E. Smith, Circuit Judge:

Appeal from the United States District Court for the Western District of Texas No. 5:19-CV-1415

Symon Mandawala flunked out of a medical sonography program, so he sued. Seven complaints, three venues, and two appeals later, the trial court dismissed nearly all the pro se plaintiff's dozen-or-so claims and all butone defendant, the school.

* Judge Haynes concurs in the judgment only.

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Mandawala asks us to reverse and to order the assignment of a different district judge. We disagree on all counts and affirm.

I.

A.

A few years ago, Symon Mandawala attended a medical sonography program at Baptist School of Health Professions. After failing to graduate, Mandawala sued the school in small-claims court to recoup his cost of atten-dance and damages for emotional distress. In his small-claims petition, Mandawala alleged that he flunked the program because the school did not staff its clinics adequately, which prevented Mandawala from completing his clinical duties. The petition contained no other allegations. The court dis-missed, deeming the claimed damages to exceed its jurisdiction.

Mandawala then brought the same claims in state district court. Unable to comprehend Mandawala's complaint, the school issued a general denial and moved for a more definite complaint. The court so ordered, and Mandawala filed an amended complaint. The new complaint, though no clearer than the first, added several new claims, including claims under vari-ous education and privacy laws. Mandawala also alleged, for the first time, that the school had failed him out of racial animus.

On the school's motion and after a hearing, the state district judge dismissed Mandawala's amended petition. During the hearing, Mandawala complained that he lacked adequate notice and time to prepare for the pro-ceeding. He also stated falsely that the school had admitted his claim's validity and thus was estopped from opposing him. Noting those objections, the state judge announced her ruling and told Mandawala that he could appeal.Rather than appeal, Mandawala sued again—this time, in federal dis-trict court—raising at least eleven claims. Among them were racial and sex

discrimination, fraudulent misrepresentation, breach of contract, conver-sion, defamation, intentional infliction of emotional distress, and violations of the First and Twenty-Sixth Amendments.[1]

[1] The Twenty-Sixth Amendment states that adult citizens' right to vote "shall not be denied or abridged . . . on account of age." U.S. Const. amend. XVI, §

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The complaint also added the school's attorney, Blaine Holbrook, as a defendant. Just before the state-court hearing, Mandawala claimed, Hol-brook left the courtroom with a stack of documents and returned empty-handed. A few minutes later, the judge entered the courtroom with a docu-ment that, like Holbrook's, bore a colorful post-it note. Mandawala con-cluded that Holbrook had given that document to the judge to rig the hearing against him. He sued Holbrook, claiming that Holbrook conspired with the state judge to deny him his civil rights and his right to a fair trial. The defen-dants promptly replied with a motion to dismiss.

Nearly two months later, and without seeking leave of court, Manda-wala amended his complaint to add claims against Holbrook's colleague, Nicki Elgie. After implicating Elgie in Holbrook's alleged conspiracy, Man-dawala's late filing accused Elgie of filing motions late with intent to violate his constitutional rights and cause "psychological injury." When the defen-dants replied that the pleading was tardy, Mandawala filed it again. The district court struck the amended complaint but let the plaintiff file a fourth to correct deficiencies in his earlier pleadings. That new

complaint added Tenet, the school's corporate parent,[2] as a defendant. It otherwise restated or clarified old allegations.

ltimately, the district court dismissed with prejudice nearly all the claims. Against Baptist School, the court dismissed the claims of racial dis-

crimination, First Amendment retaliation, procedural due process, conver-sion, defamation, and intentional infliction of emotional distress ("IIED"). The court also rejected all claims arising from the state-court hearing and dismissed the attorney defendants from the suit. When the dust settled, only

Mandawala's sex-discrimination and breach-of-contract claims survived. Because Mandawala had never served Tenet, the school's supposed corpor-ate parent, the court dismissed Tenet, leaving

Baptist School as the lone defendant. The court then ordered the parties to mediate the surviving claims.

[2]So the plaintiff says. The school denies that Tenet is its parent.

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Unhappy with those decisions, Mandawala sought a writ of manda-mus, demanding that we disqualify both the district judge and the magistrate judge for bias. Mandawala never explained why we should replace the magis-trate judge. As for the district judge, Mandawala claimed that he dismissed the claims relating to the state-court hearing to favor the state district judge, whom the federal judge knew from his time on the state appellate bench. Also motivating dismissal, according to Mandawala, was a friendship be-tween Holbrook (the school's lawyer) and partners of a firm that employed the district judge before he joined the federal bench.

Finally, Mandawala suggested that the district court had applied Bap-tist law, rather than federal law, and pointed to the judge's membership in the Baptist church as another source of bias. Describing Mandawala's claims as spurious, unfounded, and speculative, we denied the writ. Only then did Mandawala file a recusal motion with the district court. That, too, was denied.

Since we denied the writ, the case has ground to a halt, despite the district judge's best efforts. The judge forged ahead with mediation, setting the first hearing before a new magistrate judge. But months after the date was set, Mandawala told the court that he would refuse to participate, asserting, without basis, that the mediation's "hidden purpose" is "to hurt [his] right to appeal." With progress stalled, the district court stayed the case until further notice.

B.

Mandawala presents several issues on appeal. His theories fall into four buckets. First, Mandawala contests the dismissal of most of his claims against Baptist School. He thinks that we should restore his claims of racial discrimination, First Amendment retaliation, loss of procedural due process, defamation, and intentional infliction of emotional distress.[3] Second, Mandawala urges us to restore his claims against Holbrook and Elgie for their alleged misconduct during the state-court proceeding. Third, Mandawala disagrees with Tenet's dismissal from the case. And

[3] The district court also dismissed Mandawala's conversion claim. But Mandawala does not discuss that claim on appeal, so we do not address it here.

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fourth, Mandawala renews his complaints about the district judge. He again accuses the judge of bias and demands his recusal. We reject all those arguments and affirm.

II.

On defendants' motion, the district court dismissed Mandawala's claims against Baptist School of racial discrimination, First Amendment retaliation, loss of procedural due process, defamation, and IIED. We agree and affirm.

We review de novo the district court's ruling. Cicalese v. Univ. of Tex. Med. Branch, 924 F.3d 762, 765 (5th Cir. 2019). To withstand a motion to dismiss under Rule 12(b)(6), a complaint must present enough facts to state a plausible claim to relief. See Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). A plaintiff need not provide exhaustive detail to avoid dismissal, but the pleaded facts must allow a reasonable inference that the plaintiff should prevail. Facts that only conceivably give rise to relief don't suffice. See id. at 555. Thus, though we generally take as true what a complaint alleges, we do not credit a complaint's legal conclusions or "[t]hreadbare recitals of the elements of a cause of action." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

A.

Mandawala says that the district court should not have dismissed his claim of racial discrimination, which he brings under Title VI of the Civil Rights Act of 1964. We disagree.

Federally funded programs may not intentionally discriminate based on race. 42 U.S.C. § 2000d. An official policy of discrimination, such as a university that refuses admission to a racial group's members, breaches that principle. But sometimes, the claimed discrimination does not arise from an official policy. In those cases, the plaintiff must allege that an official knew of the intentional discrimination but refused to stop it despite having authority to do so. See Gebser v. Lago Vista Ind. Sch. Dist., 524 U.S. 274, 290 (1998).

Mandawala is black. He claims that one of his instructors, Debra Forminos, gave him poor grades because of his race. Mandawala proffers three facts to back that claim. First, a former student of

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the program told him that she felt that Forminos dislikes nonwhite people. Second, Mandawala says that he felt as though he suffered discrimination. Third, after Mandawala sought a transfer to another hospital, Forminos told Melissa Moorman, the clinical coordinator, that she would accept another student to take his place. And that student happened to be white.

This evidence is bare and conclusory and does not come close to allowing a reasonable inference of intentional discrimination. At bottom, Mandawala alleges just that he and a former student felt that Forminos treated nonwhites differently. Subjective belief alone cannot prove intentional discrimination. See, e.g., Mohamed v. Irving Indep. Sch. Dist., 252 F. Supp. 3d 602, 627-28 (N.D. Tex. 2017).

Mandawala also has not shown that any school official knew of inten-tional discrimination against him and refused to act. Mandawala says that he told a senior faculty member that a former student believed that Forminos had treated her differently because of her race. But even if that faculty mem-ber had authority to remedy discriminatory conduct, Mandawala relayed only a student's feeling that Forminos disliked nonwhites. That is not evidence of discriminatory conduct. And Mandawala cannot obtain relief unless he shows that Baptist School had actual notice of a violation. See Gebser, 524 U.S. at 287-91. Neither Mandawala nor anyone else reported racially discriminatory conduct to a school official with power to act. That dooms his claim.

Styling Mandawala's claim as a claim of disparate impact does not change our conclusion. Private plaintiffs cannot bring disparate-impact claims under Title VI. See Alexander v. Sandoval, 532 U.S. 275, 291-92 (2001). Mandawala cites Griggs v. Duke Power Co., 401 U.S. 424 (1971), for support. But Griggs applied a different part of the Civil Rights Act that does not apply here. Id. at 425. And even if a disparate-impact test did apply, Mandawala would not satisfy it.

To show disparate impact, a plaintiff must identify a "facially neutral personnel policy or practice" that disparately impacted members of a pro-tected class. McClain v. Lufkin Indus., Inc., 519 F.3d 264, 275 (5th Cir. 2008). Mandawala never tells us what neutral policy he contests or how it caused his harm. Even if we could

graft Griggs's disparate-impact test onto Manda-wala's claims, he still would lose.

B.

Mandawala claims that Baptist School unlawfully retaliated against him for exercising his First Amendment rights. The district court dismissed that claim. We affirm.

To state a claim for First Amendment retaliation, Mandawala must show that Baptist School retaliated against him for constitutionally protected speech. Nieves v. Bartlett, 139 S. Ct. 1715, 1722 (2019). That retaliation also must have caused Mandawala's claimed injury. Id. (citing Hartman v. Moore, 547 U.S. 250, 259 (2006)). That is, Mandawala must plead that the school would not have failed him from the medical sonography program absent his protected speech. Id.; see also Mt. Healthy City Sch. Dist. Bd. of Ed. v. Doyle, 429 U.S. 274, 285-86 (1977).

Mandawala's retaliation claim boils down to this: A teacher, Chelsea Jackson, instructed him to perform a carotid-artery scan. Mandawala replied that his course of study did not require the scan. So Jackson gave Mandawala a low grade, sought to remove him from the clinical site, and recommended that Baptist School fail him from the program. Mandawala concludes that Baptist School flunked him to punish him for stating his view that the scan was elective. Even if we assumed that the First Amendment could protect Mandawala's statement, his claim would fail.

First, Mandawala has not shown that "the adverse action . . . would not have been taken absent the retaliatory motive." Nieves, 139 S. Ct. at 1722 (emphasis added). Mandawala claims that the school dismissed him for stat-ing that the scan was elective. But he also has said that the images he took were poor and that he did not study how to take better ones. And his com-plaint later contends that the school failed Mandawala because a patient said that he had injured her. From those undisputed facts, we cannot infer that Mandawala would have passed the course if he had held his tongue. Of course, Mandawala adequately pleads that his statement partially motivated his dismissal. But that ill motive will not suffice because "non-retaliatory grounds" justified the

penalties of which he complains. See id. (quoting Hartman v. Moore, 547 U.S. 250, 256 (2006)).

Second, Mandawala must show that the school had retaliatory intent. See id. (requiring a connection between "a defendant's animus" and the plaintiff's injury (emphasis added)). He has not shown that. He has said only that Jackson gave him a low grade and urged the school to fail him. Nowhere does he say that the school failed him because he said that the carotid scans were elective. The school did support its decision to fail Mandawala with emails from Forminos and Jackson. But Mandawala never alleges that those emails offered his statement as the reason he failed. He otherwise offers no evidence that Baptist School flunked him to punish him for stating that he did not have to perform carotid scans. He thus has not met his burden to plead the school's retaliatory intent.

Finally, much as Mandawala tries to frame his statement to Jackson as an "expression of feeling" that enjoys First Amendment protection, his real complaint seems to be that he lost "the right to choose the topic" he wanted to study. Mandawala faults the district court for not seeing a "constitutional" issue in Mandawala's failure to "follow Mrs. Jackson's direction." He protests that Baptist School violated his "constitutional right to choose" his course of study. But the First Amendment confers no such right. We may not treat Mandawala's failure to complete his studies as expressive conduct meriting constitutional protection.[4]

Because Mandawala failed to state a claim for First Amendment retaliation, dismissal with prejudice was proper.

C.

Mandawala says that Baptist School violated the Fourteenth Amendment by depriving him of procedural due process. The district court dismissed that claim because Mandawala's complaint showed that he received notice and an opportunity to be heard when the school told him that he had failed the course.

[4] See Voting for Am., Inc. v. Steen, 732 F.3d 382, 389 (5th Cir. 2013) ("[NOon-expressive conduct does not acquire First Amendment protection whenever it is combined with another activity that involves protected speech.").

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We agree with the district court that the school supplied adequate process. Dismissals for academic cause entitle a student only to an "informal give-and-take" with an administrator. Bd. of Curators of Univ. of Mo. v. Horowitz, 435 U.S. 78, 86 (1978) (quoting Goss v. Lopez, 419 U.S. 565, 584 (1975)). That is what Mandawala got. As the district court stated, school administrators "met with Mandawala, informed him he failed the course, explained to him why he failed the course, and told him that he would have to retake the course in order for it to count toward his graduation requirements." Such process far exceeds what the Constitution requires.[5]

There is another ground for dismissal: The Fourteenth Amendment applies only to state actors. See Brentwood Acad. v. Tenn. Secondary Sch. Ath. Ass'n, 531 U.S. 288, 295-98 (2001). Baptist School is a private educational institution. Though it receives public funds, that alone cannot transform it into a state actor. See, e.g., Rendell-Baker v. Kohn, 457 U.S. 830, 839-43 (1982).[6] Mandawala presents no other evidence that would support imputing the school's conduct to the government. Cf. Brentwood Acad., 531 U.S. at
295-96. So the Fourteenth Amendment does not apply, and no process was due.

D.

The district court dismissed Mandawala's defamation claim. We concur.

In Texas, a defendant is liable for defamation if he negligently publishes a false statement that defames the plaintiff and

[5] See, e.g., Davis v. Mann, 882 F.2d 967, 975 (5th Cir. 1989); see also Ekmark v. Matthews, 524 F. Appx 62, 64 (5th Cir. 2013) (per curiam) (holding that mere notice preceding a dental student's academic dismissal satisfied the Fourteenth Amendment).

[6] See also Aldridge v. Tougaloo Coll., 847 F. Supp. 480, 488 (S.D. Miss. 1994) (holding that federal financial assistance "is entirely not determinative in considering whether there is state action").

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causes damage. D Magazine Partners, L.P. v. Rosenthal, 529 S.W.3d 429, 434 (Tex. 2017). To plead defamation in federal court, a plaintiff generally must specify when and where the statement was published. Otherwise, the claim may be too vague to give adequate notice to the defendant of the claim he must contest.[7]

According to Mandawala, Baptist School's employees defamed him by criticizing him internally. Mandawala highlights three communications: An email from Forminos to Moorman, the clinical coordinator, described Mandawala as a student whom "apparently no one wants." Another message from Forminos relayed that a patient had accused Mandawala of hurting and disrespecting her. Finally, Moorman told faculty that Mandawala was moved from one clinical site "due to his behavior and lack of professionalism." Mandawala says all those statements were false. That may be. But as the district court observed, Mandawala never says that the school's employees shared their criticisms with third parties. Publication is required for the tort of defamation to lie. So his claim must fail. Mandawala ignores that problem. Instead, he posits that Forminos committed defamation per se when she relayed the patient complaint. Defamation per se, he says, requires almost no proof at all—not of damages, time or place, or even publication. That is inaccurate.[8] But we will not belabor the demerits of that theory. Because Mandawala never raised that contention in the district court, he has forfeited it on appeal. See Rollins v. Home Depot USA, 8 F.4th 393, 397 (5th Cir. 2021) (citing United States v. Zuniga, 860 F.3d 276, 284 n.9 (5th Cir. 2017)).

E.

Mandawala claims IIED. The district court correctly dismissed that claim. A plaintiff may recover for IIED only when the

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[7] Cf. Jackson v. Dallas Indep. Sch. Dist., No. 98-CV-1079, 1998 U.S. Dist. LEXIS 10328, at *13 (N.D Tex. Jul. 2, 1998) ("Defamation claims must specifically state the time and place of the publication."), aff'd without opinion, 232 F.3d 210 (5th Cir. 2000); Cantu v. Guerra, No. 20-CV-0746, 2021 U.S. Dist. LEXIS 119681, at *40-42 (W.D. Tex. June 28, 2021).

[8] Look no further than Bentley v. Bunton, 94 S.W.3d 561 (Tex. 2002), which

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defendant intentionally or recklessly engaged in "extreme and outrageous" conduct that causes severe emotional distress.[9] The tort exists to capture acts that are obviously tortious but are so unusual that they evade condemnation on other tort theories. See Standard Fruit & Vegetable Co. v. Johnson, 985 S.W.2d 62, 68 (Tex. 1998). Mandawala alleges no such conduct. His IIED claim duplicates his others. His interminable briefing suggests that if he had any viable claim, other tort theories would supply a remedy.

III.

Mandawala accused Baptist School's lawyers, Holbrook and Elgie, of conspiring with the state judge to deprive him of his constitutional rights. The district court dismissed those claims and both defendants. On appeal, Mandawala asks us to revive his claims. We decline.

Let's reprise the plaintiff's wafer-thin allegations. Start with the claims against Holbrook. Before the state court hearing, Holbrook left the courtroom with a stack of documents

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Cont. Mandawala cites for support. Though finding defamation per se, the Bentley majority spent dozens of pages studying the tort's other elements. Id. at 577-607.

Defamation per se differs from ordinary defamation only as to damages. The law regards statements that are defamatory per se, such as accusing a judge of corruption or calling someone a thief, as so egregious that the "jury may presume general damages." John J. Dvorske & Lucas Martin, 50 Tex. Jur. 3d Libel & Slander § 3. But a plaintiff still must prove the other elements of the tort. Even if Forminos's statement was defamatory per se, Mandawala should lose, because he has not pleaded publication.

Plus, the other statements that Mandawala highlights likely do not qualify as defamation per se. See 50 Tex. Jur. 3d Libel & Slander § 23. As to those statements, Mandawala must prove his damages. Yet he has offered nothing more than conclusory allegations of reputational harm. Those will not do.

[9] MVS Int'l Corp. v. Int'l Advert. Sols., LLC, 545 S.W.3d 180, 203 (Tex. App.—El Paso 2017, no pet.) (citing Tiller v. McLure, 121 S.W.3d 709, 713 (Tex. 2003) (per curiam)).

bearing a colorful post-it note. Minutes later, the judge entered the courtroom with a document that also bore a col-orful post-it note. Mandawala asks us to conclude from this that Holbrook conspired with the state judge to deny him his civil rights and his right to a fair trial. Mandawala accuses Elgie, the school's other lawyer, of the same conspiracy, even though Mandawala's second complaint admits that Elgie wasn't even present. Without a shred of evidence, he also claims that Elgie and Holbrook tardily filed and served documents with intent to prejudice his rights. Finally, Mandawala says that the attorneys violated various state-court filing rules—again with intent to prejudice his rights.

Mandawala seeks relief under 42 U.S.C. §§ 1983, 1985, and 1986. But none entitles him to relief. Section 1983 applies only to actions taken "under color of" state law, custom, or usage, which actions deprive the plaintiff of a federal right. 42 U.S.C. § 1983; see also West v. Atkins, 487 U.S. 42, 48 (1988). But Elgie and Holbrook are private attorneys. And private attorneys are not state actors, as we have repeatedly and emphatically held. See, e.g., Gipson v. Rosenberg, 797 F.2d 224, 225 (5th Cir. 1986) (per curiam). Nor does Manda-wala plausibly allege that the attorneys deprived him of his due process rights. Mandawala "was present at the state court hearing and . . . was allowed to argue" the pending motions. The state judge ruled only after reviewing the pleadings and hearing the arguments. After dismissing Mandawala's com-plaint, the judge reminded him that he could appeal. In short, no facts show or even suggest that the state court proceedings were unfair.

Mandawala's claims under Sections 1985 and 1986 are even more bizarre. For instance, both sections require that "some racial, or perhaps otherwise class-based, invidiously discriminatory animus" undergirds the conspirators' action.[10] Mandawala never alleges that Holbrook or Elgie har-bored any animus at all, racial or otherwise. Instead, he suggests that we should impute racial animus to the attorneys just because Mandawala had accused Baptist School of racial discrimination. That argument, if one could call it that, is jaw-dropping. It has no support in the caselaw.

We will not prolong our review here. The district court carefully examined Mandawala's civil rights claims and

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correctly decided that they merited dismissal with prejudice. Because no claim against the school's attorneys survived, the district court properly dismissed those defendants from the suit.

IV.

All the claims that we have addressed were dismissed with prejudice. Such dismissals have preclusive effect, which means that Mandawala cannot bring them again.[11] Desiring a fifth bite at the apple, Mandawala protests that dismissal with prejudice is "extreme and rare" and requires a showing of "contumacious conduct or apparent deliberate delays."

Mandawala gets the law backwards. In fact, we presume that a dismissal is with prejudice "unless the order explicitly states otherwise." Fernandez-Montes v6 Allied Pilots Ass'n, 987 F.2d 278, 284 n.8 (5th Cir. 1993). Courts should allow a plaintiff to amend his complaint "when justice so requires." Fed. R. Civ. P. 15(a)(2). But once the plaintiff has had a "fair

opportunity to make his case," additional pleadings are futile and wasteful. Schiller v. Physicians Res. Grp. Inc., 342 F.3d 563, 566 (5th Cir. 2003) (quoting Jacquez v. Procunier, 801 F.2d 789, 792-93 (5th Cir. 1986)).

Mandawala has filed four complaints in federal court. He filed the last only after the district court had explained why his previous ones fell short. After so many chances, the district court acted reasonably in refusing another. The court certainly did not abuse its discretion. Cf. id. Dismissal with prejudice was proper.

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[10] Griffin v. Breckenridge, 403 U.S. 88, 102 (1971) (for § 1985's requirements)8 see also Newberry v. E. Tex. State Univ., 161 F.3d 276, 281 n.3 (5th Cir. 1998) (noting that § 1986 claims cannot survive absent proof of all elements of a § 1985 claim).

[11] See Guajardo v. JP Morgan Chase Bank, N.A., 605 F. Appp'x 240, 244 (5th Cir. 2015) (per curiam) (citing Williams v6 allas Cnty6 Comm'rs, 689 F.2d 1212, 1215 (5th Cir. 1982)).

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V.

Mandawala's final complaint named Tenet, which he says is Baptist School's corporate parent, as a defendant, but Mandawala never served Tenet. When the district court asked that Mandawala show cause why Tenet should not be dismissed, Mandawala submitted no evidence of service. Instead, he claimed that service on Baptist School sufficed as service on Tenet and that Tenet, despite never entering an appearance, had waived any objection to personal jurisdiction. That did not satisfy the district judge, who then dismissed Tenet from the suit. Mandawala asks us to drag Tenet back in. We decline. Tenet never was properly served, so dismissal was required.

Serving Baptist School did not serve Tenet. The federal rules authorize two relevant methods of service on a corporation like Tenet: First, the plaintiff may serve the corporation per the law of the state where he files the suit. Fed. R. Civ. P. 4(h)(1)(A). In Texas, one may serve a firm by serving

its president, vice president, or registered agent. Tex. Bus. Orgs. Code §§ 5.201(b) & 5.255. Second, the plaintiff may deliver the summons and complaint "to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process." Fed. R. Civ.P. 4(h)(1)(B). Nothing in the record suggests that Baptist School qualifies under either method of service. Serving the school could not serve Tenet.

Rather than read the service rules, Mandawala skips ahead to Rule 12 and avers that Tenet waived any objection to personal jurisdiction. That is inaccurate. Tenet never appeared in this case. Only Baptist School objected to Tenet's non-service. Nonetheless, Mandawala falsely states that Tenet did appear; he questions the district court's impartiality for concluding otherwise. We affirm Tenet's dismissal from the case. Because Tenet was not served and never appeared, that dismissal is without prejudice.[12]

VI.

Mandawala renews his baseless attacks on the district judge, saying that we must reassign the case because the judge is biased. We warned Mandawala that his claims of bias were "unsupported," "speculative," "spurious," and "plainly

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insufficient." But Mandawala serves them up again any-way, distorting and misstating the record along the way. Gruel is gruel, no matter the bowl. So we will not disqualify the district judge.

At bottom, Mandawala alleges two sources of bias. First, he says that the adverse rulings of the district judge show his bias. Second, Mandawala conjures that the judge's religion and distant ties to interested parties require his disqualification. Each contention is frivolous. And more troublingly, Mandawala misstates, omits, and distorts the record to pretend support forhis claims.

We turn first to Mandawala's assertion that the district judge's ad-verse rulings evince bias. As we observed in Mandawala's last appeal, ad-verse rulings, without more, do not warrant disqualification for bias. It is obvious why: If we credited Mandawala's theory, every judge would have to recuse, because any ruling in a dispute between parties would supply prima facie evidence of bias against the loser. Also, as in his mandamus petition, Mandawala advances the judge's adverse rulings as the chief ground for dis-qualification. But even that evidence is thin. Mandawala devotes eight pages of his brief to the judge's supposed bias. At least half those pages rehash the judge's decision to appoint counsel for him in mediation. But the judge vacated that order at Mandawala's request. Therefore, the lynchpin of Man-dawala's claim of bias is a moot point that the trial court resolved in his favor. Mandawala never tells us that he prevailed, even though the district judge issued the vacatur a month before Mandawala briefed this appeal.

Mandawala's claims about the district judge's religion have the same defects. Mandawala says that the judge holds a leadership position in a Bap-tist church. Because Baptist School is affiliated with the Baptist faith, Man-dawala concludes that we must disqualify the district judge and reassign the case.

That contention fails both legally and factually. Mandawala cites not one precedent that holds or even suggests that a judge must recuse himself or herself whenever a party appearing before that judge shares his or her religious beliefs. In fact, every source

[12] By this we do not mean to suggest that there would be a viable cause of action against Tenet.

that Mandawala does cite is either irrelevant or contradicts his position.[13]

As for the facts, Mandawala repeatedly asserts that the district judge holds a leadership position in his local church and that the church "is a party in th[eO litigation." Mandawala offers no evidence for either point. The only evidence contradicts his account. Mandawala never sued the judge's church,

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[13] In Trujillo v. ABA, 706 F. Appx 868 (7th Cir. 2017) (cited in Mandawala's brief), Trujillo sued the American Bar Association. When he lost, he claimed that the district judge was biased because he was an ABA member. Id. at 871. Declaring that argument "meritless," the court held, in three sentences, that recusal was not required. Id. The Judicial Conference's advisory Opinion No. 52 (cited at page 69 of Mandawala's brief) reaches the same conclusion as Trujillo and emphasizes that "unwarranted recusal may bring public disfavor to the bench and to the judge." Comm. on Codes of Conduct, Judicial Conference of the United States, Advisory Op. No. 52 (June 2009).

In Offutt v. United States, 348 U.S. 11 (1954) (cited in Mandawala's brief), the Supreme Court reviewed a trial judge's decision to hold an attorney in contempt. Throughout the proceedings, the judge, in the jury's presence, screamed at the lawyer, assailed his fitness to practice law, and otherwise revealed extraordinary hostility "with increasing personal overtones." Id. at 12. For example, during one heated exchange, the judge told the lawyer that "[iOf you say another word I will have the Marshal stick a gag in your mouth." Id. at 16 n.2. From those exchanges, the Supreme Court concluded that the judge's sentence of the attorney might not have been fair. Though not vacating the con-tempt charge, the Court ordered a different judge to decide an appropriate sentence. See id. at 16-18.

In Liteky v. United States, 510 U.S. 540 (1994) (cited in Mandawala's brief), the plaintiffs, like Mandawala, presented several of the district judge's rulings as grounds for his disqualification. Also like Mandawala, the plaintiffs presented no evidence that the judge had "reveal[edO an opinion," id. at 555, derived from "knowledge acquired outside [theO proceedings," id. at 556. The members of the Court quibbled over the proper basis for dismissing the appeal. But the Court unanimously agreed that "petitioners did not assert sufficient grounds to disqualify the District Judge." Id. at 557 (Kennedy, J., concur-ring in the judgment).

Finally, in United States v. Jordan, 49 F.3d 152, 157-58 (5th Cir. 1995) (cited in Mandawala's brief), the district judge did not recuse herself from a criminal case despite her close, decades-long friendship with a lawyer whom the defendant had slandered and harassed with false criminal allegations. Over a dissent, a panel of this court held that the judge should have recused. Her "long, close, and multi-faceted friendship" with a person with whom the defendant had "an extremely hostile relationship," id. at 157, suggested that a "reasonable person would question the impartiality of the district judge," id. at

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nor does that church have any interest in the case.[14] Weeks before Mandawala filed his brief in this court, the district judge stated that he has "never held a leadership position within the church."

All this supplied clear notice that Mandawala's assertions were base-less. Yet Mandawala urges them again on appeal and omits all contrary facts. There is more: After citing as support the order in which the judge denied having any leadership role in the church, Mandawala brazenly states that the district judge "agreed that he is a Baptist church leader." He did not.

Mandawala alleges two other sources of bias. The first is a friendship between Holbrook and partners at a firm that employed the district judge for three years or so before he joined the federal bench. That connection is meaningless.[15] Mandawala identifies no authority requiring a judge to recuse whenever a friend of a former colleague appears before him.[16] Mandawala again omits contrary evidence—this time, the district judge's statement

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Cont-158. The dissent disagreed, reasoning that neither circuit nor Supreme Court precedent required recusal. Id. at 160 (E. Garza, J., dissenting).

[14] Mandawala does not list the district judge's church as an interested party in his brief on appeal. That underscores his position's absurdity. Mandawala tells us to disqualify the judge because of his connection with the Baptist church. But he does not bother to list the church in his brief so that we can decide whether we have connections with the church that would require our recusal.

[15] See, e.g., Henderson v6 ep't of Pub6 Safety & Corr6, 901 F.2d 1288, 1295-96 (5th Cir. 1990). See also Cheney v. U.S. Dist. Court for Dist. of Columbia, 541 U.S. 913, 928-29 (2004) (Scalia, J., sitting as a single Justice) (not recusing despite a cordial friendship and a hunting trip with the defendant, because a reasonable person could not doubt the Justice's impartiality).

[16] That rule, we suspect, would require recusal in a vast number of cases. After all, only three-and-a-half connections separate the average U.S. Facebook user (a reasonable proxy for the average U.S. person) from all other people in the country. See Sergey Edunov et al., Three and a Half Degrees of Separation, Facebook Research (Feb. 4, 2016), https://research.fb.com/blog/2016/02/three-and-a-half-degrees-of-separation. whom Mandawala complains were once colleagues on the state bench. That proves nothing, as we said when we denied Mandawala's mandamus petition. Mandawala points us to no case or other authority that has transformed his frivolous position into a legitimate one between then and now. No recusal is necessary or appropriate.

that he has "absolutely no recollection of meeting Mr. Holbrook." The second supposed source of bias is that the district judge and the state judge about whom Mandawalacomplaint were once collegue on the bench. That proves nothing, as we said we denied Mandawala's mandamus petition. Mandawala points us to no case or other authority that has transformed his frivolous position into a ligitimate one between then and now.

No recusal is necessary or appropriet.

* * * * *

In summary:

The district court dismissed with prejudice Mandawala's claims against Baptist School of racial discrimination (under

Title VI), First Amend·ment retaliation, loss of procedural due process, defamation, and IIED. We AFFIRM.

The district court dismissed with prejudice Mandawala's claims against Holbrook and Elgie under §§ 1983, 1985, and 1986 and dismissed defendants Holbrook and Elgie. We AFFIRM.

The district court dismissed defendant Tenet for lack of personal ser·vice. We AFFIRM that dismissal, without prejudice.

We AFFIRM the denial of Mandawala's recusal motion.

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

No. SA-19-CV-01415-JKP-ESC

SYMON MANDAWALA,
Plaintiff,

V.

BAPTIST SCHOOL OF HEALTH PROFESSIONS, TENET, BLAINE HOLBROOK, NICKI ELGIE,
Defendants.

ORDER

This matter is before the Court on Defendants Baptist School of Health Professions, Northeast Baptist Hospital, and Blaine Holbrook's (collectively, "Defendants") Motion to Dismiss (ECF No. 23) to which Plaintiff Symon Mandawala ("Mandawala") responded (ECF No. 25). Upon consideration of the motion, the response, the record, and the relevant law, the Court concludes the Motion to Dismiss shall be GRANTED IN PART and DENIED IN PART.

FACTUAL ALLEGATIONS

Accepted as true and taken in the light most favorable to him, Mandawala's amended complaint alleges the following. See ECF No. 22. Symon Mandawala is an African American male. Mandawala was a student in the Baptist School Of Health Professions' ("Baptist") Diagnostic Medical Sonography program from September 4, 2016 through August 26, 2018, during which he completed fifty-six of the sixty-four credits required to graduate. In September 2017, after Mandawala had successfully completed rotations at three other clinical sites (Baptist sends students to six hospitals for practicum

experience where, under supervision, they complete sonograms on patients) the clinical coordinator, Melissa Moorman ("Ms. Moorman"), assigned him to Mission Trail Baptist Hospital.

During Mandawala's time at Mission Trail, the technician at the site, Sandra, did not allow Mandawala to conduct any scans (sonograms). The only time Mandawala was allowed to conduct scans was when Sandra was not working and a technician named Zaret Montavol was working. Mandawala informed his classroom instructor, Stacy Palmer, and a senior faculty member, Stephanie Wanat ("Ms. Wanat"), that he was not being allowed to do any scans. After five weeks at Mission Trail, Ms. Moorman transferred Mandawala to Baptist Medical M&S Imaging, where he was able to successfully complete the class requirements. Mandawala was then assigned to Northeast Baptist Hospital.

At Northeast Baptist Hospital ("Northeast"), Mandawala was supervised by technicians Virj Pascale and Debra Forminos ("Ms. Forminos"). Mr. Pascale supervised Mandawala's work approximately eighty percent of the time and Ms. Forminos the remaining twenty percent. Mandawala observed that the evaluations he received from Mr. Pascale were generally positive, while Ms. Forminos's evaluations were wholly negative. Ms. Forminos demanded that Mandawala show her deference based on her long service with Baptist; she insisted she grade Mandawala's work even though, in conformance with school policy, Mandawala had requested Mr. Pascale grade his work; and Ms. Forminos and a technician named Stacy spoke in whispers about Mandawala. Once, after two obstetrical patient scans, Ms. Forminos suggested to Mandawala sonography is a career better suited for women. She illustrated her point by saying that some female patients refused to be scanned by Mr. Pascale.

Based on his observations and experiences, Mandawala believed Ms. Forminos and Stacy were treating him differently than his female peers. Mandawala shared this with Ms. Wanat and asked to be assigned to a different location. Ms. Wanat responded that Ms. Forminos had

made the same request, citing scheduling difficulties. However, email communications among Baptist staff and the Northeast supervising technicians suggest that Ms. Forminos's request was made not because of scheduling difficulties but because she preferred to have white female students in the clinical rotations she supervised. Mandawala received a poor grade from Ms. Forminos and, despite his complaint that she had been treating him differently than his female peers and his request to be graded by Mr. Pascale, the school allowed the grade to stand.

Mandawala was assigned to Resolute Hospital for his final clinical rotation. There, clinical instructor Chelsea Jackson directed Mandawala to conduct an ultrasound of a patient's carotid artery. Mandawala was unprepared to conduct this ultrasound because vascular sonography was an elective and not part of the core curriculum. He objected to the assignment, telling Ms. Jackson, "I cannot do this because it's not part of my schoolwork." ECF No. 22, par. 31 Mandawala was not opposed to doing the sonogram. If vascular sonography was to be a mandatory part of the curriculum, he only wanted notice and time to prepare. In response, Ms. Jackson demanded Mandawala's immediate removal from the site, gave him a "low" grade, and recommended that Baptist fail him. On the last day, Baptist told Mandawala he had failed the course and he would have to retake the course and pay for it. Baptist supported its decision with emails from Ms. Forminos and Ms. Jackson to Ms. Moorman. Baptist deemed this interaction a hearing and thereupon, its decision to fail Mandawala became final.

LEGAL STANDARD

To survive a motion to dismiss filed pursuant to Fed. R. Civ. P. 12(b)(6), the complaint must allege "enough facts to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable

inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

A court addressing a motion to dismiss pursuant to Rule 12(b)(6) must "construe the complaint in the light most favorable to the plaintiff and draw all reasonable inferences in the plaintiff's favor," Severance v. Patterson, 566 F.3d 490, 501 (5th Cir. 2009), and "must limit itself to the contents of the pleadings, including attachments thereto." Brand Coupon Network, L.L.C. v. Catalina Mktg. Corp., 748 F.3d 631, 635 (5th Cir. 2014). The focus is not on whether the plaintiff will ultimately prevail, but whether that party should be permitted to present evidence to support adequately asserted claims. Twombly, 550 U.S. at 563 n.8.

A complaint may be dismissed as a matter of law for failure to state a claim for two reasons: (1) lack of a cognizable legal theory; or (2) insufficient facts under a cognizable legal theory. Frith v. Guardian Life Ins. Co., 9 F.Supp.2d 734, 737-38 (S.D. Tex. 1998). Thus, to qualify for dismissal under Rule 12(b)(6), a complaint must, on its face, show a bar to relief. Clark v. Amoco Prod. Co., 794 F.2d 967, 970 (5th Cir. 1986).

DISCUSSION

A. Discrimination Based on Race or Gender

Defendants contend that in his amended complaint, Mandawala "still failed to plead sufficient facts from which the Court can infer that any Defendant engaged in intentional discrimination based on his race or sex." ECF No. 23 at 8. Specifically, Defendants assert that the allegations in the amended complaint allege only a subjective belief that Ms. Forminos favors female students over male students, that Mandawala's allegations contain contradictions, and that even though he alleges he discussed Ms. Forminos's alleged conduct with an administrator, his allegations do not give rise to "actual knowledge of discrimination" as required by Gebser. Id. at 9 (citing Gebser v. Lago Vista Indep. Sch. Dist., 524 U.S. 274 (1998)).

To state a claim for discrimination under Title VI, a plaintiff must plausibly allege defendant (1) received

federal financial assistance, and (2) intentional discrimination on the basis 4 of race, color, or national origin. Alexander v. Sandoval, 532 U.S. 275, 280 (2001) (emphasizing that a private right of action is available only for intentional discrimination); Kamps v. Baylor Univ., 592 F. App'x 282, 286 (5th Cir. 2014) (noting Title VI prohibits only intentional discrimination). To state a claim for discrimination under Title IX a plaintiff must plausibly allege the defendant (1) received federal financial assistance, and (2) excluded him from participation in defendant's educational programs because of his sex. Cannon v. Univ. of Chicago, 441 U.S. 677, 680, 717 (1979). In a private cause of action, the plaintiff must allege that an "appropriate person"—an official authorized to institute corrective measures—had "actual knowledge" of the discrimination and responded with "deliberate indifference." Gebser, 524 U.S. at 290 (distinguishing claims involving an official policy of discrimination from those seeking to hold an institution liable for the discriminatory acts of an individual).

The amended complaint does not plausibly allege that Baptist responded with deliberate indifference to alleged race or national origin discrimination. Mandawala alleges he gave Ms. Wanat "a copy of a comment" by a former female Latino student who described how she "felt about Mrs. Forminos treatment" as proof "that Mrs. Forminos does not like students that are non-white." ECF No. 22, par. 48. The interactions with Stacy and Ms. Forminos Mandawala describes in his amended complaint make no mention of Mandawala's race or national origin. And with the exception of the former student's comment, Mandawala does not allege that he reported any incidents of race discrimination to anyone at Baptist. Thus, it is impossible to infer that Baptist knew about race or national origin discrimination by technicians at Northeast and yet was deliberately indifferent to it. Furthermore, an allegation that he shared subjective beliefs— his or another student's—with Ms. Wanat is not the same thing as alleging Baptist had actual knowledge of racial discrimination and was deliberately indifferent. Allegations of subjective views, without supporting factual

allegations, do not give rise to an inference of intentional discrimination nor an inference of deliberate indifference to discrimination. See Byers v. Dallas Morning News, Inc., 209 F.3d 419, 427 (5th Cir. 2000). Therefore, the amended complaint does not plausibly allege a Title VI claim founded on intentional race or national origin discrimination against Mandawala. Because Mandawala failed to allege sufficient facts to support a reasonable inference of discrimination based on his race or national origin, Mandawala's Title VI claim is dismissed.

The amended complaint alleges that Mandawala told Ms. Wanat that Ms. Forminos suggested to him that sonography is a career better suited for women. He also told Ms. Wanat that Ms. Forminos was treating him differently than his female peers. As evidence, he pointed to the evaluations he received from Ms. Forminos compared to the evaluations he received from Mr. Pascale. Mandawala further avers that he asked Ms. Wanat to move him from the Northeast site because Ms. Forminos treated him differently than his female peers.

Construing the facts asserted in the amended complaint in the light most favorable to Mandawala, and upon drawing all reasonable inferences in his favor, the Court must conclude Mandawala asserted enough facts to give rise to an inference of intentional discrimination based on his sex and Baptist's deliberate indifference to that discrimination. The focus is not on whether Mandawala will ultimately prevail, but whether he should be permitted to present evidence to support any adequately asserted claims. See Twombly, 550 U.S. at 563 n.8. Because Mandawala asserted sufficient facts to support a reasonable inference of discrimination based on his sex, this claim will proceed.

B. Freedom of Speech; Deprivation of Property Right

Defendants contend Mandawala cannot make out a First Amendment retaliation claim because he has failed to establish a prima facie case. ECF No. 23 at 10. Specifically, the amended complaint does not make clear what adverse action was taken in response to

hisstatement, nor does it allege a causal connection. Id. With respect to any Fourteenth Amendment claim, Defendants argue that Mandawala does not allege he was deprived of a property interest and that a Fourteenth Amendment claim requires state action. Id. (citing Caleb v. Grier, 598 Fed. App'x 227, 233-234 (5th Cir. 2015). To state a retaliation claim in an education context, a plaintiff must establish a prima facie case by plausibly alleging: (1) he engaged in a protected activity, (2) the school or its representatives took an adverse action against him, and (3) a causal connection exists between the protected activity and the adverse action. Muslow v. Bd. of Supervisors of La. State Univ., No. 19-11793, 2020 U.S. Dist. LEXIS 65368, at *50 (E.D. La. Apr. 14, 2020) (collecting cases). Causation is plausibly alleged when the plaintiff establishes a defendant knew that the plaintiff "engaged in any protected activity" at the time of the alleged retaliation. Collins v. Jackson Pub. Sch. Dist., 609 F. App'x 792, 795 (5th Cir. 2015) (per curiam) (quoting Watts v. Kroger Co., 170 F.3d 505, 512 (5th Cir. 1999)). Because not all speech is protected by the First Amendment, to allege a plausible claim that his speech was the basis for the school's retaliation, a student must identify the statements he relies on. Judeh v. La. State Univ. Sys., No. 12-1758, 2013 U.S. Dist. LEXIS 55574, at *12 (E.D. La. Apr. 18, 2013).

A claim that an educational institution exacted discipline without first affording notice and an opportunity to be heard, requires a plaintiff to allege facts sufficient to show (1) that he was deprived of a liberty or property interest protected by the Due Process Clause, and (2) that he was deprived of that interest without constitutionally adequate process. Id. at *13.

Construed liberally, Mandawala's prima facie case for retaliation is this: (1) he objected to an assignment, saying "I cannot do this because it's not part of my school work" (protected activity); (2) Baptist failed him and required him to retake and again pay for the course (adverse action); (3) almost immediately after Mandawala voiced his objection, the instructor demanded Baptist remove Mandawala from the clinical site and recommended it fail him

(causal connection). Mandawala's due process claim alleges: (1) he was denied the opportunity to complete a course he paid for (property interest); and (2) being told on the last day of school that Baptist failed him and he would have to retake and again pay for the course is not consistent with due process.

In an education context, First Amendment rights are "analyzed in light of the special characteristics of the school environment." Widmar v. Vincent, 454 U.S. 263, 267 n.5 (1981). Where there is "no finding and no showing" that engaging in speech would "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school," a prohibition against speech "cannot be sustained." Tinker v. Des Moines Indep. Sch. Dist., 393 U.S. 503, 509 (1969) (citing Burnside v. Byars, 363 F.2d 744, 749 (5th Cir. 1966)).

Construing the facts in the light most favorable to Mandawala, Ms. Jackson gave him a low grade and recommended Baptist fail him because he verbally contradicted her directive to conduct a vascular sonogram. Mandawala alleges he was genuinely surprised when Ms. Jackson instructed him to conduct a vascular sonogram and questioned the assignment because he believed vascular sonography was an elective.

Defendants argue that Mandawala's claim must fail because he "has not alleged that this speech was a matter of public concern." ECF No. 23 at 10. Mandawala's speech was not made in a context that requires the Court to include that discussion in its analysis. See, e.g., Bradshaw v. Pittsburg Indep. Sch. Dist., 207 F.3d 814, 816 (5th Cir. 2000) (noting that "[a]s a threshold requirement to constitutional protection, the public employee must establish that her speech addressed a matter of public concern") (emphasis added). Defendants further contend that "it is entirely unclear what adverse action Plaintiff alleges was the result of this statement." ECF No.23 at 10. Mandawala clearly alleges he was failed for voicing his objection to Ms. Jackson's 8 directive to conduct a vascular sonogram.

As to the causal connection between his alleged protected activity and an adverse action, Mandawala alleges Ms. Jackson's retaliation was almost immediate—the following day she wrote to Baptist, demanded Mandawala's immediate removal, and recommended that Baptist fail him. ECF No. 22 at 5, par. 32.

However, Ms. Jackson did not fail Mandawala, Baptist did. Mandawala does not allege temporal proximity between receipt of Ms. Jackson's email and Baptist's decision to fail him. Mandawala alleges Baptist administrators did not tell him he failed the course and would have to retake it until the last day of school. Baptist presented to Mandawala emails from Ms. Forminos and Ms. Jackson in support of its decision to fail him. Construing the amended complaint in the light most favorable to Mandawala and construing all reasonable inferences in his favor, Mandawala does not allege sufficient facts to infer Baptist retaliated against him for his protected speech. For this reason, Mandawala's retaliation claim is dismissed.

Mandawala's procedural due process claim fails as a matter of law. Procedural requirements that attach to academic decisions are "far less stringent" than those that exist when a student challenges a disciplinary decision. Board of Curators of Univ. of Missouri v. Horowitz, 435 U.S. 78, 86 (1978). A dismissal for academic cause entitles a student to an "'informal give-and-take' between the student and the administrative body dismissing him that would, at least, give the student the opportunity to characterize his conduct and put it in proper context," Horowitz, 435 U.S. at 86 (quoting Goss v. Lopez, 419 U.S. 565, 584 (1975); it does not require a hearing. Ekmark v. Matthews, 524 F. App'x. 62, 64 (5th Cir. 2013) (per curiam).

Construing the facts in the light most favorable to Mandawala he received sufficient process. On the last day of school, Baptist administrators met with Mandawala, informed him he failed the course, explained to him why he failed the course, and told him that he would have to retake the course in order for it to count toward his graduation requirements, which included paying for the

course a second time. ECF No. 22 at 5, par. 34. This process meets the standard courts have found sufficient in similar circumstances. See, e.g., Ekmark, 524 F. App'x. at 64 (holding that medical resident who was notified of reason for his suspension was given adequate process); Davis v. Mann, 882 F.2d 967, 975 (5th Cir. 1989) (holding that dental resident who received an informal hearing "received even more procedural protections than are required by the Fourteenth Amendment"); Wren v. Midwestern State Univ., No. 7:18-cv-00060-O-BP, 2019 U.S. Dist. LEXIS 118143, at *40 (N.D. Tex. June 25, 2019) (dismissing due process claim of nursing student who had been informed of her unsatisfactory performance and, rather than retaking the failed course, she withdrew from the program). Accordingly, Mandawala's due process claim is dismissed.

C. 42 U.S.C. §§ 1983, 1985(2), 1986

Defendants argue this Court does not have subject matter jurisdiction over Mandawala's claims brought pursuant to 42 U.S.C. §§ 1983, 1985, and 1986 because these claims are, collectively, an attempt to re-litigate his state court claim. The Court disagrees. Claims brought under federal law are clearly within the jurisdiction of this Court. The allegations set forth in the amended complaint with respect to the sections cited do not reurge the allegations made in the state court petition but make clear Mandawala believes counsel for Baptist and the state court judge engaged in improper ex parte communication.

Defendants further contend that the state court hearing transcript shows Mandawala was given an opportunity to be heard and was afforded due process because Judge Gonzales considered all of the pleadings in the matter, heard the arguments of the parties, and informed Mr. Mandawala that he could appeal her ruling. Defendants also argue that Mandawala cannot state a claim under § 1983, § 1985, or § 1986 because the Defendants are not state actors, Mandawala was not deprived any right conferred by the constitution or federal law, and he has alleged only his subjective belief that

Blaine Holbrook ("Holbrook"), Nicki Elgie ("Elgie"), and Judge Gonzales engaged in a conspiracy.

To state a claim under § 1983, a plaintiff must allege that a "person," while acting under color of state law, deprived him of a right guaranteed under the Constitution or a federal statute. West v. Atkins, 487 U.S. 42, 48 (1988). The employee of a private entity acts under color of state law "when that entity performs a function which is traditionally the exclusive province of the state." Wong v. Stripling, 881 F.2d 200, 202 (5th Cir. 1989). A private party who is alleged to have conspired with or acted in concert with state actors may be acting under color of state law and held liable under § 1983. Priester v. Lowndes Cty., 354 F.3d 414 (5th Cir. 2004), cert. denied, 543 U.S. 829 (2004). A conspiracy is shown where a plaintiff plausibly alleges: (1) an agreement between the private and public defendants to commit an illegal act and (2) a deprivation of constitutional rights. Id.; see also Avdeef v. Royal Bank of Scotland, P.L.C., 616 F. App'x 665, 676 (5th Cir. 2015).

To state a claim under § 1985(2), a plaintiff must allege a conspiracy to impede, hinder, obstruct, or defeat the due course of justice in a state or territorial court. Section 1985 requires that the conspirators' actions be motivated by an intent to deprive their victim of the equal protection of the laws. "The language requiring intent to deprive of equal protection, or equal privileges and immunities, means that there must be some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action. The conspiracy, in other words, must aim at a deprivation of the equal enjoyment of rights secured by the law to all." Kush v. Rutledge, 460 U.S. 719, 726 (1983) (quoting Griffin v. Breckenridge, 403 U.S. 88, 102 (1971) (emphasis in original)) . To bring § 1985 claim, a plaintiff must allege:(1) the defendants conspired (2) for the purposes of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws, and (3) one or more of the conspirators committed some act in furtherance of the

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conspiracy; whereby (4) another person is injured in his person or property or deprived of having and exercising any right or privilege of a citizen of the United States; and (5) the action of the conspirators is motivated by a racial animus.

Horaist v. Doctor's Hosp. of Opelousas, 255 F.3d 261, 270 n.12 (5th Cir. 2001) (citing Wong v. Stripling, 881 F.2d 200, 202-03 (5th Cir. 1989)).

To state a claim under § 1986, a plaintiff must state a valid claim under § 1985. Section 1986 imposes liability on individuals who have knowledge of a conspiracy under § 1985 but fail to take preventative action. Thus, a § 1986 claim must be predicated upon a valid § 1985 claim. Newberry v. E. Tex. State Univ., 161 F.3d 276, 281 n.3 (5th Cir. 1998).

Read liberally, Mandawala alleges that Defendants Holbrook and Elgie, acting as counsel for Baptist and TENET, failed to serve Mandawala with one or more motions, Holbrook and Elgie presented the motion(s) to Judge Gonzales ex parte, Judge Gonzales took the bench, granted the motions, and dismissed Mandawala's state court case. ECF No. 22, pars. 35-42.

Mandawala's § 1983 claim fails for several reasons. First, as counsel representing Baptist and TENET, the Court cannot find Holbrook and Elgie were state actors acting under color of state law. See Gipson v. Rosenberg, 797 F.2d 224, 225 (5th Cir. 1986) (holding that private attorneys are not state actors), cert. denied, 481 U.S. 1007 (1987). Second, even if Holbrook and Elgie were employees of Baptist or TENET, Mandawala alleges no facts to show that Baptist or TENET is an arm of the state for purposes of 42 U.S.C. § 1983. Therefore, Mandawala fails to state a claim under § 1983 because the allegations do not evince an agreement between Holbrook, Elgie, (private individuals) and Judge Gonzales (a state actor) to commit an illegal act.

As Mandawala does not allege any racial or class-based discriminatory animus, he failed to state § 1985 and § 1986 claims. Additionally, Mandawala was present at the state court hearing and, contrary to the allegation in

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his amended complaint, he was allowed to argue the motions pending before Judge Gonzales. As this Court noted in its order on Defendants' first motion to dismiss, "any suggestion of wrongdoing by Judge Gonzales is contradicted by the transcript attached to Mandawala's Complaint. The transcript shows Judge Gonzales considered all of the pleadings in the matter, heard the arguments of the parties, and informed Mandawala that he could appeal her ruling." ECF No. 19 at 6-7 (citing ECF No. 1 at 68-71). Additionally, Judge Gonzales informed Mandawala that the state court did not have jurisdiction over federal claims, stating, "you seem to try to be alleging some federal law complaints, which certainly this court would not have jurisdiction over." ECF No. 1 at 68. Thus, Mandawala's allegation that he was denied due process at the state hearing fails as a matter of law.

For the reasons expressed above, Mandawala has failed to state a claim under 42 U.S.C. § 1983, § 1985(2) or § 1986 and these claims are dismissed.

D. Breach of Contract

Defendants contend the amended complaint does not allege the required elements or the factual support for breach of contract, to wit: "(1) the existence of a valid contract; (2) performance or tendered performance by the plaintiff; (3) breach of the contract by the defendant; and (4) damages sustained by the plaintiff as a result of the breach." ECF No. 23 at 13 (quoting Smith Int'l, Inc. v. Egle Group, LLC, 490 F.3d 380, 387 (5th Cir. 2007)).

Defendants contend the amended complaint does not allege the required elements or the factual support for conversion, to wit: (1) the plaintiff owned or had legal possession of the property or entitlement to possession; (2) the defendant unlawfully and without authorization assumed and exercised dominion and control over the property to the exclusion of, or inconsistent with, the plaintiff's rights as an owner; (3) the plaintiff demanded return of the property; and (4) the defendant refused to return the property. ECF No. 23 at 13 (citing Smith v. Maximum Racing, Inc., 136 S.W.3d 337, 341 (Tex. App.—Austin 2004, no pet.)).

The amended complaint alleges Mandawala entered into a contract with Baptist by which it promised to provide education sufficient to prepare him to work as a sonography technician in exchange for payment for said education. Mandawala alleges he tendered performance by paying for and participating in the courses. Mandawala alleges that the contract required Mandawala to complete a specific number and certain types of scans to receive his diploma and required Baptist to provide the necessary equipment and instructors for the students to complete the required scans. Baptist allegedly breached the contract when it failed to supply the necessary instructors and therefore, he was unable to complete the required number of scans. Mandawala further alleges Baptist set a core curriculum. Baptist allegedly breached the agreement to provide its promised core curriculum when it changed the core curriculum without giving notice. Mandawala's alleged damages include payment for a course for which he did not receive credit due to Baptist's breach. ECF No. 22, pars. 4-35, 107-119; see also ECF No. 25 at 4.

While the circumstances differ under which courts have found contracts between students and education institutions, contracts have been found to exist. See, e.g., Univ. of Tex. Health Sci. Ctr. v. Babb, 646 S.W.2d 502, 506 (Tex. App.—Houston [1st Dist.] 1989, writ denied) (holding that "a school's catalog constitutes a written contract between the educational institution and the patron, where entrance is under its terms"); Anyadike v. Vernon Coll., No. 7:15-cv-00157-O, 2016 U.S. Dist. LEXIS 191886, at *14-19 (N.D. Tex. Mar. 14, 2016) (finding that the college's student handbook was not a contract); Doe v. Va. Coll., LLC, No. 1:19-CV-23-RP, 2019 U.S. Dist. LEXIS 38972, at *4 (W.D. Tex. Mar. 12, 2019) (enforcing arbitration clause in college enrollment contract). In this case, construing the facts alleged in the light most favorable to Mandawala and upon drawing all reasonable inferences in his favor, Mandawala alleged facts sufficient to state a contract claim. Mandawala's allegations do not support a conversion claim.

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Accordingly, the contract claim will proceed and the conversion claim will be dismissed.

E. Defamation

Defendants assert that Mandawala has not alleged facts to support a defamation claim, to wit: that the defendant (1) published a false statement of fact to a third party; (2) the statement was defamatory concerning the plaintiff; (3) the defendant acted negligently regarding the truth of the statement; and (4) in some instances, the plaintiff incurred damages. See Azadpour v. Blue Sky Sports Ctr. Of Keller, 2018 U.S. Dist. LEXIS 149606, at *7 (N.D. Tex. 2018). Additionally, Texas federal district courts require defamation claims to specifically allege "the time and place of the publication." Garrett v. Celanese Corp., 2003 U.S. Dist. LEXIS 14905, No. 3:02-CV-1485-K, 2003 WL 22234917, at *4 (N.D. Tex. 2003), aff'd, 102 Fed. Appx. 387 (2004); Jackson v. Dallas Indep. Sch. Dist., 1998 U.S. Dist. LEXIS 10328, No. CIV. A. 398-CV-1079, 1998 WL 386158, at *5 (N.D. Tex. 1998), aff'd, 232 F.3d 210 (5th Cir. 2000).

The amended complaint references emails sent between Baptist faculty, administrators, and clinical site staff, but does not allege that any statement was published to a third party. The allegation that Ms. Forminos falsely reported to Baptist that a patient complained about Mandawala is troubling. However, to state a claim, Mandawala must allege more than the existence of a potentially defamatory statement. Because this claim lacks the specificity required to state a claim, it will be dismissed.

F. Intentional Infliction of Emotional Distress

Under Texas law, intentional infliction of emotional distress has four elements: (1) the defendant acted intentionally or recklessly; (2) the conduct was extreme and outrageous; (3) the defendant s actions caused the plaintiff emotional distress; and (4) the emotional distress suffered by the plaintiff was severe. Mattix Hill v. Reck, 923 S.W.2d 596, 597 (Tex. 1996) (citing Twyman v. Twyman, 855 S.W.2d 619, 621 (Tex.1993)). The defendant's conduct must have been "so outrageous in character, and so

extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." Twyman, 855 S.W.2d at 621; Hirras v. Nat'l R.R. Passenger Corp., 95 F.3d 396, 400 (5th Cir. 1996).

Intentional infliction of emotional distress is a "gap-filler" tort that was "judicially created for the limited purpose of allowing recovery in those rare instances in which a defendant intentionally inflicts severe emotional distress in a manner so unusual that the victim has no other recognized theory of redress." Standard Fruit and Vegetable Co. v. Johnson, 985 S.W.2d 62, 68 (Tex. 1998); Hoffmann-La Roche, Inc. v. Zeltwanger, 144 S.W.3d 438, 447 (Tex. 2004). This cause of action is "never intended to supplant or duplicate existing statutory or common-law remedies." Toronka v. Cont'l Airlines, Inc., 649 F. Supp. 2d 608, 612-13 (S.D. Tex. 2009) (quoting Creditwatch, Inc. v. Jackson, 157 S.W.3d 814, 816 (Tex. 2005)).

Here, Mandawala bases his claim for intentional infliction of emotional distress on the same underlying conduct and facts as the other claims under which he seeks to recover. Mandawala did not allege any additional facts in support of his intentional infliction of emotional distress claim. Thus, upon construing the facts asserted in the complaint in the light most favorable to Mandawala and upon drawing all reasonable inferences in his favor, the Court must conclude Mandawala cannot assert facts to support a claim for intentional infliction of emotional distress.

Even if Mandawala were allowed to re-plead this cause of action, he cannot assert an intentional infliction of emotional distress claim, as it is based on the same underlying conduct as his claims for discrimination. Therefore, Mandawala's intentional infliction of emotional distress claim is dismissed.

CONCLUSION

For the reasons set forth above, Defendants' Motion to Dismiss (ECF No. 23) is GRANTED IN PART AND DENIED IN PART.

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In the Order denying Defendants' first motion to dismiss, this Court provided to Mandawala a statement of the complaint's deficiencies. The Court has read the amended complaint and response to Defendants' current motion to dismiss liberally, affording Mandawala the benefit of any doubt. The Court accepted as true the allegations of material fact in the amended complaint and construed them in the light most favorable to Mandawala. In each instance in which the Court concluded that a claim must be dismissed, it did not find any deficiencies that could be cured by amendment. Thus, dismissal of these claims with prejudice is warranted because Mandawala has previously been granted leave to amend after being apprised of the deficiencies in his pleading.

Accordingly, the following claims are DISMISSED WITH PREJUDICE: Title VI (discrimination based on race or national origin); First Amendment (retaliation); Fourteenth Amendment (due process); 42 U.S.C. § 1983; 42 U.S.C. § 1985; 42 U.S.C. § 1986; Conversion; Defamation; Intentional Infliction of Emotional Distress. The following claims SHALL PROCEED: Title IX (discrimination based on sex); Contract.

The Court's previous Order granted Mandawala leave to amend his complaint to name the proper parties. The amended complaint names Baptist School of Health Professions, TENET, Blaine Holbrook, and Nicki Elgie. Accordingly, the following Defendants are DISMISSED from this lawsuit: North Central Baptist Hospital, St. Luke's Hospital, Baptist Medical Center, Resolute Hospital, Mission Trails Baptist Hospital. The claims that are proceeding do not implicate Defendants Blaine Holbrook and Nicki Elgie. Accordingly, Defendants Blaine Holbrook and Nicki Elgie are DISMISSED from this lawsuit.

It does not appear that TENET has been served. Accordingly, on or before September 30, 2020, Plaintiff Symon Mandawala shall SHOW CAUSE why TENET should not be dismissed from this lawsuit. This matter is set for status conference before the undersigned on October 2, 2020 at 11:00 AM. An order specifying whether

the conference will proceed in person or via Zoom will follow.

It is so ORDERED.

SIGNED this 3rd day of September 2020.

JASON PULLIAM
UNITED STATES DISTRICT
JUDGE

Addition to ROA.34.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

SYMON MANDAWALA,

Plaintiff,

v. **No. SA-19-CV-01415-JKP-ESC**

BAPTIST SCHOOL OF HEALTH PROFESSIONS, ALL COUNTS; AND TENET,

Defendants.

ORDER

In the Memorandum Opinion and Order issued September 3, 2020, the Court directed Plaintiff to show cause on or before September 30, 2020, why TENET should not be dismissed from this action. *See* ECF No. 34 at 18. As of the date of this Order, Plaintiff has not responded. Accordingly, for the reasons set forth in the above referenced Memorandum Opinion and Order, TENET is DISMISSED from this action.

It is so ORDERED.

SIGNED this 23rd day of November 2020.

Jason Pulliam

JASON PULLIAM
UNITED STATES DISTRICT JUDGE

APPEAL,CASREF,ESC,STAYED

U.S. District Court [LIVE]
Western District of Texas (San Antonio)
CIVIL DOCKET FOR CASE #: 5:19-cv-01415-JKP-ESC

Mandawala v. Baptist School of Health Professions et al
Assigned to: Judge Jason K. Pulliam
Referred to: Judge Elizabeth S. Chestney
Case in other court: 5CCA, 20-50785 (Doc. 36)
5CCA, 20-50981 (Doc. 52)
Cause: 42:2000d Federally Assisted Programs

Date Filed: 12/05/2019
Jury Demand: Plaintiff
Nature of Suit: 448 Civil Rights: Education
Jurisdiction: Federal Question

Plaintiff

Symon Mandawala

represented by **Mark Anthony Sanchez**
Sanchez & Wilson, P.L.L.C.
6243 IH-10 West, Suite 1025
San Antonio, TX 78201-2020
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Fax: 210-222-9526
Email: mas@sanchezwilson.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

Baptist School of Health Professions
All Counts

represented by **Blaine A. Holbrook**
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10101 Reunion Place - Suite 900
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Nicki Kay Elgie
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Email: nelgie@evans-rowe.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Northeast Baptist Hospital
Count 1, 2, and 11

represented by **Blaine A. Holbrook**
(See above for address)

TERMINATED: 09/03/2020

LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Nicki Kay Elgie
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Blain Holbrook
Count 4, 5, 6 and 11
TERMINATED: 09/03/2020

represented by **Blaine A. Holbrook**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Nicki Kay Elgie
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

North Central Baptist Hospital
TERMINATED: 09/03/2020

Defendant

St. Lukes Hospital
TERMINATED: 09/03/2020

Defendant

Baptist Medical Center
TERMINATED: 09/03/2020

Defendant

Resolute Hospital
TERMINATED: 09/03/2020

Defendant

Mission Trails Baptist Hospital
TERMINATED: 09/03/2020

Defendant

Tenet
TERMINATED: 11/23/2020

Defendant

Nick Elgie
TERMINATED: 09/03/2020

Date Filed	#	Docket Text

D

12/05/2019		THIS CASE HAS BEEN RANDOMLY ASSIGNED TO JUDGE JASON K. PULLIAM. (dtg) (Entered: 12/06/2019)
12/05/2019		If ordered by the court, all referrals will be assigned to Magistrate Judge Chestney. (dtg) (Entered: 12/06/2019)
12/05/2019	1 (p.10)	COMPLAINT (Filing fee $400.00 receipt number 500052065), filed by Symon Mandawala. (Attachments: # 1 (p.10) Civil Cover Sheet, # 2 (p.86) Filing Fee Receipt)(dtg) (Entered: 12/06/2019)
12/09/2019	2 (p.86)	Case Opening Letter to Symon Mandawala. (dtg) (Entered: 12/09/2019)
12/09/2019	4 (p.90)	Summons Issued as to Baptist School of Health Professions, Blain Holbrook, Northeast Baptist Hospital. (bc) (Entered: 12/11/2019)
12/10/2019	3 (p.87)	ORDER REFERRING CASE to Magistrate Judge Elizabeth S. Chestney. Signed by Judge Jason K. Pulliam. (bc) (Entered: 12/10/2019)
12/19/2019	5 (p.93)	SUMMONS Returned Executed by Symon Mandawala. Baptist School of Health Professions served on 12/15/2019, answer due 1/6/2020. (bc) (Entered: 12/20/2019)
01/06/2020	6 (p.95)	Motion to Dismiss for Failure to State a Claim *and Lack of Subject Matter Jurisdiction* by Baptist School of Health Professions, Blain Holbrook, Northeast Baptist Hospital. (Elgie, Nicki) (Entered: 01/06/2020)
01/07/2020	7 (p.105)	SUMMONS Returned Executed by Symon Mandawala. Blain Holbrook served on 12/23/2019, answer due 1/13/2020; Northeast Baptist Hospital served on 12/23/2019, answer due 1/13/2020. (wg) (Entered: 01/07/2020)
01/07/2020	8 (p.109)	DEMAND for Trial by Jury by Symon Mandawala. (wg) (Entered: 01/07/2020)
01/21/2020	9 (p.111)	Memorandam to Oppose the Defendant's Motion to Dismiss the Case by Symon Mandawala. Motions referred to Judge Elizabeth S. Chestney. (bc) Modified on 1/31/2020 To edit text (bc). (Entered: 01/23/2020)
01/21/2020	10 (p.123)	JURY DEMAND by Symon Mandawala. (bc) (Entered: 01/23/2020)
01/28/2020	11 (p.127)	REPLY to Response to Motion, filed by Baptist School of Health Professions, Blain Holbrook, Northeast Baptist Hospital, re 9 (p.111) MOTION Plaintiff's Motion to Sustain the Complaint and Memorandam to Oppose the Defendant's Motion to Dismiss the Case filed by Plaintiff Symon Mandawala (Elgie, Nicki) (Entered: 01/28/2020)
01/31/2020		Notice of Correction: ***NOTIFIED ALL PARTIES THAT THE ENTRY WAS MODIFIED TO REMOVE THE MOTION WORDING AND CHANGED TO A MEMORANDUM*** re 9 (p.111) MOTION Plaintiff's Motion to Sustain the Complaint and Memorandam to Oppose the Defendant's Motion to Dismiss the Case. (bc) (Entered: 01/31/2020)
03/04/2020	12 (p.134)	NOTICE OF UNAVAILABLE by Symon Mandawala (bc) (Entered: 03/05/2020)
03/04/2020	13 (p.135)	AMENDED COMPLAINT against Baptist School of Health Professions, Blain Holbrook, Northeast Baptist Hospital amending 1 (p.10) Complaint., filed by Symon Mandawala.(bc) (Entered: 03/05/2020)

03/11/2020	14 (p.210)	***DOCUMENT DEFICIENT- MISSING A PROPOSED ORDER. PLEASE FILE THE PROPOSED ORDER AS A ATTACHMENT AND LINK TO THE ORIGINAL MOTION*** MOTION to Strike 13 (p.135) Amended Complaint by Baptist School of Health Professions, Blain Holbrook, Northeast Baptist Hospital.. (Elgie, Nicki) Modified on 3/11/2020 To edit text (bc). (Entered: 03/11/2020)
03/11/2020	15 (p.217)	DEFICIENCY NOTICE: ***DOCUMENT DEFICIENT- MISSING A PROPOSED ORDER. PLEASE FILE THE PROPOSED ORDER AS A ATTACHMENT AND LINK TO THE ORIGINAL MOTION*** re 14 (p.210) MOTION to Strike 13 (p.135) Amended Complaint (bc) (Entered: 03/11/2020)
03/11/2020	16 (p.218)	ATTACHMENT *(Proposed Order)* to 14 (p.210) MOTION to Strike 13 (p.135) Amended Complaint by Baptist School of Health Professions, Blain Holbrook, Northeast Baptist Hospital. (Elgie, Nicki) (Entered: 03/11/2020)
03/18/2020	17 (p.219)	PLAINTIFF'S MOTION TO ADD A PARTY AS A DEFENDANT AND RESPONSE TO THE DEFENDANT'S MOTION TO STRIKE (DOCKET 13) by Symon Mandawala. (Attachments: # 1 (p.10) Plaintiff's Amended Petition to Seek Relief for Unfairly Treated Under Educational Conditions). (Entered: 03/19/2020)
04/22/2020	18 (p.301)	ORDER, (Scheduling Recommendations/Proposed Scheduling Order due by 5/22/2020,). Signed by Judge Elizabeth S. Chestney. (mgr) (Entered: 04/22/2020)
04/30/2020	19 (p.308)	ORDER DENYING 6 (p.95) Motion to Dismiss for Failure to State a Claim; GRANTING 14 (p.210) Motion to Strike ; GRANTING 17 (p.219) Motion for Leave to File. If Plaintiff desires to pursue this action, he is ORDERED to file an amended complaint no later than thirty (30) days after the date of this Order, remedying the deficiencies discussed above Signed by Judge Jason K. Pulliam. (mgr) (Entered: 05/04/2020)
05/01/2020	20 (p.319)	Proposed Scheduling Order by Symon Mandawala. (rg) (Entered: 05/06/2020)
05/06/2020	21 (p.322)	ORDERED that the parties obligation to file their Rule 26(f) report and scheduling recommendations is STAYED pending further order of the Court. Signed by Judge Elizabeth S. Chestney. (rg) (Entered: 05/06/2020)
05/20/2020	22 (p.324)	2nd AMENDED COMPLAINT against Baptist School of Health Professions, Blain Holbrook, Mission Trails Baptist Hospital, North Central Baptist Hospital, Northeast Baptist Hospital, Resolute Hospital, St. Lukes Hospital amending 13 (p.135) Amended Complaint., filed by Symon Mandawala.(wg) (Entered: 05/20/2020)
06/03/2020	23 (p.341)	Motion to Dismiss for Failure to State a Claim by Baptist School of Health Professions, Blain Holbrook, Northeast Baptist Hospital. (Elgie, Nicki) (Entered: 06/03/2020)
06/08/2020	24 (p.356)	ORDER SETTING TELEPHONIC INITIAL PRETRIAL CONFERENCE (Telephonic Intitial Pretrial Conference set for 7/28/2020 11:30 AM before Judge Jason K. Pulliam,). Signed by Judge Elizabeth S. Chestney. (cd) (Entered: 06/08/2020)
06/18/2020	25 (p.364)	Response in Opposition to Motion, filed by Symon Mandawala, re 23 (p.341) Motion to Dismiss for Failure to State a Claim filed by Defendant Baptist School of Health Professions, Defendant Blain Holbrook, Defendant Northeast Baptist Hospital (rg) (Entered: 06/18/2020)

06/22/2020	26 (p.372)	ADVISORY TO THE COURT by Symon Mandawala. (bc) (Entered: 06/23/2020)
07/23/2020	27 (p.379)	Rule 26(f) Discovery Report/Case Management Plan by Baptist School of Health Professions, Blain Holbrook, Northeast Baptist Hospital. (Elgie, Nicki) (Entered: 07/23/2020)
07/23/2020	28 (p.382)	Scheduling Recommendations by Baptist School of Health Professions, Blain Holbrook, Northeast Baptist Hospital. (Elgie, Nicki) (Entered: 07/23/2020)
07/28/2020	29 (p.385)	PDF with attached Audio File. Court Date & Time [7/28/2020 11:31:25 AM]. File Size [9692 KB]. Run Time [00:20:11]. (admin). (Entered: 07/28/2020)
07/28/2020	30	Minute Entry for proceedings held before Judge Elizabeth S. Chestney: Initial Pretrial Conference held on 7/28/2020 (Minute entry documents are not available electronically.) (Court Reporter FTR Gold.)(bc) (Entered: 07/28/2020)
07/29/2020	31 (p.386)	ORDER STAYING CASE--IT IS THEREFORE ORDERED that this case is STAYED until the District Court issues an order on Defendants motion to dismiss. Signed by Judge Elizabeth S. Chestney. (bc) (Entered: 07/29/2020)
08/06/2020	32 (p.389)	MOTION for Reconsideration re 31 (p.386) Order Staying Case, MOTION to Strike 27 (p.379) Rule 26(f) Discovery Report/Case Management Plan by Symon Mandawala. Motions referred to Judge Elizabeth S. Chestney. (bc) (Entered: 08/06/2020)
08/18/2020	33 (p.407)	ORDER DENYING 32 (p.389) Motion for Reconsideration ; DENYING 32 (p.389) Motion to Strike. Signed by Judge Elizabeth S. Chestney. (bc) (Entered: 08/18/2020)
09/03/2020	34 (p.409)	ORDER-- GRANTED IN PART AND DENIED IN PART 23 (p.341) Motion to Dismiss for Failure to State a Claim. Mission Trails Baptist Hospital, North Central Baptist Hospital, Resolute Hospital, St. Lukes Hospital, Baptist Medical Center and Nick Elgie terminated. It does not appear that TENET has been served. Accordingly, on or before September 30, 2020, Plaintiff Symon Mandawala shall SHOW CAUSE why TENET should not be dismissed from this lawsuit. (Status Conference set for 10/2/2020 11:00 AM before Judge Jason K. Pulliam). Signed by Judge Jason K. Pulliam. (bc) (Entered: 09/03/2020)
09/03/2020	35 (p.427)	ORDER-- Northeast Baptist Hospital is DISMISSED from thislawsuit (see ECF No. 34 at 17). Signed by Judge Jason K. Pulliam. (bc) (Entered: 09/03/2020)
09/04/2020	36 (p.428)	NOTICE OF APPEAL by Symon Mandawala. Filing fee $ 505, receipt number 500055409. Per 5th Circuit rules, the appellant has 14 days, from the filing of the Notice of Appeal, to order the transcript. To order a transcript, the appellant should fill out a (Transcript Order) and follow the instructions set out on the form. This form is available in the Clerk's Office or by clicking the hyperlink above. (bc) (Entered: 09/10/2020)
09/04/2020	37 (p.430)	Notice of Appeal Filing fee received in the amount of $505.00, receipt number 500055409 (bc) (Entered: 09/10/2020)
09/10/2020	38 (p.431)	Scheduling Recommendations/Proposed Scheduling Order *of Defendant Baptist School of Health Professions* by Baptist School of Health Professions. (Elgie, Nicki) (Entered: 09/10/2020)
09/17/2020	39 (p.434)	***DOCUMENT DEFICIENT-MISSING A PROPOSED ORDER. PLEASE FILE THE PROPOSED ORDER ONLY AND LINK TO THE ORIGINAL MOTION.***

		Motion to Strike and ANSWER to 22 (p.324) Amended Complaint, *of Baptist School of Health Professions* by Baptist School of Health Professions.(Elgie, Nicki) Modified on 9/18/2020 To edit text (bc). Modified on 10/15/2020 To change to Motion (bc). (Entered: 09/17/2020)
09/18/2020	40 (p.461)	DEFICIENCY NOTICE: ***DOCUMENT DEFICIENT-MISSING A PROPOSED ORDER. PLEASE FILE THE PROPOSED ORDER ONLY AND LINK TO THE ORIGINAL MOTION.*** re 39 (p.434) Answer to Amended Complaint, (bc) (Entered: 09/18/2020)
09/18/2020	41 (p.462)	ATTACHMENT *(Proposed Order)* to 39 (p.434) Answer to Amended Complaint, by Baptist School of Health Professions. (Elgie, Nicki) (Entered: 09/18/2020)
09/21/2020	42 (p.463)	Plaintiff's Response to Defendants' 39 (p.434) Motion to Strike and Answer to Amended Complaint by Symon Mandawala. (bc) (Entered: 09/22/2020)
09/22/2020	43 (p.470)	ORDER--The status conference scheduled for October 2, 2020 at 11:00 AM before the undersigned is hereby CANCELLED. Signed by Judge Jason K. Pulliam. (bc) (Entered: 09/22/2020)
10/01/2020	44 (p.471)	DEMAND for Trial by Jury by Baptist School of Health Professions. (Elgie, Nicki) (Entered: 10/01/2020)
10/21/2020	45 (p.619)	Transcript filed of Proceedings held on 7/28/2020, Proceedings Transcribed: Initial Pretrial Conference (By Phone). Court Reporter/Transcriber: Chris Poage, Telephone number: 210-244-5036 Email: chris_poage@txwd.uscourts.gov. Parties are notified of their duty to review the transcript to ensure compliance with the FRCP 5.2(a)/FRCrP 49.1(a). A copy may be purchased from the court reporter or viewed at the clerk's office public terminal. If redaction is necessary, a Notice of Redaction Request must be filed within 21 days. If no such Notice is filed, the transcript will be made available via PACER without redaction after 90 calendar days. The clerk will mail a copy of this notice to parties not electronically noticed Redaction Request due 11/11/2020, Redacted Transcript Deadline set for 11/23/2020, Release of Transcript Restriction set for 1/19/2021, Appeal Record due by 11/5/2020, (cp) (Entered: 10/21/2020)
10/29/2020	46 (p.473)	ORDER DENYING 39 (p.434) Motion to Strike. Signed by Judge Elizabeth S. Chestney. (bc) (Entered: 10/29/2020)
11/13/2020	47 (p.476)	ORDER of USCA (certified copy). re 36 (p.428) Notice of Appeal.**Thus, the notice of appeal filed before all claims and all parties were disposed of is premature. We are without jurisdiction over this appeal, and it must be dismissed. See Borne v. A&P Boat Rentals No. 4, Inc., 755 F.2d 1131, 1133 (5th Cir. 1985). Accordingly, the appeal is DISMISSED for want of jurisdiction.*** (Attachments: # 1 (p.10) TRANSMITTAL LETTER FROM USCA5)(dtg) (Entered: 11/19/2020)
11/18/2020	48 (p.479)	PRO SE MOTION to Seek an Entry of Certificate of Final Judgment on Partly Dismissed Claims in the Order Dated September 3, 2020 by Symon Mandawala. (bc) (Entered: 11/20/2020)
11/23/2020	49 (p.483)	ORDER --In the Memorandum Opinion and Order issued September 3, 2020, the Court directed Plaintiff to show cause on or before September 30, 2020, why TENET should not be dismissed from this action. See ECF No. 34 at 18. As of the date of this Order, Plaintiff has not responded. Accordingly, for the reasons set forth in the above referenced Memorandum Opinion and Order, TENET is DISMISSED from this action. Signed by Judge Jason K. Pulliam. (bc) (Entered: 11/23/2020)

11/23/2020	50 (p.484)	ORDER GRANTING 48 (p.479) Motion for Rule 54(b) Certification of Final Judgment. Plaintiffs motion, ECF No. 48, to certify the Memorandum Opinion and Order, ECF No. 34, as a partial final judgment pursuant to Federal Rule of Civil Procedure 54(b) is GRANTED. Signed by Judge Jason K. Pulliam. (bc) (Entered: 11/24/2020)
11/23/2020	51 (p.488)	PARTIAL FINAL JUDGMENT-- Accordingly, and pursuant to this Courts Order, ECF No. 34, Plaintiff hereby takes nothing as to his claims against the above-named defendants. In accordance with Fed. R. Civ. P. 54(b), and for the reasons set forth in its Order granting Plaintiffs motion for Rule 54(b) certification, the Court expressly determines that there is no just reason for delaying this Partial Final Judgment even though one defendant remains in the case. Signed by Judge Jason K. Pulliam. (bc) (Entered: 11/24/2020)
11/30/2020	52 (p.489)	AMENDED NOTICE OF APPEAL by Symon Mandawala. Per 5th Circuit rules, the appellant has 14 days, from the filing of the Notice of Appeal, to order the transcript. To order a transcript, the appellant should fill out a (Transcript Order) and follow the instructions set out on the form. This form is available in the Clerk's Office or by clicking the hyperlink above.***AMENDED NOTICE OF APPEAL FILED PER 5TH CIRCUIT'S INSTRUCTIONS.*** (dtg) (Entered: 12/01/2020)
11/30/2020	55 (p.499)	PRO SE Amended NOTICE by Symon Mandawala re 52 (p.489) Notice of Appeal (bc) (Entered: 12/01/2020)
12/01/2020	53 (p.493)	COPY of Letter of transmittal from USCA to Symon Mandawala.***We received your notice of appeal. In light of having to be filed in the district court, we are taking no action on this notice of appeal. We are forwarding it to the district court.*** (dtg) (Entered: 12/01/2020)
12/01/2020	54 (p.498)	ORDER, (Status Conference set for 12/8/2020 1:00 PM before Judge Jason K. Pulliam). Signed by Judge Jason K. Pulliam. (bc) (Entered: 12/01/2020)
12/08/2020	56	Minute Entry for proceedings held before Judge Jason K. Pulliam: Status Conference held on 12/8/2020 (Minute entry documents are not available electronically.) (Court Reporter Tish Moncivais.)(bc) (Entered: 12/08/2020)
12/11/2020	57 (p.503)	ORDER of USCA (certified copy). re 36 (p.428) Notice of Appeal.***Per Curiam: This panel previously dismissed the appeal for lack of jurisdiction. The panel has considered Appellant's motion for reconsideration. IT IS ORDERED that the motion is DENIED.*** (Attachments: # 1 (p.10) TRANSMITTAL LETTER FROM USCA5)(dtg) (Entered: 12/11/2020)
12/15/2020	58 (p.505)	Scheduling Recommendations by Baptist School of Health Professions. (Elgie, Nicki) (Entered: 12/15/2020)
12/15/2020	59 (p.511)	ADVISORY TO THE COURT by Baptist School of Health Professions *regarding agreement to mediation.* (Elgie, Nicki) (Entered: 12/15/2020)
12/15/2020	62 (p.525)	Appeal Filing fee received in the amount of $505.00, receipt number 500056339 (bc) (Entered: 12/17/2020)
12/15/2020	63 (p.526)	Plaintiff Symon Mndawala's Rule 26(a)(1) Initial Disclosures (bc) (Entered: 12/17/2020)
12/15/2020	64 (p.531)	Proposed Scheduling Order by Symon Mandawala. (bc) (Entered: 12/17/2020)

12/16/2020	60 (p.517)	ORDER Directing Parties to Mediate and Appointing Counsel. Signed by Judge Jason K. Pulliam. (mam) (Entered: 12/16/2020)
12/17/2020	61 (p.520)	Vacation Notice --Mark Anthony Sanchez (bc) (Entered: 12/17/2020)
12/17/2020		Mailed out Order 60 (p.517) along with 61 (p.520) Vacation Notice to the Plantiff: Symon Mandawala (bc) (Entered: 12/17/2020)
12/21/2020	65 (p.533)	Certified copy of USCA JUDGMENT/MANDATE Dismissing 36 (p.428) Notice of Appeal, filed by Symon Mandawala.***Accordingly, the appeal is DISMISSED for want of jurisdiction.*** (Attachments: # 1 (p.10) TRANSMITTAL LETTER FROM USCA5)(dtg) (Entered: 12/22/2020)
01/07/2021	66 (p.536)	NOTICE of Attorney Appearance by Mark Anthony Sanchez on behalf of Symon Mandawala. Attorney Mark Anthony Sanchez added to party Symon Mandawala(pty:pla) (Sanchez, Mark) (Entered: 01/07/2021)
01/14/2021	74 (p.583)	NOTICE OF APPEAL by Symon Mandawala. Per 5th Circuit rules, the appellant has 14 days, from the filing of the Notice of Appeal, to order the transcript. To order a transcript, the appellant should fill out a (Transcript Order) and follow the instructions set out on the form. This form is available in the Clerk's Office or by clicking the hyperlink above.***NOTICE OF APPEAL FILED PER 5TH CIRCUIT'S INSTRUCTIONS, SEE DOCKET ENTRY #73.*** (Attachments: # 1 (p.10) TRANSMTTAL LETTER FROM USCA5)(dtg) (Entered: 02/10/2021)
01/21/2021	67 (p.538)	Petition for Writ of Mandamus With Appendix in Support, filed by Symon Mandawala.(bc) (Entered: 01/26/2021)
01/29/2021	68 (p.570)	Certified copy of USCA JUDGMENT/MANDATE Dismissing 52 (p.489) Notice of Appeal, filed by Symon Mandawala.***CLERK'S OFFICE: Under 5TH Cir. R. 42.3, the appeal is dismissed as of January 29, 2021, for want of prosecution. The appellant failed to timely order transcript and make financial arrangements with the court reporter.*** (Attachments: # 1 (p.10) TRANSMITTAL LETTER FROM USCA5)(dtg) (Entered: 01/29/2021)
02/01/2021	69 (p.573)	ORDER-- (Status Conference set for 2/9/2021 12:30 PM before Judge Jason K. Pulliam). Signed by Judge Jason K. Pulliam. (bc) (Entered: 02/01/2021)
02/01/2021		Mailed out Order 69 (p.573) to Plaintiff at the P.O. Box 5512 address (bc) (Entered: 02/01/2021)
02/03/2021	70 (p.574)	Letter of transmittal from USCA received for 52 (p.489) Notice of Appeal, filed by Symon Mandawala.***The court has granted appellant's motion to reinstate the appeal.*** (dtg) (Entered: 02/03/2021)
02/03/2021		APPEAL REINSTATED as to 52 (p.489) Notice of Appeal.***Per 5th Circuit's Instructions, see Docket Entry #70.*** (dtg) (Entered: 02/03/2021)
02/03/2021	71 (p.575)	TRANSCRIPT REQUEST by Symon Mandawala. NO HEARINGS. (dtg) (Main Document 71 replaced on 2/3/2021) (dtg). (Entered: 02/03/2021)
02/09/2021	72	Minute Entry for proceedings held before Judge Jason K. Pulliam: Status Conference held on 2/9/2021 (Minute entry documents are not available electronically.) (Court Reporter Tish Moncivais.)(bc) (Entered: 02/09/2021)
02/09/2021		

	73 (p.577)	USCA5 JUDGMENT/MANDATE FOR #21-50023, re PETITION FOR WRIT OF MANDAMUS FILED WITH USCA5.***Mandawalas request for a stay of the district court proceedings is DENIED as unnecessary. See, e.g., Alice L. v. Dusek, 492 F.3d 563, 56465 (5th Cir. 2007). The petition for a writ of mandamus is DENIED. The motion to stay proceedings is DENIED. The clerk of court is DIR-ECTED to transmit the mandamus petition to the district court to be filed as a notice of appeal from that courts December 16, 2020, order. See Yates, 658 F.2d at 299 n.1.Nothing in this order should be construed as a comment on the merits of any issue or claim that remains to be resolved.*** (Attachments: # 1 (p.10) TRANSMITTAL LETTER FROM USCA5) (dtg) (Entered: 02/10/2021)
02/18/2021	75 (p.618)	ORDER. Signed by Judge Jason K. Pulliam. (mam) (Entered: 02/18/2021)