No. 24-

IN THE

Supreme Court of the United States

MICHAEL ASHFORD, *et al.*,

Petitioners,

v.

AVIATION TECHNICAL SERVICES, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

SOMER G. BROWN
COX COX FILO CAMEL & WILSON, LLC
723 Broad Street
Lake Charles, LA 70601

Counsel for Individual Plaintiff Petitioners

THOMAS M. FLANAGAN
CAMILLE E. GAUTHIER
FLANAGAN PARTNERS LLP
201 St. Charles Avenue, Suite 3300
New Orleans, LA 70170

Counsel for Certain Individual Plaintiff Petitioners

LAWRENCE C. BILLEAUD
706 West University Avenue
Lafayette, LA 70506

Counsel for Petitioner Aeroframe Services, LLC

C. LAWRENCE ORLANSKY
Counsel of Record
NICHOLAS J. WEHLEN
STONE PIGMAN WALTHER WITTMANN L.L.C.
909 Poydras Street, Suite 3150
New Orleans, LA 70112
(504) 593-0842
lorlansky@stonepigman.com

Counsel for Petitioner Roger Allen Porter II, in his capacity as Administrator ad Litem of the Estate of Roger Allen Porter

332691

COUNSEL PRESS

(800) 274-3321 • (800) 359-6859

QUESTION PRESENTED

The purpose of the realignment analysis is to ensure that there is an actual, substantial controversy between citizens of different states and avoid an unwarranted exercise of federal jurisdiction over business that belongs in state court. In *City of Indianapolis v. Chase Nat'l Bank of New York*, 314 U.S. 63 (1941), this Court realigned a defendant as a plaintiff, which had the effect of placing citizens of the same state on both sides of the lawsuit and destroying diversity jurisdiction. *City of Indianapolis* was not a removed case; it was filed in federal court. Here, on the other hand, the lower courts used a realignment analysis to create ostensible diversity jurisdiction and allow removal on that basis. Despite there being an actual case and controversy existing between Louisiana plaintiffs and their former Louisiana employer—a case that ultimately led to imposition of money judgments against the employer—the defendant-employer was realigned as a plaintiff. And, because that realignment then gave the appearance of complete diversity, federal jurisdiction was exercised over the case, including the plaintiffs' claims against the non-diverse defendant.

The question presented is:

Whether realignment can be used to create diversity jurisdiction in a removed case notwithstanding the presence of an actual case and controversy between the plaintiffs and a non-diverse defendant.

PARTIES TO THE PROCEEDING

1. The following Petitioners were original plaintiffs in these consolidated cases, were appellants in the court of appeals, and were Louisiana citizens at inception of this litigation: Michael Ashford; Lawrence Adams; Timothy Cowan; Joseph Debartola; Kathleen Debartola; Karen W. DeJean; Eric Drayton; Frank Hayes; Diana D. Pena; Gerald K. Rather; Tracy Reed; Allison Williams; Timothy Cleaves; Michael J. Daigle; Mohammad Elbjeirmi; Joseph Hein; Derrick Roberson; Eric Rogillio; Amy Sarver; Don Boring; Emily Grimmett; Jay Abbott; Ronnie Orgeron; Nathan M. Scalisi; Brian Morvant; Gordon St. Germain; Richard Blanton; Tom France; Dustin Gilley; Michael Heath; Richard D. Holt; Sean Hudnall; Holly Labove; Robert Lafleur; Michael McCloud; Philip Wells; Ramil Ivan R. Decena; Shirley A. Olivier; Sandra Peak; Joey T. Decolongon; Bridgette King; Craig LaFleur; Carolyn Manson; Christopher Meche; Jared Roberson; Clara Roy; Jenny Warner; Harold J. Gallow; Irma Chapman; Christine Queboeaux; Dustin Regan; Angella M. Guarjarcle; Sonita Joseph; Jason Fruge; Donald B. Dupre; Kristy David; Robbie W. Ellis; Clint Thibodeaux; Robert Coley; Morris W. Domingue; Lindsay Halpin; Troy Hayes; Vernon Holzknecht; Simona Lasalle; Afred Mueller; Richard Theriot; Cordy Cogdill; Howard Guillory; Jesse Plumber; Keith Plumber; Robert Rackard; Bruce Day; Mario Barreda; Myra B. Bourque; Danny Lee Bush; Brendan Callahan; Karen Chasson; Antonio Chavez; Barron Clark; Cynthia Davidson; Darick Davidson; Michael P. Elenbaas; Michael Fontenot; Patrick Gaynor; Judy Marceaux; Kenneth Miller; Geoffrey Omeara; Stephen Robinson; George Santarina; Franklin K. Welch; Keith Cooley; Kouri Donahoo; Donald R. Hebert;

Jake Maniscalco; Eric R. Martin; Elmer Dewayne Nick, Jr.; Roger Ladell Paris; Jason Soileau; John Upmeyer; Carl Ward; Jonathan Wilson; and Terra Soileau.[1] These individuals are hereafter referred to collectively as "Plaintiffs."

2. Petitioner Aeroframe Services, LLC, whose sole member at inception was Roger Porter, a Louisiana citizen. Aeroframe was an original defendant and an appellant in the court of appeals.

3. Respondent Aviation Technical Services, Inc. is a Washington corporation with its principal place of business in Washington. ATS was an original defendant at inception and an appellee in the court of appeals.

4. Petitioner Roger Allen Porter II, in his capacity as Administrator ad Litem of the Estate of Roger Allen Porter, was substituted as a third-party defendant after Roger Porter's death. Roger Porter was not a party to this case at its inception. Post-inception, Porter was added as a third-party defendant by ATS.

---

1. The plaintiffs listed from Bruce Day through Terra Soileau were plaintiffs in the consolidated cases *Day* (No. 22-30190), *Cooley* (No. 22-30188), and *Barreda* (No. 22-30193). The Fifth Circuit determined that the judgments appealed in those cases did not constitute final judgments.

CORPORATE DISCLOSURE STATEMENT

Petitioner Aeroframe Services, LLC is not owned by any parent corporation or publicly held company, in whole or in part. Petitioners Roger Allen Porter II, in his capacity as Administrator ad Litem of the Estate of Roger Allen Porter, and the individual Plaintiffs are not subject to the disclosure requirements set forth in U.S. Supreme Court Rule 29.6.

RELATED PROCEEDINGS

Ashford v. Aeroframe Services, LLC, et al.,
No. 22-30288 (5th Cir. Mar. 19, 2024)

Ashford v. Aeroframe Services, LLC, et al.,
No. 19-cv-610 (W.D. La. Jun. 10, 2021)

Ashford v. Aeroframe Services, LLC, et al.,
No. 17-30142 (5th Cir. Oct. 26, 2018)

Ashford v. Aeroframe Services, LLC, et al.,
No. 14-cv-992 (W.D. La. May 23, 2017)

Adams, et al. v. Aeroframe Services, LLC, et al.,
No. 22-30185 (5th Cir. Mar. 19, 2024)

Adams, et al. v. Aeroframe Services, LLC, et al.,
No. 14-cv-984 (W.D. La. Mar. 17, 2022)

Cleaves, et al. v. Aeroframe Services, LLC, et al.,
No. 22-30186 (5th Cir. Mar. 19, 2024)

Cleaves, et al. v. Aeroframe Services, LLC, et al.,
No. 14-cv-986 (W.D. La. Mar. 17, 2022)

Boring, et al. v. Aeroframe Services, LLC, et al.,
No. 22-30187 (5th Cir. Mar. 19, 2024)

Boring, et al. v. Aeroframe Services, LLC, et al.,
No. 14-cv-985 (W.D. La. Mar. 17, 2022)

Cooley, et al. v. Aeroframe Services, LLC, et al.,
No. 22-30188 (5th Cir. Mar. 19, 2024)

Cooley, et al. v. Aeroframe Services, LLC, et al.,
No. 14-cv-987 (W.D. La. Mar. 17, 2022)

Morvant, et al. v. Aeroframe Services, LLC, et al.,
No. 22-30189 (5th Cir. Mar. 19, 2024)

Morvant, et al. v. Aeroframe Services, LLC, et al.,
No. 14-cv-2323 (W.D. La. Mar. 17, 2022)

Day v. Aeroframe Services, LLC, et al.,
No. 22-30190 (5th Cir. Mar. 19, 2024)

Day v. Aeroframe Services, LLC, et al.,
No. 16-cv-1512 (W.D. La. Mar. 17, 2022)

Blanton, et al. v. Aeroframe Services, LLC, et al.,
No. 22-30191 (5th Cir. Mar. 19, 2024)

Blanton, et al. v. Aeroframe Services, LLC, et al.,
No. 14-cv-990 (W.D. La. Mar. 17, 2022)

Decolongon, et al. v. Aeroframe Services, LLC, et al.,
No. 22-30192 (5th Cir. Mar. 19, 2024)

Decolongon, et al. v. Aeroframe Services, LLC, et al.,
No. 14-cv-989 (W.D. La. Mar. 17, 2022)

Barreda, et al. v. Aeroframe Services, LLC, et al.,
No. 22-30193 (5th Cir. Mar. 19, 2024)

Barreda, et al. v. Aeroframe Services, LLC, et al.,
No. 14-cv-2538 (W.D. La. Mar. 17, 2022)

Warner v. Aeroframe Services, LLC, et al.,
No. 22-30194 (5th Cir. Mar. 19, 2024)

Warner v. Aeroframe Services, LLC, et al.,
No. 14-cv-983 (W.D. La. Mar. 17, 2022)

Gallow, et al. v. Aeroframe Services, LLC, et al.,
No. 22-30196 (5th Cir. Mar. 19, 2024)

Gallow, et al. v. Aeroframe Services, LLC, et al.,
No. 14-cv-988 (W.D. La. Mar. 17, 2022)

Coley, et al. v. Aeroframe Services, LLC, et al.,
No. 22-30198 (5th Cir. Mar. 19, 2024)

Coley, et al. v. Aeroframe Services, LLC, et al.,
No. 14-cv-2324 (W.D. La. Mar. 17, 2022)

Cogdill, et al. v. Aeroframe Services, LLC, et al.,
No. 22-30201 (5th Cir. Mar. 19, 2024)

Cogdill, et al. v. Aeroframe Services, LLC, et al.,
No. 14-cv-2325 (W.D. La. Mar. 17, 2022)

Rackard v. Aeroframe Services, LLC, et al.,
No. 22-30209 (5th Cir. Mar. 19, 2024)

Rackard v. Aeroframe Services, LLC, et al.,
No. 14-cv-991 (W.D. La. Mar. 17, 2022)

Jackson v. Aeroframe Services, LLC, et al.,
No. 22-30207 (5th Cir. Mar. 19, 2024)

Jackson v. Aeroframe Services, LLC, et al.,
No. 16-cv-1397 (W.D. La. Mar. 17, 2022)

Neathammer v. Aeroframe Services, LLC, et al.,
No. 22-30212 (5th Cir. Mar. 19, 2024)

Neathammer v. Aeroframe Services, LLC, et al.,
No. 16-cv-1378 (W.D. La. Mar. 17, 2022)

TABLE OF CONTENTS

Table of Contents

TABLE OF APPENDICES

Table of Appendices

TABLE OF CITED AUTHORITIES

Page

Cases

Page

Constitutional Provisions

Page

Statutes, Rules and Regulations

Other Authorities

PETITION FOR A WRIT OF CERTIORARI

Petitioners Roger Allen Porter II, in his capacity as Administrator ad Litem of the Estate of Roger Allen Porter, Plaintiffs, and Aeroframe respectfully petition this Court for a writ of certiorari to review the judgments of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The opinion of the court of appeals is reported at 96 F.4th 783 (5th Cir. 2024). App. 1a. The opinion of the district court (App. 102a) and the report and recommendation of the Magistrate Judge (App. 103a) are not reported in the *Federal Supplement* but are available at 2020 WL 6947844 and 2020 WL 6948088, respectively.

JURISDICTION

The court of appeals entered judgment on March 19, 2024 (App. 1a) and denied petitioners' petition for rehearing en banc on June 24, 2024 (App. 181a). This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1332, 28 U.S.C. § 1359, and 28 U.S.C. § 1441 are reproduced at App. 196a.

INTRODUCTION

This case presents an important issue governing the removal jurisdiction of federal courts that has not yet been, but should be, settled by this Court. Namely, whether the

realignment doctrine permits removal of a case based on diversity jurisdiction notwithstanding the existence of an actual case and controversy between the plaintiffs and a non-diverse defendant. The Fifth Circuit held that the doctrine does permit such a removal. In particular, despite the Louisiana plaintiffs' indisputably viable state law claim against a Louisiana defendant (Aeroframe, the plaintiffs' former employer) that resulted in money judgments, the Fifth Circuit held that the defendant may be realigned and treated as a plaintiff for jurisdictional purposes. According to the Fifth Circuit, realignment is allowed because, since inception of the litigation, the Louisiana litigants (plaintiffs, Aeroframe, and Porter) were "aligned" in pursuing a "deep-pocketed," diverse defendant (ATS, a Washington corporation). And, since treating the only non-diverse defendant as a plaintiff then results in complete diversity, the district court had jurisdiction to hear the case, including the Louisiana-on-Louisiana claims (plaintiffs versus Aeroframe).

The Fifth Circuit's holding is not supported by statutory text. 28 U.S.C. § 1441(a) permits removal of a case from state court only if the federal courts "have original jurisdiction" over the action. Original jurisdiction is absent here; there is no federal question and, on the face of the state court petitions, complete diversity is lacking. Moreover, while § 1441(b)(1) mandates that the citizenship of defendants sued under fictitious names be disregarded when analyzing jurisdiction, disregarding the citizenship of named defendants is not authorized.

Nor is the Fifth Circuit's holding supported by precedent. Although this Court realigned a party when analyzing jurisdiction in *City of Indianapolis v. Chase*

National Bank of New York, 314 U.S. 63 (1941), that was not a removed case. Realignment was employed there to prevent an unwarranted exercise of diversity jurisdiction, by testing whether a case filed in federal court involved an actual, substantial controversy between citizens of different states. This Court did not, in *City of Indianapolis* or any other case, hold that parties in a removed case may be realigned so as to create diversity jurisdiction and allow the federal court to adjudicate claims between non-diverse parties.

Finally, this is not a case in which a non-diverse defendant's citizenship may be disregarded for purposes of the jurisdictional analysis because that defendant is only a nominal or formal party or one that has been improperly joined. *See*, *e.g.*, *Navarro Sav. Ass'n v. Lee*, 446 U.S. 458, 461 (1980) ("[A] federal court must disregard nominal or formal parties and rest jurisdiction only upon the citizenship of real parties to the controversy."); *Williams v. Homeland Ins. Co. of New York*, 18 F.4th 806, 812 (5th Cir. 2021) (A "non-diverse defendant is improperly joined such that its citizenship can be ignored for purposes of evaluating diversity jurisdiction if the removing party shows either that: (1) there was actual fraud in the pleading of jurisdictional facts; or (2) the plaintiff is unable to establish a cause of action against the non-diverse defendant in state court."). All parties, including the removing party (respondent here, diverse ATS), agree that the plaintiffs had valid unpaid wage claims against their former employer (Aeroframe). This fact is best evidenced by the money judgments (now affirmed by the Fifth Circuit) enforcing those claims, obligating a Louisiana defendant to pay money to Louisiana plaintiffs.

The Fifth Circuit utilized realignment and affirmed denial of remand because it found that plaintiffs (more specifically, plaintiffs' counsel) would not have pursued their claims against non-diverse Aeroframe unless they could also sue ATS, a well-heeled defendant, in state court. This conflicts with removal jurisprudence holding that a plaintiffs' motivation in suing a non-diverse defendant is irrelevant to the removal analysis. *See Chicago, Rock Island, & Pac. Ry. Co. v. Schwyhart*, 227 U.S. 184, 193 (1913) ("Again, the motive of the plaintiff, taken by itself, does not affect the right to remove. If there is a joint liability, he has an absolute right to enforce it, whatever the reason that makes him wish to assert the right."). And the appellate court's reasoning risks a flood of removals in other cases, whenever a diverse defendant questions the strategy and rationale behind a plaintiff's decision to assert actual, viable claims against a non-diverse defendant.

This Court has long held that removal statutes must be strictly construed against removal and in favor of remand. *See*, *e.g.*, *Syngenta Crop Prot., Inc. v. Henson*, 537 U.S. 28, 32 (2002). This holding is directly undermined by the Fifth Circuit's expansive approach to realignment. Indeed, the complete diversity requirement of 28 U.S.C. § 1332(a)—the statutory basis for diversity jurisdiction—is meaningless if the citizenship of a legitimate, non-diverse defendant may be disregarded to accomplish removal.

Certiorari should be granted so that this Court can resolve the important jurisdictional issue raised by the Fifth Circuit's ruling.

STATEMENT OF THE CASE

A. Basis for Federal Jurisdiction

The jurisdiction of the district court was invoked under 28 U.S.C. § 1332 because of alleged diversity of citizenship, through removal effected by defendant ATS purportedly pursuant to 28 U.S.C. § 1441.

B. Statutory Background

"The power reserved to the states under the Constitution to provide for the determination of controversies in their courts, may be restricted only by the action of Congress in conformity to the Judiciary Articles of the Constitution." *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108-09 (1941). Such a restriction is found in 28 U.S.C. § 1441, which authorizes removal of civil actions commenced in state court and must be strictly construed. *Syngenta Crop Prot., Inc. v. Henson*, 537 U.S. 28, 32 (2002). Under § 1441(a), a defendant may remove "any civil action brought in a State court of which the district courts of the United States have original jurisdiction." Original jurisdiction is thus required to support removal under § 1441. *Id.* at 33.

Under 28 U.S.C. § 1332(a), district courts have original jurisdiction over civil actions where the matter in controversy exceeds the sum or value of $75,000 and is between citizens of different states. This Court has "read the statutory formulation 'between . . . citizens of different States' to require complete diversity between all plaintiffs and all defendants." *Lincoln Prop. Co. v. Roche*, 546 U.S. 81, 89 (2005) (quoting *Caterpillar Inc. v. Lewis*,

519 U.S. 61, 68 (1996)). "That is, diversity jurisdiction does not exist unless *each* defendant is a citizen of a different State from *each* plaintiff." *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 373 (1978) (emphasis in original).

If a removal is based on diversity of citizenship, § 1441(b)(1) mandates that the citizenship of defendants sued under fictitious names be disregarded. The statute makes no mention of disregarding the citizenship of named defendants. Moreover, § 1441(b)(2) prohibits removal of an action "if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought."

C. This Litigation

1. Plaintiffs (Louisiana) were employed by Aeroframe (Louisiana), an airplane maintenance, repair, and overhaul facility in Lake Charles, Louisiana. When Aeroframe ceased operating and failed to tender their final paychecks, the plaintiffs contacted an attorney with the law firm Cox, Cox, Filo, Camel & Wilson, LLC. Plaintiffs wanted to recover the wages they were owed, as well as statutory penalties and attorneys' fees under Louisiana law.

The Cox firm was reluctant to take plaintiffs' cases because it believed Aeroframe had no money to pay a judgment. But continued requests for representation prompted the Cox firm to contact Aeroframe's principal, Roger Porter. Porter blamed ATS (Washington), for Aeroframe's closure. Based on its investigation, the Cox firm determined that ATS was a viable defendant and agreed to represent the plaintiffs in suing both companies (diverse ATS and non-diverse Aeroframe). Porter

directed Aeroframe's employees to contact the Cox firm for representation. Porter was unconcerned about the lawsuits against Aeroframe because it was out of money and going out of business.

The Cox firm filed lawsuits in Louisiana state court on behalf of the plaintiff-employees, naming Aeroframe and ATS as defendants. The lawsuits presented no federal question, and complete diversity was lacking because all plaintiffs and Aeroframe were Louisiana citizens. ATS therefore did not initially remove the lawsuits to federal court. Instead, it filed a cross-claim against Aeroframe and added Porter, individually, by naming him as a third-party defendant. Until then (months after the petition was filed in state court), Porter and ATS were not suing one another.

Porter contacted the Cox firm.[1] He asked for representation in counter-suing ATS and agreed that, if he recovered any money from ATS, the funds would first be used to compensate the plaintiffs (Aeroframe's former employees). After consulting with ethics counsel about the proposed simultaneous representation of the plaintiffs and Porter (a third-party defendant with no claims adverse to the plaintiffs) in the same lawsuit, the Cox firm agreed to represent Porter subject to his execution of a conflicts waiver. That agreement—reached months after suit was filed—was memorialized in a written document confirming that any recovery from ATS by Porter or his

1. Porter knew the Cox firm before inception of this litigation. The Cox firm had been adverse to Aeroframe in other matters, but had also been asked to evaluate Aeroframe's potential claims arising from the 2010 Deepwater Horizon oil spill.

company, Aeroframe, would first be used to compensate the plaintiffs for the wages they were owed.

2. ATS began removing these consolidated cases in 2014. ATS argued that all non-ATS parties (plaintiffs, Aeroframe, and Porter) should be aligned as plaintiffs for jurisdictional purposes because their interests were opposed to ATS. On appeal in *Ashford v. Aeroframe* (*Ashford I*), the Fifth Circuit disagreed. The court explained that Aeroframe and plaintiffs were adverse at inception of the litigation, and "federal diversity-of-citizenship jurisdiction 'depends upon the state of things at the time of the action brought.'" *Ashford v. Aeroframe Servs., L.L.C.*, 907 F.3d 385, 386 (5th Cir. 2018) (quoting *Grupo Dataflux v. Atlas Glob. Grp., L.P.*, 541 U.S. 567, 570–71 (2004)). App. at 151a-152a. Thus, removal was improper, and *Ashford I* was remanded to state court.

3. ATS removed *Ashford v. Aeroframe* again in 2019 (*Ashford II*). Relying on "new evidence," ATS argued that Porter—Aeroframe's principal—was working with the Cox firm from inception of the lawsuit, including by referring Aeroframe's former employees to the firm. The district court agreed, held that the non-ATS parties were aligned at inception, and denied remand. The court then granted summary judgment in all cases dismissing all claims against ATS. Separately, the court adjudicated the Louisiana plaintiffs' claims against Louisiana Aeroframe and entered money judgments in the plaintiffs' favor.

The Fifth Circuit affirmed,[2] concluding that "new evidence reveals that diversity has existed since the

2. These cases were consolidated on appeal.

inception of the litigation."[3] App. at 2a. Citing realignment jurisprudence, the Fifth Circuit explained that courts must look past the pleadings and "'arrange the parties according to their sides in the dispute.'" App. at 20a (quoting *Zurn Indus., Inc. v. Acton Constr. Co.*, 847 F.2d 234, 236 (5th Cir. 1988)). Further, party alignment for jurisdictional purposes is to be determined "'by the plaintiff's principal purpose *for filing suit*.'" App. at 22a (emphasis in original) (quoting *Zurn*, 847 F.2d at 236). Here, according to the Fifth Circuit, diversity jurisdiction exists because the principal purpose of this lawsuit was to permit Porter (a non-party at inception) to sue ATS in state court. The court stated:

> We now know the [plaintiffs], represented by [the Cox firm], were not interested in pursuing a claim against Aeroframe, which [it] understood had no assets. We now know that, instead, [lawyers with the Cox firm] were, from the inception of litigation, attempting to pursue deep-pocketed ATS in a friendly state court forum on behalf of Aeroframe's principal and [the Cox firm's] client, Porter.

---

3. As explained in the Fifth Circuit's opinion, ATS's "new evidence" supporting the second removal largely resulted from discovery taken in connection with a motion for sanctions that ATS brought against Aeroframe, Porter, and the Cox firm lawyers, alleging bad faith throughout the litigation, as well as information ATS claims it discovered from the record of an unrelated lawsuit Porter filed in Tennessee. App. 10a-12a. An evidentiary hearing was held on the motion for sanctions, and all evidence adduced at the hearing was also deemed submitted in connection with the non-ATS parties' motions to remand. App. at 17a-18a. The sanctions issue is not pertinent to the question presented here, which relates solely to whether the federal courts have jurisdiction over this case.

App. at 23a. The Fifth Circuit thus used the realignment doctrine to create diversity jurisdiction and permit removal despite the citizenship of non-diverse Aeroframe—a defendant against whom the plaintiffs had asserted legitimate and viable claims—because it found that plaintiffs (or their counsel) would not have sued Aeroframe unless they could also pursue diverse ATS in in a "friendly state court." The Fifth Circuit then affirmed "the individual judgments against Aeroframe in favor of the employees," App. at 25a, and denied rehearing. App. at 181a.

REASONS FOR GRANTING THE PETITION

This case presents an important question of federal law that should be settled by this Court, as the Fifth Circuit's decision encourages removal in a host of previously unremovable cases. *See* Sup. Ct. R. 10(c). The Fifth Circuit has dramatically expanded the realignment doctrine so that it permits removal of a case from state court notwithstanding the existence of a true case and controversy between non-diverse parties. This expansion undermines the purpose of the realignment doctrine articulated in *City of Indianapolis v. Chase Nat'l Bank of New York*, 314 U.S. 63 (1941), which is not to create federal jurisdiction but rather to prevent parties from manufacturing it. The Fifth Circuit's decision is inconsistent with decisions rendered by other circuit courts, which have used realignment to permit removal where a non-diverse defendant is a nominal party lacking a real interest in the controversy. And it is contrary to this Court's removal jurisprudence dictating that a plaintiff 's motives for asserting a legitimate claim against a non-diverse defendant do not affect the right to remove. *See*

Chicago, Rock Island, & Pac. Ry. Co. v. Schwyhart, 227 U.S. 184, 193 (1913).

Certiorari is warranted.

A. The Fifth Circuit's Decision Dramatically Expands The Realignment Doctrine, Undermining Its Purpose.

A fundamental requirement for the exercise of diversity jurisdiction under 28 U.S.C. § 1332(a), whether a case is filed in federal court or removed from state court, is the existence of complete diversity; each plaintiff must be a citizen of a different state than each defendant. *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 373 (1978). Congress and the federal courts have long sought to prevent parties from manipulating jurisdictional facts in order to gain access to the federal forum where complete diversity is absent. 28 U.S.C. § 1359, for example, prohibits the exercise of federal jurisdiction over a case in which a party, "by assignment or otherwise, has been improperly or collusively made or joined to invoke the jurisdiction of such court." Thus, diversity jurisdiction was not exercised in *Airlines Reporting Corp. v. S & N Travel, Inc.*, 58 F.3d 857, 864 (2d Cir. 1995), because claims had been assigned to the plaintiff for the "primary purpose" of vesting the federal court "with jurisdiction it formerly did not possess."

The realignment doctrine, as used in *City of Indianapolis v. Chase Nat'l Bank of New York*, 314 U.S. 63 (1941), similarly protects against the unwarranted exercise of federal jurisdiction. There, Chase National Bank filed suit in federal court based on diversity jurisdiction. Chase

was the trustee under a mortgage deed to secure a bond issue executed by Indianapolis Gas. Indianapolis Gas subsequently entered a 99-year lease conveying all of its property to Citizens Gas, under which Citizens Gas agreed to pay Chase the interest on the bonds. Later, Citizens Gas conveyed its entire property, including the property leased from Indianapolis Gas, to the City of Indianapolis. The City then refused to honor the lease (including the requirement that it pay Chase interest), which led Chase, a New York citizen, to sue three Indiana citizens: the City, Citizens Gas, and Indianapolis Gas.

Indianapolis Gas's answer asserted that it never denied the validity of the lease that the City refused to honor. The district court therefore found that there was "no collision between the interests" of Chase and Indianapolis Gas. *Id*. at 71. The court realigned Indianapolis Gas as a plaintiff, held that there was no diversity jurisdiction because Indiana citizens were on both sides of the lawsuit, and dismissed for lack of jurisdiction. The Seventh Circuit reversed. After the case was litigated on the merits, this Court granted certiorari "because of the important jurisdictional issue involved in the litigation." *Id.* at 72.

This Court agreed with the district court that the parties should be rearranged for jurisdictional purposes because Chase and Indianapolis Gas were aligned on the "one question" that permeated the litigation: whether the lease was valid and binding upon the City. *Id.* Upon considering Indianapolis Gas as a plaintiff, the Court concluded that there was no jurisdiction due to a lack of complete diversity. The purpose of the Court's jurisdictional analysis and realignment of the parties was to prevent an unwarranted exercise of federal jurisdiction.

Indeed, the Court explained that the requirements of diversity jurisdiction, "however technical seeming, must be viewed in the perspective of the constitutional limitations upon the judicial power of the federal courts, and of the Judiciary Acts in defining the authority of the federal courts when they sit, in effect, as state courts." *Id.* at 76 (footnote omitted). The "dominant note" in Congressional enactments related to diversity jurisdiction is "one of jealous restriction, of avoiding offense to state sensitiveness, and of relieving the federal courts of the overwhelming burden of 'business that intrinsically belongs to the state courts,' in order to keep them free for their distinctive federal business." *Id.* at 76 (quoting Henry J. Friendly, *The Historic Basis of Diversity Jurisdiction*, 41 Harv. L. Rev. 483, 510 (1928)). Statutes conferring diversity jurisdiction thus must be strictly construed so that the "'power reserved to the states, under the Constitution (Amendment 10), to provide for the determination of controversies in their courts,'" is not unduly restricted. *Id.* at 76-77 (quoting *Healy v. Ratta*, 292 U.S. 263, 270 (1934)).

This Court did not suggest in *City of Indianapolis* that realignment is a tool that can be used to *create*—as opposed to destroy—complete diversity and thereby permit litigation of claims between non-diverse parties in federal court. Nor is that suggestion made in any other decision by this Court. As a result, federal courts, including the Fifth Circuit, have long recognized that the "objective of *City of Indianapolis* realignment is only to insure that there is a *bona fide* dispute between citizens of different states." *Zurn Indus., Inc. v. Acton Constr. Co.*, 847 F.2d 234, 237 (5th Cir. 1988); *Md. Cas. Co. v. W.R. Grace & Co.*, 23 F.3d 617, 623 (2d Cir. 1993), *amended* (May 16, 1994)

("[T]he Supreme Court's chief concern in *Indianapolis* [was] that parties not manipulate alignment to manufacture diversity jurisdiction."). As stated by the Fourth Circuit in *Jackson v. Home Depot U.S.A., Inc.*, 880 F.3d 165, 172 (4th Cir. 2018), *aff'd*, 587 U.S. 435 (2019) (quoting *U.S. Fid. & Guar. Co. v. A & S Mfg. Co.*, 48 F.3d 131, 133 (4th Cir. 1995)), "[r]ealignment ensures that parties do not artfully draft pleadings in order to escape 'the mandate that courts carefully confine their diversity jurisdiction to the precise limits that the jurisdictional statute, pursuant to Article III, has defined.'" Thus, where a case does not involve "an attempt to fraudulently manufacture diversity jurisdiction," there is no need to "delve too deeply into the issue of realignment." *Id.* at 172-73.

The Fifth Circuit's decision here directly undermines this long-recognized purpose of the realignment doctrine. Whereas realignment is a means of testing for the presence of original jurisdiction and restricting access to federal courts, the Fifth Circuit has used it to manufacture jurisdiction by treating a non-diverse defendant (Aeroframe) as a plaintiff despite the named plaintiffs' indisputably viable claims against it. Further, by focusing its analysis on the non-diverse defendant's financial situation and the pre-suit decision-making strategies of plaintiffs' counsel, the Fifth Circuit's decision will have the practical effect of encouraging additional removals, jurisdictional discovery, mini-trials, and credibility determinations. This case, for example, has involved consecutive removals from state court and has been pending in federal court for ten years, despite the undisputed fact that the *Louisiana* plaintiffs asserted meritorious unpaid wage claims that ultimately resulted in money judgments against their *Louisiana* former employer. The Court should grant this petition and take

the opportunity to firmly declare that *City of Indianapolis* realignment is unavailable to create diversity jurisdiction and permit removal where there is a viable claim asserted against a non-diverse defendant.

B. This Court's Nominal Defendant Jurisprudence Renders Realignment Unnecessary in Removed Cases.

The Fifth Circuit and other federal circuit courts have used the doctrine of realignment in removed cases. But those cases appear to involve nominal defendants with whom the plaintiff had no actual case or controversy. For example, in *Peters v. Standard Oil Co. of Texas*, 174 F.2d 162 (5th Cir. 1949), a mineral lessor sued the lessee to terminate a mineral lease. Another co-lessor was alleged to be indispensable to the suit and was named as a defendant. *Id.* at 163. The court realigned that non-diverse co-lessor as a plaintiff since both lessors had the same interest vis-à-vis the defendant lessee. The naming of a co-lessor as a defendant apparently was required to terminate the lease, rendering that lessor a "nominal" defendant (with no true claims being asserted by one lessor against the other).

In *Cleveland Housing Renewal Project v. Deutsche Bank Trust Co.*, 621 F.3d 554 (6th Cir. 2010), another removed case, the Sixth Circuit affirmed the district court's decision to realign a party. There, the plaintiff (an Ohio non-profit corporation) brought a public nuisance action in state court against diverse Deutsche Bank relating to properties the bank owned in the City of Cleveland. *Id.* at 557. The plaintiff also named the City as a defendant. However, its complaint did not "allege any cause of action against the City, nor . . . seek any relief

from the City." *Id.* For that reason, because the plaintiff and the City only had "potentially adverse interests," the City was realigned as a plaintiff after removal so that diversity jurisdiction could be exercised. *Id.* at 559-60.

The First Circuit similarly held that realignment was proper in *Littlefield v. Acadia Ins. Co.*, 392 F.3d 1 (1st Cir. 2004), a removed case. There, a plaintiff (Hartman) sued a defendant (Littlefield) in state court for wrongful death following a boat collision on a New Hampshire lake. Littlefield then filed a separate state court declaratory judgment action against his insurer, arguing that the insurer owed coverage and a defense for the wrongful death suit. *Id.* at 4. Littlefield named Hartman as a defendant (with her consent) in the declaratory judgment action because New Hampshire law granted Hartman standing to challenge the insurer's denial of coverage. *Id.* at 4 n.2. The insurer removed.

Hartman's presence as a defendant in the case would have defeated complete diversity because Hartman and Littlefield were both New Hampshire citizens. However, the First Circuit realigned. *Id.* The court explained that because "Hartman's interest in this case and the relief she seeks are identical to Littlefield's, she should have been re-aligned as a plaintiff " by the district court. *Id.*

While *Peters*, *Cleveland Housing*, *Littlefield*, and other cases[4] base their jurisdictional analysis on party alignment, they are more properly classified as nominal

4. *City of Vestavia Hills v. Gen. Fid. Ins. Co.*, 676 F.3d 1310, 1314 (11th Cir. 2012); *White v. U. S. Fidelity & Guar. Co.*, 356 F.2d 746, 748 (1st Cir. 1966).

defendant cases, supported by over a century of this Court's jurisprudence. *See*, *e.g.*, *Walden v. Skinner*, 101 U.S. 577, 589 (1879) (diversity jurisdiction is not defeated where the non-diverse defendant is "a mere nominal party"). Indeed, this Court has long held that "a federal court must disregard nominal or formal parties and rest jurisdiction only upon the citizenship of real parties to the controversy." *Navarro Sav. Ass'n v. Lee*, 446 U.S. 458, 461 (1980). This includes situations where a defendant was merely "named to satisfy state pleading rules," "joined only as a designated performer of a ministerial act," or "otherwise had no control of, impact on, or stake in the controversy." *Lincoln Prop. Co. v. Roche*, 546 U.S. 81, 82-83 (2005) (first citing *McNutt ex rel. Leggett, Smith, & Lawrence v. Bland*, 43 U.S. (2 How.) 9, 14 (1844); then *Walden*, 101 U.S. at 589; and then *Wood v. Davis*, 59 U.S. (18 How.) 467, 469–70 (1856)).

Nominal defendant cases, whether or not they use the term "realignment," do not support the Fifth Circuit's decision here. Non-diverse Aeroframe is *not* a nominal party. Aeroframe was the plaintiffs' employer, it was sued for not paying the plaintiffs' wages, and it has an interest in the outcome of this lawsuit. Indeed, it was ultimately cast in judgment as owing money to the plaintiffs, which judgments the Fifth Circuit affirmed while simultaneously realigning Aeroframe as a plaintiff. Aeroframe's status as a real party-in-interest is not lost because its principal (Porter) blamed ATS for Aeroframe's closure before suit was filed, or because Aeroframe, upon its closure, lacked assets to pay a judgment. To the contrary, this Court has stated that a "named defendant who admits involvement in the controversy and would be liable to pay a resulting judgment is not 'nominal' in any sense except that it is

named in the complaint." *Lincoln*, 546 U.S. at 93. And it is well settled that a defendant's financial wherewithal does not factor into the jurisdictional analysis; a defendant's citizenship must be considered even if that defendant is "'judgment-proof.'" *Parks v. New York Times Co.*, 308 F.2d 474, 478 (5th Cir. 1962) (quoting *Moore's Commentary on the United States Judicial Code*, para. 0.03(35), at 234-36 (1949)); *see also Williams v. Homeland Ins. Co. of New York*, 18 F.4th 806, 814 (5th Cir. 2021) (presence of "essentially" defunct, non-diverse defendant destroyed diversity jurisdiction notwithstanding its "financial situation").

While the Fifth Circuit's use of realignment in this case is particularly improper because it results in the exercise of diversity jurisdiction where it does not exist, the doctrine is unnecessary in removed cases. If a non-diverse defendant is merely a nominal defendant with no real interest in the controversy, its citizenship can be disregarded and jurisdiction exercised. *See*, *e.g.*, *Walden*, 101 U.S. at 589.[5] Conversely, if as here the plaintiff has a real, viable claim against the non-diverse defendant, removal is not allowed under § 1441(a) because original jurisdiction is lacking.

This Court should grant certiorari to clarify that

5. Similarly, if the plaintiff has committed fraud in the pleading of jurisdictional facts or is unable to establish a viable cause of action against a non-diverse defendant, federal courts disregard that defendant's citizenship under the improper joinder doctrine. *Williams v. Homeland Ins. Co. of New York*, 18 F.4th 806, 812 (5th Cir. 2021). The improper joinder test is not satisfied here because the plaintiffs have viable claims against non-diverse Aeroframe.

realignment is inapplicable in a removed case or, alternatively, prohibit realignment where the non-diverse defendant is not a nominal party.

C. The Fifth Circuit's Decision Is Contrary To This Court's Removal Jurisprudence.

In the Fifth Circuit, party alignment for jurisdictional purposes is determined by "the plaintiff 's principal purpose for filing suit." *Zurn Indus., Inc. v. Acton Constr. Co.*, 847 F.2d 234, 237 (5th Cir. 1988). In this case involving objectively valid claims against non-diverse Aeroframe, the Fifth Circuit focused the realignment analysis on the plaintiffs' (and their counsel's) purported *subjective* motivation in asserting those claims. The court notes, among other things, that (i) plaintiffs' counsel, the Cox firm, was "uninterested in representing [plaintiffs] because she knew Aeroframe was insolvent"; (ii) Porter confirmed before inception of the lawsuit that "Aeroframe was being pursued by numerous creditors, including former employees, who had not been paid several of their final paychecks"; (iii) Porter referred employees to the Cox firm for representation; and (iv) the Cox firm had no intention of suing Porter, individually. App. at 20a-21a. Based on these facts, the Fifth Circuit concluded that the unpaid plaintiff-employees (more particularly, their counsel) were not really interested in pursuing their valid state law claims against their employer Aeroframe and instead filed suit only to assist Porter in suing diverse ATS in a "friendly state court forum."[6] App. at 23a.

---

6. The Fifth Circuit has correctly noted that there is "nothing wrong with a plaintiff 's desire to litigate his claims in state court. Those courts are generally the equals of federal ones, and when

The Fifth Circuit's analysis conflicts with this Court's removal decisions. First, the Fifth Circuit failed to strictly construe the removal statutes against removal and in favor of remand. *See*, *e.g.*, *Syngenta Crop Prot., Inc. v. Henson*, 537 U.S. 28, 32 (2002). 28 U.S.C. § 1441(a) permits removal only where there is original jurisdiction, which is absent here because there is no federal question and diversity is incomplete. Additionally, 28 U.S.C. § 1441(b)(2) prohibits removal of a diversity case "if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought." Aeroframe is a Louisiana citizen, precluding removal.

Second, the Fifth Circuit improperly considered the plaintiffs' motive in choosing to assert their legitimate state law claims, which is contrary to this Court's holding in *Chicago, Rock Island, & Pacific Railway Co. v. Schwyhart*, 227 U.S. 184 (1913). There, after concluding that a non-diverse defendant might be liable under state law, the Court explained that the "motive of the plaintiff" in suing the non-diverse defendant "does not affect the right to remove." *Id.* at 193. Instead, "[i]f there is a joint liability, he has an absolute right to enforce it, whatever the reason that makes him wish to assert the right." *Id.* Furthermore, the non-diverse defendant's financial circumstances are irrelevant. The Court stated: "[T]he fact that the [diverse] company is rich and [the non-diverse individual] poor does not affect the case." *Id.*

---

it comes to questions of state law specifically, the state courts are superior." *Durbois v. Deutsche Bank Nat'l Trust Co.*, 37 F.4th 1053, 1060 (5th Cir. 2022) (citing Henry J. Friendly, *Federal Jurisdiction: A General View*, 149–52 (1973)).

The Fifth Circuit's departure from these well-settled rules risks a flood of removals in cases that were not previously removable, as well as significant jurisdictional discovery into questions of strategy and motive. There are many cases in which a defendant might perceive itself as a "target" or a "deep-pocket," either at case inception or as alliances shift over time. In construction cases, for example, plaintiffs often sue a general contractor and its subcontractor. If a subcontractor learns that a plaintiff had communications with its co-defendant before suit was filed—which is often the case—it might conclude that it is the primary target and remove to federal court citing the Fifth Circuit's decision. Jurisdictional discovery on fact-intensive questions related to a party's motivations to ascertain party alignment would likely be warranted, significantly increasing costs and delaying litigation on the merits of the plaintiff 's claim while threshold discovery to determine whether jurisdiction exists plays out.

Review of the Fifth Circuit's decision is necessary to prevent the erosion of the limits on diversity jurisdiction, to ensure that removal decisions are based on objective facts, and to prevent what happened here: The exercise of diversity jurisdiction over state law claims between non-diverse parties where no other basis for jurisdiction exists.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

SOMER G. BROWN
COX COX FILO CAMEL
& WILSON, LLC
723 Broad Street
Lake Charles, LA 70601

Counsel for Individual Plaintiff Petitioners

THOMAS M. FLANAGAN
CAMILLE E. GAUTHIER
FLANAGAN PARTNERS LLP
201 St. Charles Avenue,
Suite 3300
New Orleans, LA 70170

Counsel for Certain Individual Plaintiff Petitioners

LAWRENCE C. BILLEAUD
706 West University Avenue
Lafayette, LA 70506

Counsel for Petitioner Aeroframe Services, LLC

C. LAWRENCE ORLANSKY
Counsel of Record
NICHOLAS J. WEHLEN
STONE PIGMAN WALTHER
WITTMANN L.L.C.
909 Poydras Street,
Suite 3150
New Orleans, LA 70112
(504) 593-0842
lorlansky@stonepigman.com

Counsel for Petitioner Roger Allen Porter II, in his capacity as Administrator ad Litem of the Estate of Roger Allen Porter

September 2024

APPENDIX

TABLE OF APPENDICES

Table of Appendices

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, FILED MARCH 19, 2024

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 22-30288
CONSOLIDATED WITH
Nos. 22-30185, 22-30186, 22-30187, 22-30188, 22-30189, 22-30190, 22-30191, 22-30192, 22-30193, 22-30194, 22-30196, 22-30198, 22-30201, 22-30207, 22-30209, 22-30212

MICHAEL ASHFORD,

Plaintiff-Appellant-Appellee,

versus

AEROFRAME SERVICES, L.L.C.,

Defendant-Appellant,

versus

AVIATION TECHNICAL SERVICES, INCORPORATED,

Defendant-Third Party Plaintiff-Appellee,

versus

ROGER ALLEN PORTER, II,

Third Party Defendant-Appellant.

Appendix A

Appeals from the United States District Court
for the Western District of Louisiana

USDC Nos. 2:19-CV-610, 2:14-CV-984, 2:14-CV-986, 2:14-CV-985, 2:14-CV-987, 2:14-CV-2323, 2:16-CV-1512, 2:14-CV-990, 2:14-CV-989, 2:14-CV-2538, 2:14-CV-983, 2:14-CV-988, 2:14-CV-2324, 2:14-CV-2325, 2:16-CV-1397, 2:14-CV-991, 2:16-CV-1378

Before BARKSDALE, SOUTHWICK, and HIGGINSON, *Circuit Judges.*

LESLIE H. SOUTHWICK, *Circuit Judge*:

This appeal follows more than a decade of litigation, including one earlier appeal to this court. *Ashford v. Aeroframe Servs., L.L.C.*, 907 F.3d 385 (5th Cir. 2018). In that 2018 decision, we held we did not have jurisdiction to hear the merits because some parties were not diverse when the suit was filed in state court. *Id.* at 387. Since then, new evidence reveals that diversity has existed since the inception of the litigation. We AFFIRM the district court's dismissal of all claims against the defendant.

FACTUAL AND PROCEDURAL BACKGROUND

In August 2013, Michael Ashford was terminated by his employer, Aeroframe. Aeroframe is a Limited Liability Company whose sole principal was Roger Allen Porter. The company was a maintenance, repair, and overhaul ("MRO") facility based at the Chennault International Airport located in Lake Charles, Louisiana.

Appendix A

Following his termination, Ashford, a Louisiana resident, sued to recover unpaid wages. Ashford's attorney is Somer Brown with the law firm of Cox, Cox, Filo, Camel & Wilson in Lake Charles. Brown filed ten separate lawsuits on behalf of several former Aeroframe employees, including Ashford, in four different Louisiana parishes. The allegations in each complaint were the same. The first suit filed was *Cooley v. Aeroframe*, on September 24, 2013, in Calcasieu Parish. Ashford's suit — the lead case in this appeal — was filed in Evangeline Parish, on October 8, 2013.

Ashford's state court petition sought recovery from two defendants. First, he sued his former employer, Aeroframe, under the Louisiana Last Paycheck Law. La. R.S. 23:631. Roger Porter, the sole principal of Aeroframe, was a Louisiana citizen, making Aeroframe a Louisiana citizen.[1]

Ashford also sued Aviation Technical Services, Incorporated ("ATS"), a Washington corporation. Prior to Ashford's termination, Porter had been negotiating an agreement with ATS that might have alleviated Aeroframe's financial difficulties. Ashford's petition alleged that Aeroframe and ATS negotiated for a partnership, merger, or buy-out, but did not reach an

1. ATS also submitted a "Motion to Amend Jurisdictional Facts and Request for Judicial Notice." In that motion, ATS argues that Porter was in fact a citizen of Tennessee, not Louisiana, rendering the parties diverse. Because we hold that the parties were aligned from the inception of the litigation and dismiss the counts against ATS, we DENY the motion.

agreement. Thereafter, Aeroframe allegedly began negotiating with an ATS competitor, AAR Corporation.

The petition alleged that negotiations with AAR would have resulted in a "smooth continuation of the MRO business in Lake Charles" but for the that fact ATS purchased an outstanding loan on Aeroframe's assets, Aeroframe defaulted, and ATS foreclosed on the loan. Ashford's petition asserted that ATS "attempted to [seize] Aeroframe's assets to cause Aeroframe to go out of business." Ashford contended that ATS misused confidential information about Aeroframe, abandoned its plan to acquire Aeroframe, and caused Aeroframe's inability to pay its former employees (including himself). Ashford alleged violations of Louisiana Civil Code article 2315, tortious interference with contractual relations, and the Louisiana Unfair Trade Practices Act.

On March 10, 2014, ATS cross-claimed against Aeroframe and filed a third-party demand against Aeroframe's sole principal, Porter. In its claims against Aeroframe and Porter, ATS alleged it suffered financial loss from its failed attempt to acquire Aeroframe.

On April 7, 2014, Porter cross-claimed against ATS, asserting tortious interference and unfair trade practices. Porter's pleading was supposedly filed *pro se*. It was later revealed that attorney Thomas Filo drafted the demand for Porter. Both Filo and Ashford's counsel, Brown, worked at the Cox law firm. On May 9, 2014, Filo was granted leave by the state court to appear officially as counsel for Porter. At that time, Aeroframe was represented by the Williams Family Law Firm. Thus, the representation

roster consisted of the Cox law firm acting for both plaintiff Ashford and third-party defendant Porter, while defendants Aeroframe and ATS had individual counsel. We will discuss later the evidence regarding whether the Williams law firm was acting independently from the Cox law firm.

On May 14, 2014, ATS filed its first notice of removal to federal court based on diversity of citizenship. ATS alleged there had been "improper and/or fraudulent joinder" of Aeroframe, thus allowing removal. In the alternative, ATS argued the parties should be realigned "in accordance with their interests." ATS argued the employees' claims against Aeroframe were a pretense because Aeroframe was out of business and insolvent as of the filing date. ATS further contended that employees' counsel Brown was colluding with Porter to shield him from liability by not naming him in the suit. ATS argued Aeroframe was only added to the suit to defeat diversity jurisdiction and to remain in a friendly state-court forum to target ATS as a deep-pocket corporation.

ATS's notice of removal relied on the statutory provision allowing removal to federal court within thirty days of "receipt by the defendant . . . of a copy of an amended pleading, motion, order or *other paper* from which it may first be ascertained that the case is one which is or has become removable." 28 U.S.C. § 1446(b)(3) (emphasis added). ATS argued this "other paper" was a copy of an email it obtained on April 17, 2014. Brown sent the email on April 15, 2014, to her clients, including Ashford.

According to ATS, the email revealed that Brown had been colluding with Aeroframe and Porter — her clients' supposed adversaries in the suits — from the inception of the lawsuits. ATS argued the email revealed the plaintiffs-employees did not "intend to pursue Aeroframe as a defendant in this matter but are rather working closely with Aeroframe and Roger A. Porter in their efforts to oppose ATS in this litigation."

The email read:

> For those of you who missed the Aeroframe client meeting on Friday, please allow this to serve as an update and a request for you to execute and return the attached waiver.
>
> In March we traveled to Seattle and took the deposition of ATS's corporate representatives. Those individuals confirmed that, as Roger Porter had previously told us, ATS came in after knowing that AAR was doing a deal with Aeroframe. It is our belief, now confirmed by undisputed testimony from ATS and Roger Porter, that ATS was the cause of Aeroframe's closure and the loss of your employment and benefits.
>
> [Porter] has filed a cross-claim against ATS for his own losses and those of Aeroframe. Aeroframe has retained counsel from Natchitoches [the Williams law firm] who is working cooperatively with us and will not

> defend against your wage claims. In fact, your entitlement to wages, penalties, and attorney's fees will be stipulated to by Aeroframe.
>
> [Porter] has approached my partner, Tom Filo, and requested that he[] pursue [Porter]'s individual claim against ATS. [Porter] has agreed to stipulate in writing that if we represent him, his clients will be paid first out of any monies that he collects. He understands that we will not represent him absent this written agreement.
>
> However, in order for our firm to get involved on behalf of [Porter], we need each of our employee-clients to sign the attached conflict waiver. Without this signed document from each of you, we cannot assist [Porter] in collecting money FOR YOU.
>
> If you have any questions, please feel free to call or email me. We need these documents back as soon as possible. If you are not willing to enter into this arrangement with us, please contact me so that I can get you in touch with other counsel, but please also be advised that [Porter]'s written stipulation of first payments will only apply to the employees who are represented by this law firm.

The ATS notice of removal stated that the district court should realign the parties according to their

interests such that Aeroframe would be considered a plaintiff, along with the Plaintiffs-Employees and Porter, in a suit against ATS.[2]

Ashford, Aeroframe, and Porter moved to remand to state court. The magistrate judge recommended denying the motions to remand, and the district court affirmed. Although the magistrate judge recommended finding that the email was not sufficient evidence to show "the parties were aligned from the inception of the litigation," she agreed with ATS's alternative argument that the email demonstrated "complete diversity of citizenship *now* exists" because the parties had voluntarily entered into an agreement that aligned all of their interests against ATS. The court mentioned that Aeroframe had "stipulated to Ashford's claim[;] Porter is claiming the same loss as Aeroframe against ATS[;] there exists no claim between Porter and Aeroframe[;] and Porter agrees to pay Ashford's claim first from the proceeds of his recovery." The magistrate judge found that those facts

---

2. All suits filed by Brown were removed to federal court on May 14, 2014. Seventeen of those suits are consolidated here. ATS argues removal to federal court was proper in 14 of the 17 appeals. ATS agrees that this court lacks jurisdiction in three of the cases. The first is *Day v. Aeroframe* (No. 22-30190), because Plaintiff-Employee Day's claims against Aeroframe remain pending. Day's counsel did not file a motion for summary judgment against Aeroframe and the judgment in *Day* was not certified as final. The others are *Barreda v. Aeroframe* (No. 22-30193) and *Cooley v. Aeroframe* (No. 22-30188). In those, unlike in the other cases, ATS's claims against Porter and Aeroframe have not been dismissed. No party disputes ATS's assertion regarding these three suits, and we therefore DISMISS them from this appeal.

meant there had been a compromise between adverse litigants supporting removal. The district court affirmed the magistrate judge's recommendation that there was federal subject matter jurisdiction after realigning the parties according to their interests. All claims against ATS by the non-ATS litigants were later dismissed by the district court on summary judgment.

The non-ATS parties appealed. A prior panel of this court determined that, even if Ashford's and Aeroframe's interests were aligned by the time Brown sent the email to her employee-clients, their interests were adverse at the time suit was *filed*, and "federal diversity-of-citizenship jurisdiction 'depends upon the state of things at the time of the action brought.'" *Ashford*, 907 F.3d at 386 (quoting *Grupo Dataflux v. Atlas Glob. Grp., L.P.*, 541 U.S. 567, 570-71, 124 S. Ct. 1920, 158 L. Ed. 2d 866 (2004)). Because the magistrate judge "found that Ashford and Aeroframe were (at least initially) adverse," the panel concluded that "it cannot be said that diversity of citizenship existed at the time of filing in state court." *Id.* at 388 (quotation marks and citation omitted). The panel vacated and remanded. *Id.*

Judge Davis concurred in the judgment only. He explained that this court's precedent "provides that a case can become removable under federal diversity jurisdiction if the plaintiff and the nondiverse defendant enter into an irrevocable settlement." *Id.* (Davis, J., concurring in the judgment). He agreed that the email from Ashford's counsel to Aeroframe *alone* was insufficient to realign Aeroframe as a plaintiff in the matter. *Id.* at 388-89.

Judge Davis, though, would have held that there was sufficient evidence of a settlement if there were a writing from Aeroframe "confirming a promise to pay and/or to stipulate to Ashford's requested relief," but that "no such agreement was ever produced in this case." *Id.* at 388-89.

Judge Jones dissented. She would have found jurisdiction because she argued a case may become removable if there is a "realignment of interests" that occurs even after inception of the litigation. *Id.* at 395 (Jones, J., dissenting) (citing 28 U.S.C. § 1446(b)(3)). Judge Jones would have held that Aeroframe's promise to pay Ashford demonstrated they had the same "ultimate interests in the outcome of the action" such that it was proper to consider "events after this lawsuit was filed in state court to determine whether the parties had realigned their interests and the suit had become removable." *Id.* at 396 (quoting *Griffin v. Lee*, 621 F.3d 380, 388 (5th Cir. 2010)).

The prior panel remanded to district court. *Id.* at 388. Before that court carried out our order to remand to state court, ATS filed a motion for sanctions. In its motion, ATS explained how it recently learned that in December 2018, while the appeal was pending in this court, Porter testified in a separate lawsuit against AAR.[3] In that testimony,

3. As a reminder, AAR was a separate competitor that allegedly was planning to buy Aeroframe. The negotiations with AAR would have resulted, according to Ashford's petition, in a "smooth continuation of the MRO business in Lake Charles," but for the fact that ATS already purchased an outstanding loan on Aeroframe's assets and Aeroframe had already defaulted on that loan. Porter

Porter revealed he did not "oppose the employees[']claim[s] for unpaid wages" and admitted that, as principal of Aeroframe, he signed an agreement with the Plaintiffs-Employees wherein he would "subordinate[] anything that I would get to the employees first." As evidence of the agreement, Porter offered a June 4, 2014, retainer agreement with the Cox law firm ("Cox-Porter retention agreement"), which contained a "waiver of conflict." The waiver read:

> WAIVER OF CONFLICT: [Porter] understands that [the Cox firm] is currently representing a number of former employees of Aeroframe to collect unpaid wages. Client expressly waives any conflict regarding the law firm's representation of those former employees and, in addition, agrees that the claims of all former employees of Aeroframe represented by [the Cox law firm] shall take priority over the individual claim of . . . Porter and/or [Aeroframe] against ATS. . . . Porter expressly agrees to fund those unpaid wage claims from proceeds received by Aeroframe or . . . Porter in the event either Aeroframe or . . .

---

separately sued AAR in Tennessee, alleging that AAR violated a contract it had with Porter wherein it offered Porter employment and monetary benefits. *See Porter v. AAR Aircraft Servs., Inc.*, 790 F. App'x 708, 710 (6th Cir. 2019). A jury awarded Porter $250,000, which was one year of employment under the relevant contract. This award was affirmed. *Id.* at 715. ATS argued in its motion for sanctions that if ATS interfered with Porter's contract with AAR, Porter would not have been able to sue AAR for breach of that same contract.

> Porter receives a recovery before such former employees receives recovery.

ATS argued this supported the need for sanctions because the non-ATS parties repeatedly denied the existence of any writing regarding a "stipulation" or "settlement" between the non-ATS parties.

The magistrate judge recommended the district court consider the new evidence and retain the case. The district court declined to adopt the recommendation and remanded the case to state court "in accordance with the judgment of the Fifth Circuit, except for the pending sanctions issues." *Ashford v. Aeroframe Servs., L.L.C.*, No. 2:14-CV-0992, 2019 U.S. Dist. LEXIS 66661, 2019 WL 1716198, at *1 (W.D. La. Apr. 17, 2019).[4]

After remand, ATS again removed to federal court. By the time this second notice of removal was filed, ATS had engaged in discovery relating to the motion for sanctions. In addition to the June 4, 2014, Cox-Porter retention agreement we quoted, ATS argued new evidence attached to the second notice of removal (discussed in detail later) revealed Porter had been working with the Cox law firm from the inception of the litigation to protect himself from suit.

---

4. The district court stated "[t]he Fifth Circuit has recognized [that] 'a district court must possess the authority to impose sanctions irrespective of the existence of subject matter jurisdiction.'" 2019 U.S. Dist. LEXIS 66661, [WL] at *1 n.2 (quoting *Willy v. Coastal Corp.*, 915 F.2d 965, 967 (5th Cir. 1990)).

ATS argues this new evidence was the requisite "other paper" under 28 U.S.C. § 1446(b)(3) permitting the suit to be removable. According to ATS, the original email from Brown, combined with the Cox-Porter retention agreement, demonstrates there was a functional compromise between Ashford and Aeroframe (through Porter, the sole principal of the company), such that the parties were no longer adverse to one another. ATS contends there is now conclusive proof that Aeroframe was a merely nominal defendant added to defeat diversity jurisdiction and we should retain jurisdiction and reinstate the judgment dismissing all claims against ATS.

Porter, Ashford, and Aeroframe moved to remand to state court. Aeroframe "adopt[ed] by reference the arguments posited or briefed by other counsel in this litigation," including "counsel for Michael Ashford" — the party to whom it is supposedly adverse.

The magistrate judge agreed with ATS's argument that there was a functional settlement between the parties such that they were no longer adverse. The magistrate judge recommended holding the agreement to be sufficient to remove the case because the "plaintiff and the nondiverse defendant enter[ed] into an irrevocable settlement agreement." Relevantly, Judge Davis, in his concurrence, had concluded that, if the nondiverse parties enter into an irrevocable settlement, a case becomes removable at that time. *Ashford*, 907 F.3d at 388 (Davis, J., concurring in the judgment). As noted, he concurred in the remand, though, because "no such agreement was ever produced in this case." *Id.* The magistrate judge also

referred to the "multiple representations made by counsel about the lack of 'settlement' between the parties," and that the retainer agreement was unknown even to the Williams law firm, which was representing Aeroframe.

The magistrate judge further recommended finding there was now sufficient evidence the non-ATS parties were aligned from the inception of the litigation. This would also support remand under our statement in *Ashford* that "federal diversity-of-citizenship jurisdiction depends upon the state of things at the time of the action brought." *Id.* at 386 (opinion of the court, joined in the judgment only) (quotation marks and citation omitted).

The district court adopted the magistrate judge's recommendation to deny remand to state court.

In September 2020, the district court granted ATS's motion to consolidate 16 of the 17 separate lawsuits. The suit brought by Ashford became the lead case.

In October 2020, ATS filed a motion for summary judgment denying it had liability to any of the plaintiffs. It also sought dismissal of all the individual employees' claims against Aeroframe, arguing that the Cox-Porter retention agreement provided that these employees' only recovery would be a money judgment against ATS. Judgment in favor of ATS would therefore end the possibility of recovery on the employees' claims.

In April 2021, the magistrate judge recommended all claims against ATS by the employees, Aeroframe, and

Porter be dismissed with prejudice. The magistrate judge, though, recommended rejecting ATS's suggestion that the employees' claims against Aeroframe be dismissed. The district court adopted this report and recommendation. The court entered summary judgment in favor of ATS, dismissing all claims. The court also entered monetary judgments in favor of the individual employees against Aeroframe.

The non-ATS parties timely appealed. They urge a vacatur of the judgment on the basis of lack of diversity jurisdiction. The appeal specifically seeks to have the monetary awards to the individual employee-*appellants* set aside for the same reason.

DISCUSSION

Denial of a motion to remand is reviewed *de novo*. *Gebbia v. Wal-Mart Stores, Inc.*, 233 F.3d 880, 882 (5th Cir. 2000). "Jurisdictional findings of fact are reviewed for clear error." *New Orleans & Gulf Coast Ry. Co. v. Barrois*, 533 F.3d 321, 327 (5th Cir. 2008). What is required factually results from the rule that "diversity jurisdiction requires complete diversity — all of the plaintiffs must be citizens of different states than all of the defendants." *Williams v. Homeland Ins. Co. of N.Y.*, 18 F.4th 806, 812 (5th Cir. 2021).

As we already discussed, the district court accepted the magistrate judge's recommendation to deny the motions to remand on two separate grounds. The first ground was that there was now sufficient evidence the

non-ATS parties' interests had been aligned from the inception of the litigation. The second ground was that an irrevocable settlement agreement that eliminated adversity between the parties permitted removal under *Vasquez v. Alto Bonito Gravel Plant Corp.*, 56 F.3d 689, 693 (5th Cir. 1995).[5] We begin with the question of whether the parties were aligned from inception.

The non-ATS parties argue the district court erred in even considering whether Porter, Aeroframe, and the employees' interests were aligned from the inception of the litigation. They contend that ATS's second notice of removal did not make this argument. Instead, ATS's sole basis for removal was the alleged post-inception settlement between Aeroframe and the employees. Therefore, the magistrate judge's "*sua sponte* reconsideration" of this argument was improper. They further contend that this holding violates 28 U.S.C. § 1447(d), which states, "[a]n order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise." ATS maintains that alignment from inception has always been the basis for ATS's removals.

We find no error in the district court's reconsideration of its prior holding that the non-ATS parties' interests were not aligned from the inception of the litigation. ATS's second notice of removal argues that Porter was "orchestrating Aeroframe employees to sue his defunct company" through lawyers at the Cox law firm. In the

5. The existence of a settlement was supported by the April 15, 2014, email from Brown to her plaintiff-employee clients and the June 4, 2014, Cox-Porter retention agreement.

first paragraph of the notice of removal, ATS cited Exhibit 1 thereto, which is an email from Porter to Brown on October 1, 2013. Porter wrote: "I have three [suits] so far but I anticipate more as I am instructing previous employees to contact you to be added to the suit[]." ATS's notice of removal further relied on Porter's statement that he "has been meeting with Tom Filo for the past month." This reveals that Porter was working with Brown and Filo of the Cox law firm before Brown filed Ashford's suit on October 8, 2013.[6] Moreover, the same day ATS filed its second notice of removal on May 13, 2019, ATS filed in each of the non-Ashford cases a "Supplemental Notice of Additional Jurisdictional Facts Supporting Diversity Jurisdiction." Section II of the supplemental notice is entitled "[a]dditional facts regarding collusion among the parties and proper alignment," with numerous exhibits supporting those additional facts.

Further, during the May 14-15, 2019, hearing on ATS's motion for sanctions (*i.e.*, the day after the second notice of removal and supplemental notices were filed), ATS introduced several new pieces of evidence documenting the parties' collusion from inception. During the hearing, the magistrate judge stated that "we've seen a lot more information now that could result in there being a different finding" on whether there was alignment from inception. At the close of the December 10, 2019, hearing on the non-ATS parties' motions to remand, the magistrate judge granted ATS's unopposed oral motion to have all

6. This also shows that Porter had been working with Brown and Filo before Brown filed the first suit, *Cooley v. Aeroframe*, on September 24, 2013.

evidence adduced in connection with the sanctions hearing considered as evidence for purposes of the motions to remand. Additionally, the court invited the parties to file supplemental briefing addressing issues discussed at the hearing. The non-ATS parties neither objected nor filed supplemental briefing.

"We have held that issues raised for the first time in objections to the report of a magistrate judge are not properly before the district judge." *Finley v. Johnson*, 243 F.3d 215, 219 n.3 (5th Cir. 2001). If the non-ATS parties believed the magistrate judge had no right to reconsider the issue of proper alignment, they had ample opportunity to present their arguments to the magistrate judge. Having failed to do so, they cannot now argue such an impropriety.

We turn to the non-ATS parties' remaining argument that the district court's holding violates 28 U.S.C. § 1447(d). Although it is true that Section 1447(d) prohibits review or reconsideration of a remand order,[7] the district court here was not reconsidering a remand order. It was considering ATS's second removal and making a separate factual determination based on new evidence.

We have held that a defendant has a "right to seek subsequent removals after remand." *S.W.S. Erectors, Inc. v. Infax, Inc.*, 72 F.3d 489, 492 (5th Cir. 1996). If the defendant fails to remove on its initial pleadings, it may

7. "An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise." 28 U.S.C. § 1447(d).

file a second removal petition "when subsequent pleadings or events reveal a new and different ground for removal." *Id.* at 493 (emphasis omitted). In *S.W.S. Erectors*, we held that the party could seek a second removal "using newly acquired facts from [a] deposition transcript" because that "constitute[d] a new paper or event that changed the facts regarding the removableness of the case." *Id.* at 494.

The same is true here. The district court's original ruling was that there was insufficient evidence to hold the interests of Ashford, Aeroframe, and Porter were aligned from the inception of the litigation. *Ashford*, 907 F.3d at 387. That finding was not appealed to this court. *Id.* At that point, the sole evidence of the parties' aligned interests was the April 15, 2014, email from Brown to her clients. *See Ashford v. Aeroframe Servs., L.L.C.*, No. 2:14-CV-992, 2015 U.S. Dist. LEXIS 193889, 2015 WL 13650549, at *8-9 (W.D. La. Jan. 30, 2015). In the record now are several new pieces of evidence, including deposition transcripts, admitted during the hearings on May 14-15, 2019, and December 10, 2019. Given these new factual bases supporting collusion from inception, we agree with ATS that the district court was free to revisit the issue of when the collusion began to properly align the parties.

The next question is whether the magistrate judge was correct to recommend, and the district court was correct to find, that the additional evidence was sufficient to hold that the non-ATS parties were aligned from the inception of the litigation.

Diversity jurisdiction requires "an actual, substantial controversy between citizens of different states." *Zurn*

Indus., Inc. v. Acton Constr. Co., 847 F.2d 234, 236 (5th Cir. 1988). The pleadings do not control, and the court must "arrange the parties according to their sides in the dispute." *Id.* (citation omitted). We determine proper alignment by asking "whether the parties with the same 'ultimate interests' in the outcome of the action are on the same side." *Griffin*, 621 F.3d at 388 (quoting *Lowe v. Ingalls Shipbuilding, A Div. of Litton Sys., Inc.*, 723 F.2d 1173, 1178 (5th Cir. 1984)). "[T]he burden of establishing jurisdiction rests upon the party seeking to invoke it." *Gaitor v. Peninsular & Occidental S.S. Co.*, 287 F.2d 252, 253 (5th Cir. 1961).

The non-ATS parties argue that realignment is improper because the employees' "primary purpose was to recover unpaid wages against Aeroframe and ATS." They contend that the employees had a viable claim against Aeroframe at the inception of the case, and so, inferring any motivation of Porter to avoid being sued personally, or any reluctance of Plaintiffs' counsel to bring the suit before she knew there was a deep pocket to pursue, is irrelevant. Further, they argue the new evidence cited by ATS in its second notice of removal is insufficient to show that either Aeroframe or Porter was adverse to ATS at inception.

In considering the propriety of removal, we now know that before filing any suit, Brown of the Cox law firm was uninterested in representing the employees because she knew Aeroframe was insolvent. We also now know that Porter, as sole principal of Aeroframe, then spoke with Filo, who previously represented Porter/Aeroframe,

and was Brown's partner at the same Cox law firm. In that conversation, Porter confirmed Aeroframe was being pursued by numerous creditors, including former employees, who had not been paid several of their final paychecks. We now know Porter also informed Filo that he wanted to pursue a suit against ATS, which Porter blamed for the closure of Aeroframe. Filo informed Brown of these facts, and Brown included ATS in the lawsuits she was now willing to file.

We have also learned from an October 1, 2013, email to Brown that Porter was discussing the Aeroframe/ATS lawsuits with Filo before Brown filed the first suit on September 24, 2013. We know from that email that Porter was explicitly "instructing previous employees to contact" Brown to be "added to the suit[]." Finally, Porter asked Brown for "confirmation" that Aeroframe would be granted an extension to answer the complaints she was filing on behalf of the plaintiffs-employees. We agree with the magistrate judge that this exchange is telling because it reveals that "Porter speaks for Aeroframe and Brown knows it," and that "Brown had no intention of naming Porter personally in the litigation." Moreover, where former employees did *not* retain counsel with the Cox law firm and filed suit to retrieve their paychecks, those suits named Porter personally, alleging he diverted funds from Aeroframe.

We have further learned that the Williams law firm, which represented Aeroframe, was not necessarily "separate counsel" to Porter's own counsel as previously believed. *Ashford*, 907 F.3d at 388 n.2 (Davis, J.,

concurring in the judgment). In fact, Porter and Filo met with the Williams law firm in January 2014 to discuss its representation of Aeroframe. Around January 30, 2014, Porter employed the Williams law firm to represent Aeroframe in a "[b]reach of contract claim against [ATS] and for all damages arising out of that breach of contract." The contingency fee employment contract of employment does not mention defending against the claims of the Aeroframe employees, further supporting ATS's argument that Porter and Filo agreed to target ATS via Aeroframe. Furthermore, the Williams law firm had an "extensive history" with the Cox law firm, which included "vested mutual financial interest[s] in numerous cases together," such that Porter, acting for Aeroframe, signed a conflict waiver. Finally, we learned that Porter's original answer and incidental demand on April 7, 2014, — which was supposedly *pro se* — was actually drafted by Filo of the Cox law firm.

This court's original holding in this case acknowledged that "federal courts are not bound by the labels the parties give themselves in the pleadings." *Id.* at 387 (citing *Zurn*, 847 F.2d at 236). It concluded *Zurn* stands for the premise that the "parties' alignment for jurisdictional purposes is to be determined by the plaintiff's principal purpose *for filing suit*." *Id.* (emphasis in original) (quotation marks and citation omitted). It emphasized that "[b]ecause the magistrate judge found that Ashford's 'principal purpose' for suing Aeroframe was legitimate (a finding that no one appeals), fidelity to *Zurn* requires relinquishing the case." *Id.*

Using that same legal standard, the new evidence that became available after our remand allowed the district court to re-evaluate the plaintiff's principal purpose for filing suit. We now know the employees, represented by Brown, were not interested in pursuing a claim against Aeroframe, which she understood had no assets. We now know that, instead, Brown and Filo of the Cox law firm were, from the inception of litigation, attempting to pursue deep-pocketed ATS in a friendly state court forum on behalf of Aeroframe's principal and Filo's client, Porter.

Given this new information, we hold the non-ATS parties' interests were aligned from the inception of litigation.[8] Because of this holding, we need not address the

8. The employees also suggest on appeal that the amount in controversy does not exceed the requisite $75,000. We agree with ATS that the amount in controversy is facially apparent. The magistrate judge found in 2015 that Ashford's pleading facially met the jurisdictional amount, *Ashford*, 2015 U.S. Dist. LEXIS 193889, 2015 WL 13650549, at *11, as did Judge Jones in dissent (the court did not reach the issue), *Ashford*, 907 F.3d at 397 (Jones, J., dissenting). The employees did not object to the magistrate judge's report and recommendations finding that the amount in controversy was met when she denied remand to state court, or to the district court's adoption of the recommendation.

In any event, Ashford's complaint alleged he was entitled to recover "all wages due for services already performed, including all accrued and unused or purchased vacation and other paid benefits not received; actual damages including lost future wages; statutory penalties; statutory attorneys' fees; costs of these proceedings; and interest thereon." Louisiana law forbids plaintiffs in state courts from pleading a specific numerical value of damages. *Gebbia*, 233 F.3d at 882 (citing La. Code Civ. Proc. art. 893). Therefore, when a

magistrate judge's alternative recommendation that the Cox-Porter retention agreement reveals the parties had a post-inception settlement, rendering the cases removable.

After finding we have jurisdiction, we need turn only briefly to the merits. The non-ATS parties do not appeal or address in their briefs any challenge regarding the merits of the grant of summary judgment in favor of ATS and dismissal of all claims against ATS with prejudice. They have therefore waived any such arguments. *See Rollins v. Home Depot USA*, 8 F.4th 393, 397 (5th Cir. 2021).

Finally, Aeroframe argues that three cases, *Day*, *Neathammer*, and *Jackson*, should be remanded because, as a third-party defendant in those cases, ATS had no procedural right to remove them. *See Home Depot U.S.A., Inc. v. Jackson*, 587 U.S. 435, 139 S. Ct. 1743, 1748, 204 L. Ed. 2d 34 (2019). ATS agrees that *Day* is not properly before this court because the judgment appealed by Aeroframe is not final. Regarding *Neathammer* and

---

case originally filed in a Louisiana state court is removed to federal court on the basis of diversity, the removing defendant must prove by a preponderance of the evidence that the amount in controversy exceeds $75,000. *Id.* (citing *Luckett v. Delta Airlines, Inc.*, 171 F.3d 295, 298 (5th Cir. 1999)). A defendant may meet this burden by either: (1) showing it is facially apparent that the amount in controversy exceeds $75,000; or (2) setting forth facts in its removal petition supporting such a finding. *Luckett*, 171 F.3d at 298. As the magistrate judge wrote in 2015, "[a]lthough past wages due may be negligible, future lost wages, future benefits lost, and attorney fees for the prosecution of this matter place the amount in controversy well above the minimum threshold." *Ashford*, 2015 U.S. Dist. LEXIS 193889, 2015 WL 13650549, at *11. We agree.

Jackson, those cases were dismissed with prejudice on February 1, 2021. Aeroframe has not appealed the dismissal of those cases. Aeroframe appeals only the post-dismissal denial of its motions for a hearing on its motion to remand. Such motions are treated like a Federal Rule of Civil Procedure 59(e) or 60(b) motion, and the district court's denials of them are reviewed for abuse of discretion. *Demahy v. Schwarz Pharma, Inc.*, 702 F.3d 177, 181 (5th Cir. 2012). We agree with ATS that there was no abuse of discretion in the district court's denial of Aeroframe's post-dismissal motions for hearing.

We AFFIRM the district court's dismissal of all claims against ATS in the relevant cases. We DISMISS the appeals in *Day*, 22-30190, *Barreda*, 22-30193, and *Cooley*, 22-30188. As only jurisdictional arguments are made here, none on the merits, we AFFIRM the individual judgments against Aeroframe in favor of the employees whose appeals we have not dismissed.

APPENDIX B — JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA, LAKE CHARLES DIVISION, FILED JUNE 10, 2021

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

CIVIL ACTION NO. 19-cv-610
c/w/ 14-cv-983, 14-cv-984, 14-cv-985, 14-cv-986, 14-cv-987, 14-cv-988, 14-cv-989, 14-cv-990, 14-cv-991, 14-cv-992, 14-cv-2323, 14-cv-2324, 14-cv-2325, and 14-cv-2538

MICHAEL ASHFORD

VERSUS

AEROFRAME SERVICES, LLC, *et al.*

Filed June 10, 2021

JUDGE DONALD E. WALTER
MAGISTRATE JUDGE KAY

JUDGMENT

For the reasons stated in the Report and Recommendation [Doc. 111] of the Magistrate Judge previously filed herein and after an independent review of the record, a *de novo* determination of the issues, and consideration of the objections filed herein, and having determined that the findings are correct under applicable law;

Appendix B

IT IS ORDERED that the Motion for Summary Judgment [Doc. 92] filed by Aviation Technical Services, Inc. ("ATS"), be **GRANTED** in part and **DENIED** in part. The motion is denied as to ATS's request that all claims of all plaintiffs against defendant Aeroframe Services, LLC.be dismissed. With respect to the remainder of the motion, it is

ORDERED, ADJUDGED, AND DECREED that all claims of **ALL PLAINTIFFS** in these consolidated cases, **AEROFRAME SERVICES, LLC**, and **ROGER PORTER against AVIATION TECHNICAL SERVICES, INC.**, be and the same are hereby **DISMISSED** with prejudice, all costs to be assessed to the parties whose claims have been dismissed. The "All Plaintiffs" against whom judgment is rendered are identified by consolidated case number and name as:

14-cv-00983	Jenny Warner
14-cv-00984	Lawrence Adams, Timothy Cowan, Joseph Debartola, Kathleen Debartola, Karen W. DeJean, Eric Drayton, Frank Hayes, Diana D. Pena, Gerald K. Rather, Tracy Reed, and Allison Williams
14-cv-00985	Don Boring, Emily Grimmett, Jay Abbott, Ronnie Orgeron, and Nathan M. Scalisi

Appendix B

14-cv-00986	Timothy Cleaves, Michael J. Daigle, Mohammad Elbjeirmi, Joseph Hein, Derrick Roberson, Eric Rogillio, and Amy Sarver
14-cv-00987	Keith Cooley, Kouri Donahoo, Donald R. Hebert, Jake Maniscalco, Eric R. Martin, Elmer Dewayne Nick, Jr., Roger Ladell Paris, Jason Soileau, John Upmeyer, Carl Ward, and Jonathan Wilson
14-cv-00988	Harold J. Gallow, Melissa Lyons, Irma Chapman, Christine Quebodeaux, Dustin Regan, Angella M. Guarjarcle, Sonita Joseph, Jason Fruge, Donald B. Dupre, Kristy David, Robbie W. Ellis, and Clint Thibodeaux
14-cv-00989	Joey T. Decolongon, Bridgette King, Craig LaFleur, Christopher Meche, Jared Roberson, and Clara Roy
14-cv-00990	Ronald Blanton, Tom France, Dustin Gilley, Michael Heath, Richard D. Holt, Sean Hudnall, Holly Labove, Robert Lafleur, Michael McCloud, Philip Wells, Ramil Ivan R. Decena, Shirley A. Olivier, Sandra Peak, and Carolyn Manson
14-cv-00991	Robert Rackard

14-cv-00992	Michael Ashford (that docket number referred to throughout this proceeding as "*Ashford 1*," predecessor to the docket number in which this judgment is rendered)
14-cv-02323	Brian Morvant and Gordon St. Germain
14-cv-02324	Robert Coley, Morris W. Domingue, Lindsay Halpin, Troy Hayes, Vernon Holzknecht, Simona LaSalle, Alfred Mueller and Richard Theriot
14-cv-02325	Cory Cogdill, Howard Guillory, Jesse Plumber, and Keith Plumber
14-cv-02538	Mario Barreda, Myra B. Bourque, Danny Lee Bush, Brendan Callahan, Karen Chasson, Antonio Chavez, Barron Clark, Cynthia Davidson, Darick Davidson, Michael P. Elenbaas, Michael Fontenot, Patrick Gaynor, Judy Marceaux, Kenneth Miller, Geoffrey Omeara, Stephen Robinson, George Santarina, and Franklin K. Welch

Upon reconsideration of the previous ruling denying plaintiff Michael Ashford's Motion for Summary Judgment [14-cv-992, doc. 85, ruling at doc. 104] and finding that motion should now be **GRANTED**, it is

ORDERED, ADJUDGED, AND DECREED that judgment be and it is hereby rendered in favor

of **MICHAEL ASHFORD** against **AEROFRAME SERVICES, LLC**, in the amount of **THIRTY-FIVE THOUSAND, TWO HUNDRED AND 0/100 ($35,200) DOLLARS**, with judicial interest thereon from date of judicial demand until paid, representing unpaid wages in the amount of $2,640; a penalty of $23,760; and attorney fees of $8,800.

THUS DONE AND SIGNED in Chambers this 9th day of June, 2021.

/s/ DONALD E. WALTER
DONALD E. WALTER
UNITED STATES DISTRICT JUDGE

APPENDIX C — REPORT AND RECOMMENDATION OF THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF LOUISIANA, LAKE CHARLES DIVISION, FILED APRIL 29, 2021

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

CIVIL ACTION NO. 19-cv-610; 14-cv-983; 14-cv-984; 14-cv-985; 14-cv-986; 14-cv-987; 14-cv-988; 14-cv-989; 14-cv-990; 14-cv-991; 14-cv-992; 14-cv-2323; 14-cv-2324; 14-cv-2325; 14-cv-2538

JUDGE WALTER

MAGISTRATE JUDGE KAY

MICHAEL ASHFORD

VERSUS

AEROFRAME SERVICES, LLC, *et al.*

REPORT AND RECOMMENDATION

Currently pending before us is a Motion for Summary Judgment filed by Aviation Technical Services, Inc. ("ATS"), seeking dismissal of all claims pending against it by the parties whose claims have been consolidated into this docket number. Doc. 92. The claims sought to be dismissed were brought by over 100 former employees ("plaintiff-employees") of Aeroframe Services, LLC, ("Aeroframe"), Aeroframe itself, and Aeroframe principal

and CEO Roger Porter ("Porter").[1] We refer to the employees, Aeroframe, and Porter collectively as the "non-ATS litigants." ATS also asks us to dismiss the claims of the plaintiff-employees against Aeroframe.

This matter has been referred to the undersigned for review, report, and recommendation in accordance with the provisions of 28 U.S.C. § 636 and the standing orders of this court. After consideration of the memoranda in support and in opposition of the motion, the evidence submitted therewith (or not), and for reasons stated below,

IT IS RECOMMENDED that the motion be **GRANTED** and that judgment be rendered in favor of

1. Although we did not do so initially, we have since determined Aeroframe to be simply the alter-ego of Porter. In our first dealings with remand in *Ashford 1*, 14-cv-992, ATS encouraged us to conclude that Porter and Aeroframe were one in the same but we declined to do so, in part because Aeroframe was being represented by a seemingly random, unattached law firm—the Williams firm. See 14-cv-992, doc. 45, p. 16, n. 19. By the time we reconsidered remand in this case and reviewed the additional information obtained by ATS while preparing for its Motion for Sanctions in *Ashford 1*, we had no difficulty concluding "there is no daylight between Porter and Aeroframe." Doc. 62, p. 7. By that time we learned that the relationship between the Williams firm and Thomas Filo, an attorney whose involvement is discussed more fully below, was so intertwined that "Williams found it necessary to have Porter, acting for Aeroframe, waive any conflict inherent in the representation." Doc. 62, p. 12. Comparison of the oppositions to this motion filed by Aeroframe to that of Porter [docs. 98 and 97] —they are virtually identical, word-for-word—further buttresses our conclusion. And then there is the near lock-step manner in which they have participated in this litigation as illustrated below. "[T]here is no daylight between Porter and Aeroframe." *Id.* at p. 7.

ATS against all non-ATS litigants, dismissing all claims against ATS, costs to be assessed to the non-ATS litigants. Further, we **RECOMMEND** the court **DENY** ATS's request to grant summary judgment in favor of Aeroframe against the plaintiff-employees.

Finally, we **RECOMMEND** the district court **RECONSIDER** its previous ruling in *Ashford 1* mooting the Motion for Summary Judgment filed there by Ashford against Aeroframe. 14-cv-992 motion at doc. 85, ruling at doc. 104. We now recommend that the motion be granted and judgment be rendered in favor of Ashford and against Aeroframe, awarding Ashford his wages, penalties, and attorney fees as prayed for against his former employer.

I.

Background

A. General

In the Fall of 2013 and the beginning of 2014, attorney Somer Brown ("Brown") with the law firm of Cox, Cox, Filo, Camel & Wilson ("the Cox firm"), filed ten separate lawsuits in four parishes, all of which were removed to this court on May 14, 2014.[2] All complaints of all plaintiff-

2. 14-cv-983 (Warner from Cameron Parish) at doc. 1; 14-cv-984 (Adams from Calcasieu Parish) at doc. 1; 14-cv-985 (Boring from Calcasieu Parish) at doc. 1; 14-cv-986 (Cleaves from Calcasieu Parish) at doc. 1; 14-cv-987 (Cooley from Calcasieu Parish) at doc. 1; 14-cv-988 (Gallow from Calcasieu Parish) at doc. 1; 14-cv-989 (Decolongon from Calcasieu Parish) at doc. 1; 14-cv-990 (Blanton from Calcasieu Parish) at doc. 1; 14-cv-991 (Rackard from Beauregard Parish) at doc. 1; and 14-cv-992 (*Ashford 1* from Evangeline Parish) at doc. 1. We refer to these as "the first filed claims."

employees in all suits, including those filed and removed later, were identical.[3] ATS's motion under consideration seeks to dismiss claims against it by all employees asserted in the cases that are now consolidated.

We have twice provided extensive procedural histories of the controversies between these litigants, first in a Report and Recommendation issued in Ashford vs. Aeroframe Services, LLC, et. al., docket number 14-cv-992 ("*Ashford 1*") [doc. 283, adopted by the district court at doc. 294] wherein we recommended sanctions be imposed against non-ATS litigants Aeroframe and Porter and attorneys Brown and Thomas A. Filo ("Filo"), both partners in the Cox Firm and again in this case ("*Ashford 2*") in a Report and Recommendation recommending denial of a Motion to Remand filed by non-ATS litigants. *See* doc. 62, Report and Recommendation, adopted by the district court at doc. 69. Virtually all filings, memoranda, and hearings in this matter to date have focused solely on jurisdiction and sanctions. We now focus on the background of the case(s) from a substantive standpoint.

B. The First Filed Lawsuits

Plaintiffs-employees' claims against Aeroframe are for wages, penalties, and attorney fees due under the Louisiana "Last Paycheck Law." La. R.S. § 23:631. Each

3. Of the other four consolidated cases, three were removed 7/16/14 and the last was removed 8/20/14. They are 14-cv-2323 (Morvant from Jefferson Davis Parish), 14-cv-2324 (Coley from Calcasieu Parish), 14-cv-2325 (Cogdill from Calcasieu Parish), and 14-cv-2538 (Barreda from Calcasieu Parish). We refer to these as "the latter removed cases."

plaintiff-employee claims he or she was terminated from employment with Aeroframe when it closed its door on August 9, 2013. Each plaintiff claims that Aeroframe failed to pay his or her last wages and that they are owed those wages in addition to penalties and attorney fees. The particulars of plaintiff-employee complaints against ATS are discussed below but they seek damages under La. C.C. art. 2315, Interference with Contract, and the Louisiana Unfair Trade Practices Act ("LUTPA"), La. R.S. 51:1401, *et. seq.*

C. ATS Response to Plaintiff-Employee Claims

ATS answered all "first-filed" claims in December of 2013 and then, in March of 2014 and in most of those cases, filed a cross-claim against Aeroframe and a Third Party Demand against Porter.[4] Unsurprisingly, ATS's version of events, discussed more fully below, did not wholly comport with those set forth by the non-ATS litigants. ATS sought its own damages from Aeroframe and Porter for expenses incurred in their business dealings and it sought indemnity for plaintiffs' claims and damages from ATS and Porter under the theory of unjust enrichment.[5]

4. *See* 14-cv-983 (Warner) at doc. 1, att. 1, p. 19; 14-cv-984 (Adams) at doc. 1, att. 1, p. 24; 14-cv-985 (Boring) at doc. 1, att. 1, p. 24; 14-cv-986 (Cleaves) at doc. 1, att. 1, p. 25; 14-cv-987 (Cooley) at doc. 1, att. 1, p. 89; 14-cv-988 (Gallow) at doc. 1, att. 1, p. 12; 14-cv-989 (Decolongon) at doc. 11; 14-cv-991 (Rackard) at doc. 3, p. 42; and 14-cv-992 (Ashford) at doc. 1, att. 1, p. 41. For whatever reason no similar pleading was filed in 14-cv-990 (Blanton). ATS's cross-claim and third party demand in *Ashford 1* is found in this proceeding, *Ashford 2*, at doc. 1, att. 12, p. 41.

5. Those claims will remain even in the event the district court adopts this Report and Recommendation.

D. Progress of *Cooley v. Aeroframe*

Not much occurred in any of the state court proceedings except *Cooley v. Aeroframe*,[6] the very first case filed on September 24, 2013, in Calcasieu Parish, Louisiana. Brown, on behalf of her *Cooley* clients, issued a notice of corporate deposition to be held in Lake Charles, Louisiana.[7] ATS moved for a protective order as Porter had yet to respond to its demand against him and because the deposition should be held at its corporate office in Seattle, Washington.[8] From the records available, it appears a conference was had with the state district court and ATS was successful in arguing the inappropriateness of having Washington-based witnesses compelled to appear in Louisiana for depositions as, two days following the conference, plaintiffs issued an amended notice for the depositions to be held in Seattle on March 26, 2014.[9]

Those depositions took place as scheduled.[10] Review of the depositions indicates that Filo, partner of Brown, who, as of that time, had not enrolled as counsel for anyone, conducted the entirety of the questioning for all non-ATS litigants. We are unaware of any substantive, merit-based discovery done after this date directed to ATS.[11]

---

6. 14-cv-987.

7. 14-cv-987 (Cooley), doc. 1, att. 1, p. 25.

8. 14-cv-987 (Cooley), doc. 1, att. 1, p. 30.

9. 14-cv-987 (Cooley), doc. 1, att. 1, p. 140.

10. See Doc. 25, att. 1, pp. 21, 273.

11. On 3/2/21, as we were preparing this Report and Recommendation, Aeroframe sought leave to conduct discovery

against ATS relative to the wage claims of the plaintiff employees, claims that do not involve ATS. Aeroframe's request was prompted by an order we issued to the *Cooley* plaintiff-employees to seek summary judgment for their claims or risk our issuance of a Report and Recommendation that the claims be dismissed for failure to prosecute. Doc. 104. Although we did not believe Aeroframe needed our permission to conduct discovery, we did allow it to proceed but not against ATS as it is a stranger to those claims. Aeroframe wanted ATS to produce its (Aeroframe's) records at ATS's bother and expense so that it (Aeroframe) could defend itself against the motions for summary judgment filed as ordered by the *Cooley* plaintiff-employees. We ruled that Aeroframe, at its own expense, could obtain copies of the hard drives from its computers now in possession of a third-party custodian, at which point it would have a copy of all its records. *See generally* docs. 109, 110. Aeroframe chose to not obtain its records as suggested. 14-cv-987 (*Cooley*), doc. 80. Instead it chose to use this directive to claim its "shock and dismay" that we ***denied*** its request for discovery, which, clearly, we did not. *Id.* p. 5. It is precisely this type of "professional impropriety and shenanigans" [*Ashford v. Aeroframe Services, LLC*, 907 F.2d 385, 398 (5th Cir. 2018) (Jones, J., dissenting)] that led to our previous recommendation and the district court's acceptance of that recommendation for imposition of sanctions against Brown, Aeroframe, Filo, and Porter. 14-cv-992 (*Ashford 1*), docs. 283 (R&R), 294 (order adopting R&R). We denied ATS's request to sanction Aeroframe's original counsel, Joseph P. Williams, Sr., and Richard B Williams, whose firm's involvement is discussed in fn. 1, finding their participation in this scheme to be regrettable but further finding that they did attempt to withdraw after receiving correspondence from ATS forwarding information from the Tennessee litigation (fn. 36) evidencing Porter's duplicity. "Shock" and "dismay must be in the Porter/Aeroframe lexicon as those were the exact adjectives used by Porder in his declaration signed four years ago when describing his reaction upon learning that ATS had purchased the EADS note. Doc. 97, att. 4, p. 3, ¶

D. Porter's Reconventional Demand and Aeroframe's Incidental Demand in *Ashford 1*; Porter and Aeroframe's Responses to ATS's Claims in All Cases Other Than *Ashford 1*.

Porter filed a reconventional demand against ATS and Aeroframe filed an incidental demand against ATS, both pleadings being filed only in *Ashford 1*, not in *Cooley* (in which the Seattle depositions had been noticed) or any other first filed case. Doc. 1, att. 12, p. 101 (Porter reconventional demand) and doc. 1, att. 12, p. 116 (Aeroframe incidental demand). In almost all other cases where ATS made claims against Aeroframe and Porter, Aeroframe and Porter, in tandem, filed exceptions of prematurity and *lis pendens*, arguing that in each of those proceedings ATS's claim was premature as it was filed without leave of court and after ATS had filed its answer, and additionally that ATS's claim was subject to issue preclusion because ATS had made the exact same claim in *Ashford 1*. *Id.*[12] Neither Porter nor Aeroframe excepted to the prematurity of ATS's claim in *Ashford 1*, suggesting (as ATS does suggest) the non-ATS litigants preferred the case coming out of Evangeline Parish.[13]

---

12. See identical exceptions filed by Aeroframe and Porter in 14-cv-984 (Adams) at doc. 1, att. 1, pps. 63 (Porter) and 68 (Aeroframe); 14-cv-985 (Boring) at doc. 1, att. 1., p. 65 (Porter — if Aeroframe filed one in this matter before removal it was not contained in the record); 14-cv-987 (Cooley), doc. 1, att. 1, pp. 147 (Aeroframe) and 160 (Porter); 14-cv-988 (Gallow), doc. 1, att. 1, pps. 64 (Porter) and 67 (Aeroframe).

13. The first "first filed claims" (see fn 2) were removed on 5/14/14. The next three were removed 7/16/14. See 14-cv-2323

Appendix C

Porter's reconventional demand was very sophisticated for a lay person.[14] 14-cv-992, doc. 1, att. 1, p. 101.[15] The

(Morvant) at doc. 1; 14-cv-2324 (Coley) at doc. 1; and 14-cv-2325 (Cogdill) at doc. 1. The Notices of Removal in the latter removed cases point out what we highlight here, i.e. that, prior to the removal of the first filed claims, only *Cooley* saw any action. In these later removal notices, ATS suggests that the non-ATS litigants learned in *Cooley* that they would not be given their way when the state district court would not allow them to go forward with corporate depositions of ATS in Calcasieu Parish, Louisiana, as they had wanted. So, according to ATS, they chose a different horse with which to go forward, namely *Ashford* coming from Evangeline. See 14-cv-2323 (Morvant) at doc. 1, pp. 17-18, ¶¶ 43-44; 14-cv-2324 (Coley), at doc. 1, pp. 17-18, ¶¶ 43-44; and 14-cv-2325 (Cogdill) at doc. 1, pp. 17-18, ¶¶ 43-44. This is a compelling observation that, when considering how much effort has been spent by the non-ATS litigants to get out of this court and how little has been spent by them on the merits of their claims or defenses, does support conclusions reached elsewhere by this court and Judge Jones in her dissent in *Ashford v Aeroframe Services, LLC*, 907 F.3d 385 (5th Cir. 2018), that this has been one huge exercise in forum shopping by these non-ATS litigants in search of a friendly court in which their meritless claims against ATS might find purchase.

14. Porter did not write that pleading himself. It was written for him by Filo. See *Ashford 1*, 14-cv-992, doc. 260 (testimony at hearing on Motion for Sanctions), p. 30 (transcript p. 189) where Filo admits he drafted Porter's reconventional demand as well as Porter's exceptions discussed above. Those were filed 4/7/14. Brown did not seek a waiver of conflict from the employee-plaintiffs until her now infamous email sent 4/19/14. Doc. 46, att. 40. Given our conclusion in this proceeding that plaintiff-employees and Porter were aligned before these suits were filed (see Report and Recommendation at doc. 62, adopted by the district court at doc. 69), this fact is of no moment. This fact also supports our conclusion in this proceeding that plaintiff-employees and Porter were aligned before these suits were filed.

15. Found in this record at Doc. 1, att. 12, p. 101. Further citation to that complaint will be to where it is found in this record.

allegations of his demand are discussed more fully below but he sought damages from ATS for intentional or tortious interference with his employment agreement with AAR Corporation ("AAR") [*Id.* at p. 108] and Unfair Trade Practices under La. R.S. 51:1401, *et. seq.* [*Id.* at p. 109].

Aeroframe filed its Answer to Original Petition, Answer to Cross-Claim of Aviation Technical Services, Inc., and Cross-Claim by Aeroframe Services, Inc., on April 8, 2014, also in *Ashford 1*. 14-cv-992, doc. 1, att. 1, p. 116.[16] The factual allegations made by Aeroframe were nearly identical to those made by Porter in his claim against ATS, not surprising given the fact the latter is the alter-ego of the former,[17] and sought damages for Breach of Contract, violation of LUFTA, and "Intentional and/or Tortious Interference with a Contract and/or Business Relationship." *Id.* at p. 127.

E. Progress of *Ashford 1*

Considering the decision of Porter and Aeroframe to answer and assert claims only in *Ashford 1* and in no other, they obviously chose *Ashford 1* from Evangeline Parish to act as the "bellwether."[18] We laboriously detail in our Report and Recommendation issued in this matter at document 62 the process by which the Motions to Remand were denied in *Ashford 1*, all claims on the merits against

16. Found in this record at Doc. 1, att. 12, p. 116. Further citation to that complaint will be to where it is found in this record.

17. See fn. 1.

18. See fn. 13.

ATS by all parties were dismissed on summary judgment, how the non-ATS litigants appealed focusing entirely on the jurisdictional issue, how the Fifth Circuit reversed our finding on jurisdiction, and how ATS removed again after discovering a plethora of other evidence to establish that the non-ATS litigants had in fact been aligned in this litigation since its inception and further noting that the ruling of the Fifth Circuit might well have been different had that court known of the existence of an agreement that Porter and Aeroframe had entered to fund the employees' unpaid wage claims from proceeds received by Aeroframe or Porter (who are one in the same) in the event either recovered from ATS. Doc. 62, pp. 2-11. Through that Report and Recommendation, we suggested to the district court that it deny Motions to Remand filed by non-ATS litigants and the district court adopted the recommendation. Doc. 69.

F. Consolidation of All Claims and the Current ATS Motion for Summary Judgment

After having concluded in *Ashford 1* that we had jurisdiction, then after the claims against ATS were dismissed in *Ashford 1* on Motion for Summary Judgment, then after remand following a conclusion by the Fifth Circuit that we lacked subject matter jurisdiction,[19] then after re-removal of Ashford to this docket number *(Ashford 2*) and our conclusion again that we did have subject matter jurisdiction, we were finally in a position

19. *Ashford v Aeroframe Services, LLC*, 907 F.3d 385 (5th Cir. 2018),

of getting as many plaintiff-employee cases as possible in the same procedural posture as *Ashford 2* so that we could finally address the merits (or lack thereof) and have this litigation finally completed.

In each non-*Ashford* case there was pending a Motion to Remand filed by each non-ATS defendant and in each case ATS had filed a Motion for Summary Judgment.[20] In each case we recommended that the district court adopt our conclusion as to subject matter jurisdiction issued in this matter and in each case the district court agreed.[21] Thereafter we issued a Memorandum Ruling granting ATS's Motion to Consolidate[22] and terminated

---

20. Some cases also had pending Motions to Dismiss for Lack of Subject Matter Jurisdiction but none raised any issue that was not raised in a Motion to Remand.

21. *See* 14-cv-983 (R&R at doc. 73, adopted by district court at doc. 79); 14-cv-984 (R&R at doc. 64, adopted by district court at doc. 70); 14-cv-985 (R&R at doc. 64, adopted by district court at doc. 70); 14-cv-986 (R&R at doc. 67, adopted by district court at doc. 74); 14-cv-987 (R&R at doc. 64, adopted by district court at doc. 72); 14-cv-988 (R&R at doc. 64, adopted by district court at doc. 69); 14-cv-989 (R&R at doc. 56, adopted by district court at doc. 63); 14-cv-990 (R&R at doc. 54, adopted by district court at doc. 61); 14-cv-991 (R&R at doc. 63, adopted by district court at doc. 68); 14-cv-2323 (R&R at doc. 49, adopted by district court at doc. 56); 14-cv-2324 (R&R at doc. 50, adopted by district court at doc. 58); 14-cv-2325 (R&R at doc. 50, adopted by district court at doc. 58); and 14-cv-2538 (R&R at doc. 63, adopted by district court at doc. 70).

22. We did not consolidate 16-cv-1512, *Day v Aeroframe*, finding that it was not in the same procedural posture as the others. Neither did we consolidate 16-cv-1378, *Neathammer v Aeroframe*, or 16-cv-1397, *Jackson v Aviation Technical Services*. Although the latter two

all dispositive motions pending in all consolidated cases but urging the parties to refile (if they deemed that action appropriate) in this lead case.

Which brings us to the Motion for Summary Judgment filed by ATS currently before us. Doc. 92. This motion seeks dismissal on the merits of the claims against it by all former Aeroframe employees who are plaintiffs in all matters now consolidated as well as all claims filed against it by Aeroframe and Porter. Doc. 87.[23] Not a single claim asserted by any non-ATS litigant against ATS has been amended, supplemented, or restated.

In response to ATS's motion, we issued an electronic order that advised as follows:

> No response to this motion filed by any party is to contain any argument as to this court's subject matter jurisdiction. Argument and

---

cases involved the same circumstances, plaintiffs in both cases were represented by counsel other than Somer Brown or the Cox firm. In both of those cases plaintiffs settled with defendants; however, in both cases either Aeroframe, Porter, or both continue to argue that litigation remains viable and the cases should be remanded, ostensibly so that they can try their claims against ATS in that state court—the same claims under consideration in this Motion for Summary Judgment.

23. Restating, the consolidated cases are docket numbers 14-cv-983 (Warner), 14-cv-984 (Adams) , 14-cv-985 (Boring), 14-cv-986 (Cleaves), 14-cv-987 (Cooley), 14-cv-988 (Gallow), 14-cv-989 (Decolongon), 14-cv-990 (Blanton), 14-cv-991 (Rackard), 14-cv-992 (Ashford 1), 14-cv-2323 (Morvant), 14-cv-2324 (Coley), 14-cv-2325 (Cogdill), and 14-cv-2538 (Barreda).

> evidence to support that argument is to be limited to the merits. All non-ATS litigants, by timely moving for remand, did all that was required to preserve objections to removal. *Caterpillar Inc. v. Lewis*, 519 U.S. 61; 117 S.Ct. 467, 475; 136 L.Ed.2d 437 (1996). Any further attempts to argue this court's subject matter jurisdiction will be considered a violation of this order and will be ignored.

Doc. 95. This was done to stop the endless regurgitation by non-ATS litigants of their claims that we lack subject matter jurisdiction to consider the motion—claims that they have made at every turn and in unison—and to limit them to the merits (or lack thereof) of their claims against ATS. This direct order was violated by each non-ATS litigant.[24]

---

24. Doc. 96, Plaintiffs' Opposition, p. 1, fn. 1 ("This opposition is being filed subject to Plaintiffs' ongoing objection to the subject matter jurisdiction of the federal courts"); doc. 98, Aeroframe's Opposition, p. 2, fn 1 ("Aeroframe hereby adopts and incorporates [certain pleadings] and all arguments advanced in those prior pleadings which adequately outline the lack of this Court's subject matter jurisdiction"); and Doc. 97, p. 2, fn. 1 ("Porter hereby adopts and incorporates [certain pleadings] and all of the arguments advanced in those prior pleadings which adequately outline the lack of this Court's subject matter jurisdiction."). Such arguments are yet another example of their synchronized pleading.

Appendix C

II.

Applicable Law and Discussion of the Claims

A. Summary Judgment Standard

A court should grant a motion for summary judgment when the movant shows "that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56. The party moving for summary judgment is initially responsible for identifying portions of pleadings and discovery that show the lack of a genuine issue of material fact. *Tubacex, Inc. v. M/V Risan*, 45 F.3d 951, 954 (5th Cir. 1995). The court must deny the motion for summary judgment if the movant fails to meet this burden. *Id.*

If the movant makes this showing, however, the burden then shifts to the non-moving party to "set forth specific facts showing that there is a genuine issue for trial." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S. Ct. 2505, 2511, 91 L. Ed. 2d 202 (1986) (quotations omitted). This requires more than mere allegations or denials of the adverse party's pleadings. Instead, the nonmovant must submit "significant probative evidence" in support of his claim. *State Farm Life Ins. Co. v. Gutterman*, 896 F.2d 116, 118 (5th Cir. 1990). "If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted." *Anderson*, 106 S. Ct. at 2511 (citations omitted).

A court may not make credibility determinations or weigh the evidence in ruling on a motion for summary judgment. *Reeves v. Sanderson Plumbing Prods., Inc.*,

530 U.S. 133, 120 S. Ct. 2097, 2110, 147 L. Ed. 2d 105 (2000). The court is also required to view all evidence in the light most favorable to the non-moving party and draw all reasonable inferences in that party's favor. *Clift v. Clift*, 210 F.3d 268, 270 (5th Cir. 2000). Under this standard, a genuine issue of material fact exists if a reasonable trier of fact could render a verdict for the nonmoving party. *Brumfield v. Hollins*, 551 F.3d 322, 326 (5th Cir. 2008).

When, however, a movant satisfies its burden of showing there is no genuine dispute of material fact, the nonmovant must demonstrate there is, in fact, a genuine issue for trial by going "beyond the pleadings" and "designat[ing] specific facts" for support. *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994). Local Rule 56.1 requires a movant to file a statement of materials facts to which it contends there is no genuine issue to be tried. In response thereto an opponent of the motion must file a separate, short, and concise statement of the material fact as to which there exists a genuine issue to be tried. W.D.La.R. 56.32. Any material fact listed by the moving party will be admitted for purposes of the motion "unless controverted as required by this rule." *Id.* A non-movant may not meet its burden of proving there does exist a genuine issue for trial by conclusory or unsubstantiated allegations, or by a mere "scintilla of evidence." *Little*, 37 F.3d at 1075.

B. Factual Allegations of the Non-ATS Litigants

Because all facts for all pleadings for all claims against ATS came from Porter, we are able to summarize them collectively as follows:

Appendix C

1. Aeroframe closed its operation August 9, 2013, and employee-plaintiffs were not paid last owed wages.[25]

2. Before closure, Aeroframe and ATS had discussed a possible merger or buy-out.[26]

3. ATS was given access to Aeroframe's financial information.[27]

4. When ATS and Aeroframe were unable to reach a deal, Aeroframe began negotiating with AAR, a competitor of ATS.[28]

5. While AAR and Aeroframe were negotiating, ATS purchased a debt owed by Aeroframe, the "EADS note,"[29] in order to interfere

---

25. Doc. 1, att 12, p. 105 (Ashford);

26. Doc. 1, att 12, p. 5 (Ashford); doc. 1, att. 12, p. 125 (Aeroframe); and doc. 1, att. 12, pp. 105-106 (Porter).

27. Doc. 1, att. 12, p. 5 (Ashford); doc. 1, att. 12, p. 125 (Aeroframe); and doc. 1, att. 12, p. 105 (Porter).

28. Doc. 1, att. 12, p. 5 (Ashford); doc. 1, att. 12, p. 126 (Aeroframe); and doc. 1, att. 12, p. 106 (Porter).

29. The EADS note was a debt owed by Aeroframe and Porter personally and was secured by the equipment used by Aeroframe at its operations at the Chennault International Airport Authority ("CIAA"). See generally the testimony of ATS COO Bret Burnside at doc. 97, atts. 5, 6.

with the AAR negotiation.[30] ATS made this purchase without the permission of Aeroframe or Porter.[31]

6. ATS foreclosed on the loan to cause Aeroframe to go out of business.[32]

C. Facts Established by the Exhibits Attached to the Motion for Summary Judgment

Through its Motion for Summary Judgment and the exhibits attached thereto, ATS paints a picture that is quite different than what the bare allegations of the non-ATS litigants suggest. What follows is a chronology of events from the summer of 2013, all supported by competent evidence:

1. The EADS note was a commercial instrument, the existence of which was public record. Doc. 92, att. 12. No one needed access to Aeroframe confidential information to know of its existence.

2. On 5/16/2013, ATS and Aeroframe entered into a Confidentiality Agreement. Doc. 92,

---

30. Doc. 1, att. 12, p. 5 (Ashford); doc. 1, att. 12, p. 126 (Aeroframe); and doc. 1, att. 12, p. 108 (Porter).

31. Doc. 1, att. 12, p. 126 (Aeroframe); and doc. 1, att. 12, p. 107-108 (Porter).

32. Doc. 1, att. 12, p. 6 (Ashford); and doc. 1, att. 12, p. 108 (Porter).

att. 14. Nothing in that document required ATS to do or not do anything with respect to information about Aeroframe. The entire agreement was focused upon protection of ATS information.

3. Aeroframe and ATS entered into an exclusivity agreement on 6/7/2013. Doc. 92, att. 18. This agreement precluded Aeroframe from dealing with any other entity regarding acquisition of its assets for a period of 30 days.

4. Counsel for both companies spoke with Matra Aerospace, Inc. ("Matra"), the EADS successor in interest, about the purchase of the note. Doc. 92, att. 21.

5. According to Porter's declaration, the exclusivity agreement expired 7/7/2013 but Porter continued discussions with ATS about a potential deal. Doc. 97, att. 4, p. 2, ¶ 11.

6. The day after the exclusivity agreement expired, ATS COO Burnside texted Porter to get contact information for the person with Matra with whom he (Burnside) could deal about acquiring the note. Porter asked "do you want to speak directly with the EADS folks" to which Burnside replied "we need to talk with them directly about buying

the note." Porter responded "Okay will pull the info." Doc. 92, att. 43. p. 2.[33]

7. On 7/12/2013, Aeroframe counsel W. Joe Mize gave the green light to ATS to deal directly with EADS/Matra on acquisition of the EADS note. Doc. 92, att. 21.

8. ATS continued to deal with Porter after expiration of their agreement, which continued dealings resulted in Porter signing a contract of employment with ATS on 7/31/2013. Doc. 92, att. 20 (emails between the parties beginning 7/10/2013 and ending 8/2/2013).

9. Following expiration of the agreement, ATS provided consulting management services. Doc. 92, att. 20, p. 61. This fact is supported by Porter's declaration in which he stated that ATS was aware of Aeroframe's continuing financial decline "through personal [sic] on-site at Aeroframe's Chennault facilities" and again when he claimed to have told ATS (through Burnside) on 7/19/2013 that Aeroframe was in talks with another purchaser and that "ATS might want to pull its people who had been on-suite [sic] at Aeroframe." Doc. 97, att. 4, p. 2, ¶¶ 11, 16.

---

33. These texts markedly conflict with Porter's declaration that he was "shocked and dismayed" to learn ATS had purchased the note. Doc. 97, att. 4, p. 3, ¶ 24.

10. On 7/19/2013, Porter signed a Letter of Intent with AAR which included an exclusivity provision for 30 days. Doc. 97, att. 4, p. 2, ¶ 15.

11. As noted in 8 above, Porter continued to deal with ATS, including signing an employment contract with them on 7/31/2013, even though at that time he was obligated to deal with AAR exclusively. See emails at Doc. 92, att. 30.

12. According to Porter's declaration, on 7/19/2013 he immediately informed ATS's Burnside that he had located another purchaser and that "ATS might want to pull its people who had been on-suite [sic] at Aeroframe." Doc. 97, att. 4, p. 2, ¶ 16. Texts between the parties differ from the declaration in that the texts show clearly Porter was confronted to give this information and did not "immediately inform" ATS. On 7/19/2013 Burnside texted Porter at 5:56 p.m, "Roger, I need some sort of an answer on what course you are taking. If you are talking with other groups then I will have to pull my guys. Doesn't make much sense to keep them there if you are talking with other groups. Need and[34]

34. We are not inserting "sic" notations at all obvious errors in informal text writings.

answer if you don't mind. Thanks." Porter replied "I started a dialog with another company today. Advise you pull your guys and we can see if there is a need to revisit at some point." Burnside replies "very disappointing considering how much help we have given you over the last 6 weeks. It would be very nice of you called and at least have me some explanation. Thanks." Doc. 92, att. 43, p. 3.[35]

13. On 7/20/2013, while the AAR exclusivity agreement was still in place, Porter agreed to meet with Matt Yerbick, President and CEO of ATS, about an employment agreement. Doc. 92, att. 20, p. 43.

14. It was not until 7/22/2013 that Porter confirmed to ATS's Burnside that he

35. Whether Porter told ATS first or ATS only learned when it confronted Porter creates no genuine issue for trial as it does not matter. If we were asked or able to make a credibility call on that fact, however, which we are not, the call would not be in favor of Porter's declaration. We would characterize this as yet another attempt by Porter to bestow upon himself an aura of goodliness and deflect from his perfidy. We would place that statement in the same category as we would his other declaration that, "[a]t no time did I ever play ATS against AAR or AAR against ATS." Doc. 97, att. 4, p. 4. Our conclusion as to Porter's incredibility would be bolstered by his text to ATS discussed at II.C.21 when he promised he was "on the ATS team" about ATS getting the CIAA lease while he had already met with AAR and CIAA to arrange AAR getting the lease. See discussion at II.C.19.

(Porter) was under an exclusivity agreement with AAR, and only did so after Burnside asked him directly whether he was. Doc. 92, att. 43, p. 4.

15. On 7/23/2013 ATS agreed to purchase the EADS note. Doc. 97, att. 4, p. 3, ¶ 19.

16. On Saturday, 7/27/2013, while Porter was under the AAR exclusivity agreement, he played golf with ATS's Burnside. Porter claimed it was during this time he informed Burnside that AAR was the purchaser of Aeroframe. Doc. 97, att. 4, p. 3, ¶ 23.

17. As of 7/31/2013, AAR knew of ATS's acquisition of the EADS note. Doc. 92, att. 41. On that date David Storch with AAR sent an intra-office email: "Just spoke to Dany. Please speak with EADS to confirm if they sold the note to ATS. We should peruse [sic] the airport lease with Roger's support (if possible). If successful on lease, we should go into the market for tooling and equipment and give ATS 7 days to get their equipment out of the hangers." *Id.*

18. Porter was offered employment with ATS on 7/31/2013 via email sent at 1:32 p.m. Doc. 92, att. 20, p. 48. Porter accepted ATS's offer. Doc. 97, att. 4.

19. On 7/31/2013, Laffy Avery, president of CIAA, met with representatives of AAR and Porter to discuss AAR getting Aeroframe's hangar lease at CIAA even though the Aeroframe assets were no longer available since ATS acquired the EADS note for which the equipment stood as collateral. Doc. 92, att. 38, p. 4. Avery stated that it was his understanding "that AAR representatives and Porter would be meeting to see if they could reach an agreement for Porter to become an employee of AAR. I relied on and trusted Porter's judgment as to whether it would be best for CIAA to award the lease to AAR (as opposed to ATS) because I trusted Roger Porter and considered him to be an expert on MROs." *Id.*

20. While Porter was working with AAR on 7/31/2013 so that it, AAR, could obtain the CIAA lease and while still obligated by the exclusivity agreement with AAR, Porter emailed ATS CEO Yerbic and said "I have the agreement [employment contract] but couldn't scan it at the office so will send from home tonight. Trying to keep it very quiet. [No kidding]. My thoughts regarding ATS on site as quick as possible would be to come back in as a production consultants. Your thoughts." Doc. 92, att. 20, p. 48.

21. At 11:38 a.m. on 8/1/2013, ATS's Burnside texted Porter asking if he had any communication with AAR to which Porter replied he "missed call from Chris Jessup" Doc. 92, att. 36, p. 2. We must assume that Porter forgot he had met the day before with AAR and CIAA. When Burnside asked Porter to keep him "in the loop," Porter responded "***Okay will do. I give you my word that I am on the ATS team and will keep you in the loop***." *Id.*

22. At 1:32 p.m. the same day, Burnside texted "[t]he rumor mill is AAR is in LC talking to Chenault about hangar leases. Can you check it out?" to which Porter replies "Going over there now." Doc. 92, att. 36, p. 2. In those same texts, ATS asked for particulars on the CIAA lease.

23. On 8/1/2013, Porter met with CIAA and AAR officials "and discussed an employment contract with AAR" (even though the day before he had signed one with ATS) "as well as an agreement to voluntarily relinquish Aeroframe's leases so that Chennault could enter into lease agreements with AAR. I learned at the meeting that AAR was planning on bringing in their own agreement. . . . That night I had dinner with AAR officials and signed an offer of employment with AAR." Doc. 97, att. 4.,

p. 4, ¶ 27. This would be the day after Porter signed an employment contract with ATS and gave ATS's Burnside "his word" that he was "on the ATS team."

24. On 8/2/2013 CIAA President Avery learned that AAR had reached an employment agreement with Porter so he called an Emergency Meeting of the CIAA Board of Commissioners to be held the following day to accept surrender of the lease from Aeroframe and award it to AAR. Doc. 92, att. 38, p. 4.

25. Porter attended the CIAA meeting on Saturday, 8/3/13 at 9:30 a.m. Doc. 92, att. 46, p. 3.

26. Porter testified via affidavit in a proceeding filed in Tennessee against AAR[36] that, as a result of his having reached an employment agreement with AAR, he "recommended that the CIAA award the lease to AAR." Doc. 92, att. 30, p. 7, ¶ 12.

27. Texts between Porter and ATS's Burnside during this period (from 8/1/13 to 8/3/13) indicate ATS continued to work toward

36. *Porter v. AAR Aircraft Servs., Inc.*, No. 2:15-cv-02780, United States District Court for the Western District of Tennessee. The subject of this suit was the breakdown of Porter's employment agreement with AAR.

an agreement to take over the lease with CIAA. Doc. 92, att. 37.

28. On 8/4/2013 at 5:00 p.m., Porter emailed Burnside: "Bret, I was informed today via email that AAR had secured the lease at Chennault[37] and they are requesting I remove all aeroframe [sic] assets over the next two weeks. AAR had also informed me they will be on site with HR personnel to take application and make job offers. They have requested that work with them to transition the facility. I have confirmed the lease changes with the CIAA. I am going to talk to my attorney in the morning about next moves for Aeroframe and me personally. Lets [sic] have a call in the morning to discuss. So we can Manage ATS's position as it will be a factor in how I handle Aeroframe. Roger" Doc. 92, att. 34.

29. Even after being informed that AAR had the lease, ATS continued to meet with Porter. Doc. 92, att. 43, pp. 6-7. When asked to meet with Burnside, Porter responded "AAR has requested you not to come to the facility so lets meet off site." *Id.*, p. 6.

---

37. Perfidy and passivity. He did not "learn that" CIAA awarded the lease to AAR on 8/4/2013—he learned 8/3/2013 at the meeting that accomplished that purpose at his suggestion. He had known it was going to happen since 8/1/2013, when he met with CIAA and AAR officials. This was his plan, his design. See II.C.23-26 above.

30. ATS sent formal notice of default to Aeroframe on 8/6/2013. Doc. 92, att. 31. According to Donald Cook, ATS's CFO, this notice was prompted by AAR's "request" to Porter on 8/4/2021 (see II.C.28 above) that "all Aeroframe assets [be moved] over the next two weeks." Doc. 92, att. 2, p. 5, ¶ 32.

31. Texts between Porter and Burnside between 8/5/2013 and 8/12/2013 indicate Burnside was pushing Porter to finalize an agreement. The texts do not specify about which agreement they were speaking but context tells us it was the Strict Foreclosure Agreement discussed at II.C.38 below. As we note below, the purpose of that agreement was to confer title to the equipment located at the former Aeroframe facility to ATS so that ATS could have the equipment removed from the CIAA facility. Doc. 92, att. 43, p. 8.

32. On 8/8/13, Burnside asked Porter how he is "coming on the doc's" (again, the Strict Foreclosure Agreement) and attempted to arrange a meeting between the two of them. Porter responded at 3:55 p.m. that it was unclear when they could meet as he was "***in the middle of shutting down operations***." Doc. 92, att. 43, p. 8 (emphasis added).

33. On 8/9/2013, Aeroframe's operations ceased. According to Porter the closure was due to

"lack of funds to pay payroll . . . as well as the imminent foreclosure of the equipment by ATS (which equipment was necessary to perform any work in progress being conducted at Chennault)." Doc. 97, att. 4, p. 4, ¶ 32.

34. As early as 8/10/13, AAR's interest in having Porter on board was beginning to wane. On that date, AAR operative David Storch wrote to others:

> Two reasons why Roger [Porter] cannot go into an operating position at our new business in Lake Charles:
>
> 1. He has committed the most grievous of business leadership/ ownership mistakes by missing at least two payrolls. This will totally diminish employee trust, confidence and therefore his leadership effectiveness.
>
> 2. He blames his failure on his customers FedEx and ILFC. We can't afford to have a leader who blames his customers for his failure. In my brief conversations I did not hear him take ownership for his failure. I only want leaders who take ownership.

Doc. 92, att. 39, p. 2. To this, AAR operative Chris Jessup replied "Dany and I are in full

agreement with your talking points. Roger will not be engaged with AAR until he is fully wrapped up with his obligations with Aeroframe." *Id.*

35. On 8/11/2013, Burnside texted Porter at 11:12 a.m, "[s]ounds like you have now ceased operations. I just need to know if you are going to sign the [Strict Foreclosure Agreement] or not. Thanks." Doc. 92, att. 43, p. 9. Porter did not respond until the next morning at 9:21 a.m. when he said "[s]orry for try [sic] delays. Chris [Jessup with AAR] will touch base with you as well" then later stated "[j]ust talked with Chris and all is good to do inventory." *Id.*

36. On 8/14/2013, AAR sent formal demand to Aeroframe to "**IMMEDIATELY MAKE ARRANGEMENTS WITH AAR TO REMOVE OR OTHERWISE DISPOSE OF ANY PROPERTY THAT YOU OWN . . . THAT IS LOCATED ON THE PREMISES**" or risk having that property deemed abandoned. Doc. 92, att. 32, p. 2 (emphasis in original). That property would be the assets that acted as security for the EADS note, the equipment located at the former Aeroframe facility. Doc. 92, att. 2, p. 5, ¶ 33.

37. On 8/15/2013, ATS sent an acceleration letter to Aeroframe. Doc. 92, att. 33. According to

ATS CFO Cook, this was "a necessary step to obtain legal title to the assets secured by the [EADS] note .... so as to facilitate the AAR demands" to remove the assets from the premises. Doc. 92, att. 2, ¶¶ 34, 35.

38. On 8/20/2013, Porter, on behalf of Aeroframe, signed a Strict Foreclosure Agreement ("SFA") transferring title of the assets to ATS. Doc. 92, att. 17. The SFA provides that, as of its date, Aeroframe had failed to make payments since 4/8/11 and that the accelerated amount due at that time was $9,775,500.00 plus accrued interested in the amount of $89,670.11. *Id.*, pp. 2-3. Through this agreement ATS received title to Aeroframe equipment that served as collateral for the note.

39. The SFA also contained the following waiver and release of claims by Aeroframe:

> Effective upon the date hereof, Aeroframe hereby (a) irrevocably and unconditionally releases and forever discharges ATS . . . from any and all rights, claims, remedies and causes of action related to the Note, Security Agreement and Note Purchase Agreement, and the transfer of the Transferred Collateral under this

> Agreement . . . and (b) covenants not to sue . . . on account of any Released Claims.
>
> . . .
>
> This agreement has been jointly drafted by ATS and Aeroframe and both parties have had access to and the opportunity to consult with independent legal counsel. This Agreement shall not be construed in favor or against any party based on draftsmanship. Both of the Parties acknowledge having read all of the terms of this Agreement and they enter into the Agreement voluntarily and without duress.

Doc. 92, att. 17, pp. 6-7, 8, ¶¶ 8, 17.

The above-outlined evidence ATS submitted with its Motion for Summary Judgment meets ATS's initial burden of adducing evidence demonstrating a lack of a genuine issue of material fact. As such, the burden shifts to the non-ATS litigants to "set forth specific facts showing that there is a genuine issue for trial." *Anderson*, 106 S. Ct. at 251. No non-ATS litigant has produced any evidence that creates a question of fact for any juror to try.

D. Appropriateness of Summary Judgment for Each Claim of the non-ATS Litigants

1. Claims of the Plaintiff-Employees

As part of their response to the motion, plaintiff-employees "incorporate fully herein by reference" pleadings filed in the consolidated cases. Doc. 96, p. 2, fn. 2. We decline the invitation to cull through those documents to determine whether any information found therein might pertain to the issues raised in the motion under consideration.

a. Claims for Damages Pursuant to Louisiana Civil Code Article 2315

Article 2315 of the *Louisiana Civil Code* provides "[e]very act whatever of man that causes damage to another obliges him by whose fault it happened to repair it." The elements of a cause of action under article 2315 are fault, causation and damage. *Seals v. Morris*, 410 So.2d 715, 718 (La. 1981). On the element of duty:

> The existence of a legal duty coupled with a breach of that duty are prerequisites to any determination of fault. Whether a legal duty is owed by one party to another depends on the facts and circumstances of the case and the relationship of the parties. In all cases, duty can be stated generally as the obligation to conform to the standard of conduct of a reasonable man under like circumstances.

Id. As has been stated by the Louisiana Supreme Court:

> In order to determine whether a plaintiff should prevail on a claim in negligence, Louisiana courts employ a duty-risk analysis. *Perkins v. Entergy Corp.*, 00-1372, (La.3/23/01), 782 So.2d 606. A duty-risk analysis involves five elements which must be proved by the plaintiff: (1) proof that the defendant had a duty to conform his conduct to a specific standard (the duty element); (2) proof that the defendant's conduct failed to conform to the appropriate standard (the breach element); (3) proof that the defendant's substandard conduct was a cause-in-fact of the plaintiff's injuries (the cause-in-fact element); (4) proof that the defendant's substandard conduct was a legal cause of the plaintiff's injuries (the scope of liability or scope of protection element); and (5) proof of actual damages (the damages element).

Long v. State ex rel. Dep't of Transp. & Dev., 916 So.2d 87, 101 (La. 2005) (citations omitted). The threshold issue in any negligence action is whether the defendant owed the plaintiff a duty. *Meany v. Meany*, 639 So.2d 229, 233 (La. 1994). Under Louisiana law, determining the scope of a duty is "ultimately a question of policy as to whether the particular risk falls within the scope of the duty." *Roberts v. Benoit*, 605 So.2d 1032, 1044 (La. 1991). In deciding whether to impose a duty in a particular case, Louisiana courts examine "whether the plaintiff has any law (statutory, jurisprudential, or arising from general

principles of fault) to support the claim that the defendant owed him a duty." *Audler v. CBC Innovis, Inc.*, 519 F.3d 239, 249 (5th Cir. 2008) (quoting *Faucheaux v. Terrebonne Consol. Gov't*, 615 So.2d 289, 292 (La. 1993)).

Plaintiff-employees' petitions fail to allege a single duty owed to them by ATS, much less how that duty was breached or how any breach of duty caused them any harm. Plaintiff-employees fail to even mention La. C.C.P. article 2315 in their opposition to the motion. Doc. 96. Plaintiff-employees state nothing in their Statement of Contested Facts that would, in any manner, establish any duty owed to them by ATS, how any duty owed to them was breached, or how any breach caused them damages. Doc. 96, att. 1.[38] They merely complain that ATS "exploit[ed] the confidential financial situation of Aeroframe and retaliate[ed] against Aeroframe by accelerating large amounts of debt so quickly that Aeroframe was forced to shut down its operations without paying its employees for work performed and wages due." Doc. 92, att. 3, p. 4, ¶ 16. Plaintiff-employees failed to supply any law (statutory, jurisprudential, or arising from general principles of fault) that would support a claim that ATS owed them any duty at all with respect to its dealings with Aeroframe.

---

38. In their Statement of Contested Facts, plaintiff-employees state "[p]laintiffs have requested additional time [to conduct discovery in response to ATS's motion] and "will supplement his [sic] filing if the Court permits time for discovery." Doc. 96, att. 1. Nowhere in the record will one find a request by plaintiff-employees for additional time to conduct discovery.

We recommend that the complaint of the plaintiff-employees against ATS for damages under La. C.C. art. 2315 be dismissed with prejudice.

b. Claims for Damages for Intentional Interference with Contract between Aeroframe and AAR and Plaintiffs' Employment Contract with Aeroframe.

Plaintiff-employees allege that "ATS's actions constituted an intentional interference with both the contract between Aeroframe and AAR and Plaintiff's employment contracts with Aeroframe." Doc. 1, att. 12, p. 6. They state that "AAR caused Aeroframe's breach of that portion of the implicit employment contract whereby Aeroframe owed wages to Plaintiff[s] for work that had already been fully performed by Plaintiff[s]." *Id.* at p. 7. According to plaintiff-employees' complaint, "ATS's actions in accelerating the debt of Aeroframe were done with the knowledge that it would force Aeroframe's closure rendered impossible performance by Aeroframe of its obligation to pay wages for work already performed." *Id.* "ATS's actions were without legal or other justification and were an example of unscrupulous business dealings" and "[a]s a result of ATS's actions, Plaintiff was damaged in an amount equal to the wages and other benefits [plaintiffs are] owed for services already performed, as well as an amount of wages going forward that [they were] unable to earn because of Aeroframe's closure." *Id.*

So, unpacking the attempts at legalese, plaintiff-employees seek to make ATS responsible for the wages

that Aeroframe did not pay for services that they (plaintiff-employees) performed for Aeroframe while employed by Aeroframe. Perhaps if ATS had stolen funds from the Aeroframe account that then precluded Aeroframe from paying its employees' wages, there might be a claim of some sort against ATS. But this is not that.

The obligation to pay the employees of Aeroframe wages owed for services already performed belonged to Aeroframe and Aeroframe only. Plaintiff-employees fail to allege any law or set of circumstances that would obligate ATS to pay those wages and nothing in their response to the Motion for Summary Judgment points us to any such obligation.[39]

The only framework we can find into which might fit the plaintiff-employees' claims against ATS for "wages going forward" would be through some application of the theory of tortious interference with contract.

In *9 to 5 Fashions, Inc. v. Spurney*, 538 So.2d 228 (La. 1989), "the Louisiana Supreme Court recognized a very narrow cause of action for tortious interference with contracts." *Am. Waste & Pollution Control Co. v. Browning—Ferris, Inc.*, 949 F.2d 1384, 1386 (5th Cir. 1991). Finding no case on point but making an *Erie* guess and in keeping with the expressed intention of Louisiana

39. The opposition filed by plaintiff-employees is devoid of any substantive facts supported by any kind of evidence, much less evidence that is appropriate for summary judgment consideration, refuting facts established by ATS through exhibits attached to its motion.

courts to limit application of this cause of action,[40] the Eastern District of Louisiana determined that Louisiana law does not permit a cause of action for tortious interference with a contract against anyone other than an officer of a corporation. *Hibernial Cmty. Dev, Corp., Inc., v. U.S.E. Cmty. Servs. Grp., Inc.*, 166 F.Supp.2d 511, 514 (E.D.La. 2001). District judges in all district courts in Louisiana have similarly held[41] as has the Fifth Circuit Court of Appeal. The Fifth Circuit has noted:

> The *9 to 5 Fashions* Court specifically recognized only a corporate officer's duty to refrain from intentional and unjustified interference with the contractual relation between his employer and a third person and disavowed any intention to adopt whole and undigested the fully expanded common law doctrine of interference with contract.

Huffmaster v. Exxon Co., 170 F.3d 499, 504 (5th Cir. 1999). Insofar as no officer of ATS is a defendant to this claim, this claim must fail.

---

40. *Great Southwest Fire Ins. Co. v. CAN Ins. Companies*, 557 So.2d 966, 969 (La. 1997)

41. See, for example, *Roy Supply Co., Inc. v. Capital One Fin. Corp.*, No. 16-11349, 2016 U.S. Dist. LEXIS 108308, 2016 WL 4362156 (E.D. La. Aug. 16, 2016); *Int'l Env't Servs., Inc. v. Maxum Indus., LLC*, No. 14-601, 2014 U.S. Dist. LEXIS 129700, 2014 WL 4629662 (W.D. La. Sep. 15, 2014); and *Beta Tech., Inc. v. State Indus. Prods. Corp.*, No. 06-735, 2008 U.S. Dist. LEXIS 136441, 2008 WL 11351462 (M.D. La. Sep. 24, 2008).

Even if an officer had been named, summary judgment against plaintiff-employees would still be in order. As set forth in *9 to 5 Fashions*, the elements of the cause of action for intentional interference with contracts are:

> (1) the existence of a contract or a legally protected interest between the plaintiff and the corporation; (2) the corporate officer's knowledge of the contract; (3) the officer's intentional inducement or causation of the corporation to breach the contract or his intentional rendition of its performance impossible or more burdensome; (4) absence of justification on the part of the officer; (5) causation of damages to the plaintiff by the breach of contract or difficulty of its performance brought about by the officer.

9 to 5 Fashions, 538 So.2d at 234. Pretermitting any discussion as to whether plaintiff-employees had any "contract" or "legally protected interest" with Aeroframe,[42] plaintiff-employees have wholly failed to allege or prove with summary judgment type evidence

---

42. Plaintiff-employees mention a contract of employment with Aeroframe in their pleadings but there has been no contract produced by any of them nor have they provided any facts or evidence that would suggest one did. Absent a written contract that binds the parties to a certain period of employment, the Louisiana Civil Code provides a default rule of employment-at-will. *Read v. Wilwoods Cmty.*, 165 So.3d 883, 887 (La. 2015). Louisiana law does not recognize a cause of action for tortious interference with at-will employment. *Favrot v. Favrot*, 68 So.3d 1099, 1111 (La. App. 4th Cir. 2011).

that any ATS corporate officer knew of the alleged contract or protected interest, that any such corporate officer intentionally induced Aeroframe to breach any contract with plaintiff-employees or intentionally made such performance impossible or more burdensome, that any ATS corporate officer acted without justification, or that any plaintiff-employee caused damage to any other plaintiff-employee because of a breach of contract or difficulty of its performance brought about by an ATS corporate officer.

Plaintiff-employees' only allegations suggesting that ATS did anything inappropriate were those implying that ATS used confidential financial information to purchase the EADS debt and subsequently foreclose on the debt which, according to plaintiffs (and Aeroframe and Porter as well), would force closure of Aeroframe. Doc. 92, att. 3, p. 4. Plaintiff-employees allege under La. C.C. art. 2315 that Aeroframe's actions were retaliatory. The complaint's allegations under their LUTPA claim explain that this retaliation was occasioned by Aeroframe entering an agreement with AAR instead of ATS.[43] In short, these allegations suggest ATS was a very sore loser that chose to spend over $1M to mess up Aeroframe's good deal with AAR and therefore is liable to plaintiff-employees.

---

43. Although not alleged in plaintiff-employees' complaints, all did not turn out well for Porter in his dealings with AAR. As we see II.C., particularly ¶ 34, however, the failure of Porter to succeed with AAR or ATS had everything to do with his own attempts at improving his own position—in total ignorance of the rights of the employees to be paid for their labor—and his deception in dealing with both ATS and AAR.

Appendix C

Plaintiffs produced not a single bit of evidence to refute the submissions of ATS.[44] Their Statement of Contested Facts consists of one page, the first paragraph of which complains they have not been able to conduct discovery in response to the motion, but neither have they sought relief under Rule 56(d) of the Federal Rules of Civil Procedure.[45] Doc. 96, att. 1. They further state

44. Admittedly it might be difficult for plaintiff-employees, or anyone else truly representing their interests as opposed to the interests of Porter, to know where to go to get evidence. Brown got the information she used to prepare the complaints from her partner Filo, who got it from Porter (whom she also represented later). Doc. 54 (transcript of testimony taking at hearing on Motion for Sanctions in *Ashford 1*), p. 12 (transcript p. 171). It would not be difficult for Brown to get information from Porter (insofar as he is her client) but she would be hard-pressed to ascribe weight to any information provided by Porter as she has previously cast aspersions on his credibility. We mentioned previously the Motion for Summary Judgment filed by Ashford against Aeroframe in *Ashford 1* [14-cv-992, Doc. 85] and we will discuss it again following in the portion of this Report and Recommendation where we recommend the district court reconsider its previous ruling and grant the motion allowing Ashford to obtain judgment against Aeroframe for his unpaid wages, penalties, and attorney fees. In Ashford's reply to Aeroframe's objection to his request for summary judgment, Brown (who again was representing Porter at that point although at that time in the litigation no one knew that except Filo, Brown, Haik, and Porter) argued "Roger Porter's self-serving affidavit, which attempts to place sole fault for Plaintiff's losses on ATS, should be disregarded." 14-cv-992, Doc. 93, p. 1. This shadow boxing between Brown and her client Porter proves well what a sham this entire proceeding has been.

45. In response to the Motion for Summary Judgment filed by ATS in *Ashford 1*—discussed in part in the preceding footnote—Brown (for Ashford) requested a continuance of deadlines to respond,

that "the factual timeline relied upon by ATS is not the relevant timeline" but present no evidence indicating how ATS's timeline is inaccurate or what would be the relevant timeline. *Id.* In their memorandum in opposition, plaintiff-employees argue that events uncovered in the Tennessee litigation[46] do not preclude a determination that ATS acted inappropriately. Doc. 96, pp. 2-3. The only Tennessee information that we find material to this consideration, however, is the August 10, 2013, AAR intraoffice email explaining why it would not hire Porter for management at the Lake Charles facility. This evidence negates the

---

claiming ATS's motion was based on pleadings and discovery from the Tennessee litigation to which Ashford was not a party. Brown (for Ashford) complained of being unable to have access to information related to AAR and its involvement in this melee. See 14-cv-992, doc. 113. ATS opposed the motion, noting there (as it does here) that Brown (for Ashford) failed to comply with F.R.C.P. art. 56(d). It also noted, however, that Ashford's claim to be a stranger to the Tennessee litigation was nonsensical given the fact it was Porter who filed that suit and Porter was aligned with Ashford. 14-cv-992, doc. 119, p. 10. The district court agreed with ATS's assessment, considered it a delay tactic, and denied the request. *Id.* doc. 126. The district court's conclusion on alignment was reversed by the Fifth Circuit (*Ashford v. Aeroframe Services, LLC*, 907 F.3d 385 (5th Cir. 2018)) but evidence discovered by ATS since the Fifth Circuit's decision which led to our conclusion here that we do enjoy subject matter jurisdiction as well as our issuing sanctions against Brown, Filo, Aeroframe, and Porter in *Ashford 1* shows just how ridiculous is the position that plaintiffs herein have been unable to conduct discovery relative to the present motion.. As we have now learned, Brown represents Porter as well as Ashford and all other plaintiff-employees. *See* the June 4, 2014, Cox-Porter Retention Agreement, doc. 46, att. 44, listing Brown as co-counsel with Filo for Porter.

46. See discussion at fn 36.

allegations of the employee-plaintiffs that ATS caused a complete disruption of the deal between Aeroframe and AAR. Plaintiff-employees "set forth [no] specific facts showing that there is a genuine issue for trial." *Anderson*, 106 S. Ct. at 2511. If they need additional information as to AAR's reasons for not going forward with Porter then they could have their lawyer, Brown, ask her other client, Porter, as that was the very issue in Porter's Tennessee suit against AAR. Or they could read the Tennessee transcript themselves. But they have either done none of this or found nothing helpful to their cause from those proceedings.

Plaintiff-employees allege that the deal between Aeroframe and AAR was intended to benefit them. Doc. 92, att. 3, p. 3, ¶ 10. They produce nothing to support that claim. They allege ATS "intentionally interfered" with the agreement between AAR and Aeroframe but they produce no evidence to support what ATS's intention was when it acted or even that ATS's activities interfered with AAR's plans. *Id.* at ¶ 11. What the outline above at II.C. clearly shows—an outline that plaintiff-employees have failed to controvert—is that AAR's ultimate goal was to acquire Aeroframe's assets, which included Aeroframe's lease with CIAA. AAR continued with its plans even after it knew ATS acquired the EADS note secured by the Aeroframe assets, so there was no interruption in AAR's plans. The EADS note was commercial paper that anyone could have acquired if they wished; ATS did not need access to Aeroframe information to know about the existence of the note. Moreover, no document produced

shows that ATS ever agreed to refrain from acquiring the note without Aeroframe or Porter's permission. Plaintiff-employees have produced no evidence to support their claim that ATS foreclosed on the EADS note and seized the assets with the intention of causing Aeroframe to go out of business. According to the information provided by ATS, it foreclosed on the loan and seized the assets because AAR (whom Porter assisted in securing the CIAA lease) demanded the property be removed. ATS could not remove the assets unless it had title. It used the Strict Foreclosure process to obtain title. From the texts between Porter and Burnside set forth above, Porter not only knew ATS was engaging in this process but was also was assisting, including having his attorneys review the documents. Plaintiff-employees have produced no evidence to controvert those facts and no evidence to support their claim that actions of ATS caused the closure of Aeroframe. ATS is not obligated to prove why Aeroframe closed; rather, plaintiff-employees are required to produce evidence to support their allegation that Aeroframe closed because of ATS's actions. Plaintiff-employees have failed to do so and as such, have failed to establish a genuine issue of material fact.

We recommend that all claims of the plaintiff-employees against ATS for damages for intentional interference with the contract between Aeroframe and AAR and plaintiff-employees' (non-existent) employment contract with Aeroframe be dismissed with prejudice.

c. Claims for Damages under Louisiana Unfair Trade Practices Act ("LUTPA"), La. R.S. § 41:1401 *et. seq.*

LUTPA proscribes "unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." La. Rev. Stat. § 51:1405(A). "Because of the broad sweep of this language, 'Louisiana courts determine what is a LUTPA violation on a case-by-case basis.'" *Quality Env't Processes, Inc. v. Petroleum Co., Inc.*, 144 So.3d 1011, 1025 (La. 2014). To establish a LUTPA claim, a plaintiff "must show that 'the alleged conduct offends established public policy and is immoral, unethical, oppressive, unscrupulous, or substantially injurious.'" *Id.* The Louisiana Supreme Court has held that the "range of prohibited acts under LUTPA is extremely narrow" because the statute prohibits "only fraud, misrepresentation, and similar conduct, and not mere negligence." *Id.* A critical factor in determining whether conduct was unfair or deceptive under LUTPA is the "motivation and intent" of the defendant. See *Pikaluk v. Horseshoe Entm't, L.P.*, 810 F. App'x 243, 250 (5th Cir. 2020) (quoting *Iberia Bank v. Broussard*, 907 F.3d 826, 840 (5th Cir. 2018)).

Courts are reluctant to find liability under LUTPA when the evidence reveals a normal business relationship. See *Omnitech Int'l, Inc. v. Clorox Co.*, 11 F.3d 1316, 1332 (5th Cir. 1994). LUTPA does not prohibit businesses from exercising permissible business judgment or engaging in appropriate free enterprise transactions. See *Turner v. Purina Mills*, 989 F.2d 1419, 1422 (5th Cir. 1993). "The

statute does not forbid a business to do what everyone knows a business must do: make money." *Id.* Indeed, even "conduct that offends established public policy and is unethical is not necessarily a violation under LUTPA." *Quality*, 144 So.3d at 1025. As stated by the district court when considering ATS's Motion for Summary Judgment against all non-ATS litigants in *Ashford 1*, "[t]o state a viable claim under LUTPA, the plaintiff-employee must establish he suffered an ascertainable loss that was caused by ATS's use of unfair or deceptive acts or practices." 14-cv-992, doc. 131, p. 21.

Once again, plaintiff-employees' Statement of Contested Facts is silent as to any fact that might be tried to a jury for a claim under LUTPA. Doc. 96, att. 1. Their memorandum in opposition to the motion points to no facts that pertain specifically to the LUTPA claim. They argue in their memorandum that ATS's motion "completely ignores ATS's role in Aeroframe being effectively forced into the decision of having to close its doors" [doc. 96, p. 2] but provides no evidence of what the role was or whether its actions constitute an unfair or deceptive act or practice. The memorandum complains that ATS exploited information by purchasing the EADS note and threatening foreclosure. *Id.* While the word "exploited" makes ATS sound really mean, that does not constitute a violation of LUTPA. Given the evidence submitted by ATS with its motion, we find that nothing it did in its relationship with Porter or Aeroframe would offend public policy or was "immoral, unethical, oppressive, unscrupulous, or substantially injurious." *Quality*, 144 So.3d at 1025. Plaintiff-employees have produced no evidence of ATS's

intent or even circumstantial evidence that could lead a reasonable juror to conclude it acted with malintent.

We noted in the section above that there was nothing that prohibited ATS from purchasing the EADS note, a commercial instrument. Additionally, we noted that the "foreclosure" about which plaintiff-employees complain was actually an agreement to transfer title to the assets securing the loan when AAR, who had acquired the CIAA lease with Porter's assistance, demanded that the assets be moved. If there was any fraud, deceit, or misrepresentation it was by Porter, not by ATS.

We recommend that all claims of the plaintiff-employees against ATS for damages under the Louisiana Unfair Trade Practices Act be dismissed with prejudice.

2. Claims of Aeroframe

In opposition to ATS's motion, Aeroframe merely attached its response to the motion filed by ATS in *Ashford 1*. In footnote 1 to its opposition it claims to

> adopt[] and incorporate[] in its (sic) entirety its Memorandum in Support of Motion to Remand (Doc 10) including exhibits, its Reply Memorandum in Support of its Motion Remand (Doc. 22) and its Objection to Report and Recommendation on Motion to Remand (Doc 65) and pleads each and all of the arguments advanced in those prior pleadings which adequately outline the lack of this Court's subject matter jurisdiction.

Doc. 98, p. 2, fn 1. Just as we did with plaintiff-employees' similar attempt to incorporate other pleadings by reference, we decline this invitation to deconstruct those pleadings to assist Aeroframe in defeating ATS's motion.

Also, we obtain no understanding of any issue of fact by relying upon the Statement of Material Facts that Aeroframe produced in *Ashford 1*. ATS filed a new Statement of Uncontested Material Facts in this litigation. Doc. 92, att. 48. So, for example, when Aeroframe states in paragraph 2 of its Statement of Material Facts that it contests ATS's "#5," the remainder of the answer does not reflect anything having to do with ATS's fact #5 in this case. See Doc. 98, att. 1, p. 1. We will not waste any more of our time by attempting to ascertain to which fact Aeroframe attempts to create an issue.

We need not refer to the particular claims of Aeroframe against ATS as Aeroframe waived any right it might have had when it signed the Strict Foreclosure Agreement. The pertinent portions of the agreement are quoted above and we reproduce them here:

> Effective upon the date hereof, Aeroframe hereby (a) irrevocably and unconditionally releases and forever discharges ATS . . . from any and all rights, claims, remedies and causes of action related to the Note, Security Agreement and Note Purchase Agreement, and the transfer of the Transferred Collateral under this Agreement . . . and (b) covenants not to sue . . . on account of any Released Claims.
>
> . . .

Appendix C

> This agreement has been jointly drafted by ATS and Aeroframe and both parties have had access to and the opportunity to consult with independent legal counsel. This Agreement shall not be construed in favor or against any party based on draftsmanship. Both of the Parties acknowledge having read all of the terms of this Agreement and they enter into the Agreement voluntarily and without duress.

Doc. 92, att. 17, pp. 6-7, 8, ¶¶ 8, 17. Aeroframe states in paragraph 17 of its Statement of Material Facts:

> Aeroframe contends that when Porter signed the "Strict Foreclosure Agreement" it was based on ATS' vastly superior bargaining strength and Roger Porter's fear of economic deprivation[47] which combined to vitiate consent and the Release was not valid as it was not a bargained for agreement due to lack of mutual consent.

Doc. 98, att. 1, p. 3. In paragraph 18 it states:

> Aeroframe contends the "Waiver/Release of Claims by Aeroframe" it was based on ATS'

47. Aeroframe fails to explain why Porter would be under any fear of economic deprivation. Porter had already signed his employment agreement with AAR when the Strict Foreclosure agreement was signed. As we have concluded previously, that agreement was signed so that ATS could obtain legal title to the equipment so that it could lawfully remove the equipment from the CIAA hangar leased by AAR—a lease it obtained with the assistance of Porter.

> vastly superior bargaining strength and Roger Porter's fear of economic deprivation which combined to vitiate consent and the Release was not valid as it was not a bargained for agreement due to lack of mutual consent.

Id. Aeroframe provided no summary judgment type evidence—such as an affidavit from Porter— to substantiate these allegations. When disposing of this issue in *Ashford 1* the district court noted:

> Under Louisiana law, contracts have the effect of law between the parties and can only be cancelled "through the consent of the parties or on grounds provided by law." "When the words of a contract are clear and explicit and lead to no absurd consequences, no further interpretation may be made in search of the parties' intent." The strict foreclosure agreement contains a clause in which Aeroframe agreed to "irrevocably and unconditionally release[] and forever discharge[] ATS... from any and all rights, claims, remedies, and causes of action relating to the Note, Security Agreement, and Note Purchase Agreement, and the transfer of the Transferred Collateral under this Agreement." Under the clear meaning of this clause, Aeroframe has waived all claims that arise out of the purchase of or foreclosure on the EADS note. Aeroframe does not contest that this waiver covers all of the claims it has brought against ATS. Rather, Aeroframe argues that the waiver has no effect

> because the strict foreclosure agreement was signed under economic duress.
>
> Duress is an affirmative defense under Louisiana law and as such, must be affirmatively pleaded under both the Louisiana Rules of Civil Procedure and the Federal Rules of Civil Procedure. "When an affirmative defense is not included in the answer, evidence can be adduced thereon only in the absence of an objection." Aeroframe did not raise the affirmative defense of duress in its pleadings. Because ATS has objected to Aeroframe's affirmative defense, evidence of duress is not properly before the court on a motion for summary judgment. Aeroframe has not moved to amend its pleadings, but if it did so under Rule 15(a)(2) of the Federal Rules of Civil Procedure, the court would grant the request freely if justice so required.

14-cv-992, doc. 131, pp. 26-27 (footnotes omitted). In the nearly four years since that opinion was issued, Aeroframe still yet to amend its answer to raise these affirmative defenses. In its reply to Aeroframe's opposition to the Motion for Summary Judgment, ATS again raises the issue of Aeroframe's failure to affirmatively plead duress. Doc. 101.

We see no reason to conclude differently than did the district court and recommend that the claims of Aeroframe against ATS be dismissed with prejudice as being barred

by the Strict Foreclosure Agreement. Accordingly, we see no reason to examine the particular causes of action raised by Aeroframe, i.e. breach of contract, tortious interference with business relations, intentional interference with business relations, or LUTPA.

3. Claims of Porter

Porter and Aeroframe cheated off each other's pleadings. Just exactly as did Aeroframe, Porter states in footnote 1 to his opposition that he

> adopts and incorporates in its (sic) entirety his Memorandum in Support of Second Motion to Remand . . . (Doc. 7-1), his Reply Memorandum in Support of Second Remand (Doc. 21) and his Objection to Report and Recommendation on Motion to Remand (Doc. 63) and pleads each and all of the arguments advanced in those prior pleadings which adequately outline the lack of this Court's subject matter jurisdiction.

Doc. 97, p. 2, fn 1. Just as we did with plaintiff-employees' and Aeroframe's similar attempts to incorporate other pleadings by reference, we decline this invitation to analyze those pleadings to assist Porter in defeating ATS's motion. Porter also resubmitted the Declaration he filed in *Ashford 1* dated March 27, 2017. Doc. 97, att. 4.

And just as did Aeroframe, Porter simply relies upon the Statement of Material Facts and Contested Facts that it produced in *Ashford 1*. See Doc. 97, atts. 2, 3. Just

as with Aeroframe's statement, the paragraph numbers to which Porter attempts to respond are incorrect—ATS filed a new Statement of Uncontested Material Facts in this litigation. Doc. 92, att. 48. We will not waste any more of our time by attempting to ascertain to which fact Porter attempts to create an issue.

Porter gives a factual backdrop similar to that provided by plaintiff-employees (which would make sense given the fact that Brown got her information for the plaintiff-employee claims from Filo who represented Porter) but adds a bit of meat to the bare-boned allegations of the others. Porter mentions: (1) the June 7, 2013, 30 day exclusivity agreement with ATS; (2) the fact that he did not reach an agreement with ATS; (3) that thereafter he (Porter) was in contact with AAR; (4) that he confirmed with ATS on July 21, 2013, that he and Aeroframe were considering another offer "and could not consider an ATS offer;"[48] (5) that ATS, "relying exclusively on confidential information provided to ATS by Aeroframe and . . . Porter," agreed to buy the EADS note; (6) that ATS failed to inform him that it was purchasing the note "with the intent to foreclose on Aeroframe;" and (7) that ATS did buy the note, intending for it to "completely disrupt[]

48. Interesting he would allege this when, just 10 days later, he signed an employment agreement with ATS, having been in negotiations with them the entire time. See II.C.18. Porter's declaration does not attest to his allegation that he told ATS he "could not consider" an ATS offer but, even if it did, that would create no material issue of fact triable to a jury. See Doc. 97, att. 4 (Porter Declaration). But this does not weigh in favor of lending credibility to Porter, not that credibility is a consideration here.

the ability of Aeroframe, Roger A. Porter and AAR to complete their purchase and employment agreement." Doc. 1, att. 12, pp. 106-108.

a. Intentional or Tortious Interference with Porter's Employment Contract with AAR and/or his Business Relationship with AAR

While Porter alleges intentional or tortious interference with a contract and/or business relationship under a single heading in his demand against ATS [*Id.* at p. 108] we analyze his allegations as two separate claims governed by different legal standards.

i. Intentional or Tortious Interference with Porter's Employment Contract with AAR

Porter claims that the actions of ATS recited above interfered with his employment agreement with AAR, thereby rendering ATS liable to him for an amount "equal to all compensation and benefits he stood to receive from his employment contract with AAR." Doc. 1, att. 12, p. 108. Porter's affidavit does attest to the facts alleged but it omits one very salient fact, i.e. that Porter sued AAR in Tennessee for breach of the employment agreement he executed with them on 8/1/13. *See generally* doc. 97, att. 4. How could ATS have interfered with a contract that actually existed and was the subject of this separate litigation? That is a rhetorical question.

Porter's claim for tortious interference with a contract fails for the same reason we suggest dismissal of the plaintiff-employees' tortious interference with a contract claim: Porter has not sued an officer of ATS. Likewise, Porter can satisfy no other elements of the cause of action for intentional interference with a contract, which we set forth above in our analysis of the plaintiff-employees' interference with contract claims. See *supra* Part II.D.1.b; *9 to 5 Fashions*, 538 So.2d at 234. While Porter had a contract with AAR—satisfying the first element—there is zero evidence that ATS was aware of its existence and there is zero evidence that anyone with ATS had anything to do with AAR's breach or the rendition of AAR's performance "impossible or more burdensome." *Id.* Since there is no evidence that ATS had anything at all to do with the contract between Porter and AAR, we need not analyze the element inquiring whether there was an "absence of justification" for ATS's action. *Id.*

We recommend that all claims of Porter against ATS for damages for intentional or tortious interference with a contract be dismissed with prejudice.

ii. Intentional or Tortious Interference with Porter's Business Relationship with AAR

"Louisiana courts have long recognized a cause of action for tortious interference with business." *Restivo v. Hanger Prosthetics & Orthotics, Inc.*, 483 F.Supp.2d 521, 537 (E.D. La.2007), citing *Junior Money Bags, Ltd. v. Segal*, 970 F.2d 1 (5th Cir.1992), citing *Dussouy v.*

Gulf Coast Inv. Corp., 660 F.2d 594 (5th Cir. 1981), citing *Graham v. St. Charles St. R.R. Co.*, 47 La. Ann. 1656, 18 So. 707 (1895) "[T]he plaintiff in a tortious interference with business suit must show by a preponderance of the evidence that the defendant improperly influenced others not to deal with the plaintiff." *Junior Money Bags*, 970 F.2d at 10.

Porter does not set forth any facts showing that AAR and ATS had any sort of contact that could be described as ATS influencing AAR to do anything vis-à-vis Porter. The evidence provided by ATS shows that Porter that acted as the conduit of information between the two.[49]

Why the relationship between Porter and AAR faltered is not a material fact in the summary judgment inquiry for tortious interference with business. What would be material would be any evidence, other than Porter's unsupported conclusion,[50] that ATS improperly

---

49. See, for example, II.C.28 above where Porter emails ATS COO on 8/4/2013 pretending to have just then been advised that AAR had secured the CIAA lease and further advising that AAR wanted him, Porter, to "move all Aeroframe assets over the next two weeks". See also II.C.29 where Porter informs the ATS COO that "AAR has requested you to not to come to the facility."

50. "Unsupported allegations or affidavit or deposition testimony setting forth ultimate or conclusory facts and conclusions of law are insufficient to defeat a motion for summary judgment." *Clark v. Am.'s Favorite Chicken Co.*, 110 F.3d 295, 297 (5th Cir. 1997). "[A] party cannot defeat summary judgment with conclusory allegations, unsubstantiated assertions, or 'only a scintilla of evidence.'" *Turner v. Baylor Richardson Med. Ctr.*, 476 F.3d 337,

influenced AAR to not deal with Porter. Though not necessary to be granted summary judgment on this point, ATS did produce the intraoffice communication from AAR that described precisely AAR's problem in conducting business with Porter: he failed to pay his employees. See II.C.34. Porter, however, fails to produce a single document that would support his plain statement that ATS was in any manner responsible for the failure of his relationship with AAR. Rather, Porter's affidavit shows that AAR did offer him employment even after ATS purchased the EADS note secured by Aeroframe's assets. Doc. 97, att. 4, pp. 3-4.

We recommend that all claims of Porter against ATS for damages for intentional or tortious interference with a business relationship be dismissed with prejudice.

---

343 (5th Cir. 2007) (citing *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994)). Rather, the nonmovant must offer "significant probative evidence" to establish a genuine issue for trial. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S. Ct. 2505, 2510, 91 L. Ed. 2d 202 (1986). Porter's affidavit states that ATS's purchase of the EADS note "succeeded in scuttling the AAR acquisition." Doc. 97, att. 4, p. 3, ¶ 24. He also asserts that Aeroframe closed "due to lack of funds to pay payroll and other outstanding payables as well as the imminent foreclosure of the equipment by ATS." *Id.*, p. 4, ¶ 32. Even adhering to our charge to draw all inferences in favor of Porter, the nonmovant, we find that this affidavit simply does not create a genuine issue for trial. Porter's subjective opinion about ATS's role in causing the foregoing events—a conclusion otherwise devoid of any factual support—is insufficient to establish a genuine issue of fact as to whether ATS improperly influenced AAR to not deal with Porter.

b. LUTPA

Porter alleges that ATS

> intentionally exploited confidential financial information obtained from Roger A. Porter and Aeroframe, made intentional misrepresentations to Roger A. Porter and Aeroframe and utilized the ill gotten information to interfere with and disrupt a legitimate business transaction between AAR and Aeroframe and Roger A. Porter. ATS's action constitutes an unfair method of competition and an unfair practice in the conduct of ATS's trade.

Doc. 1, att. 12, p. 109. As we have already concluded above, existence of the EADS note was not confidential, no document anywhere required ATS to obtain permission from Aeroframe or Porter to purchase that commercial instrument, and AAR went forward with its dealings with Porter even after it knew ATS had purchased the EADS note. Porter has produced no evidence of any action taken by ATS that would offend public policy or that was "immoral, unethical, oppressive, unscrupulous, or substantially injurious." *Quality*, 144 So.3d at 1025. Porter has produced no evidence of ATS's intent or even circumstantial evidence that could lead a reasonable juror to conclude it acted with malintent.

We recommend that all claims of the plaintiff-employees against ATS for damages under the Louisiana Unfair Trade Practices Act be dismissed with prejudice.

Appendix C

III.

ATS's Invitation to Dismiss Plaintiff-Employees' Claims Against Aeroframe Pursuant to Rule 56(F)

In its Motion for Summary Judgment, ATS invites us to dismiss the plaintiff-employees' wage claims against Aeroframe given the content of the conflict waiver and agreement between the plaintiff-employees, Aeroframe, and Porter. Doc. 92, p. 6. It argues somewhat appropriately (but without regard to its own claims against Aeroframe and Porter) that, "[a]fter dismissal of all claims against ATS, the only claims remaining are the claims of the Aeroframe-Employees against Aeroframe under the Last Paycheck Law." Doc. 92, att. 1, 43. What is not clear is why ATS is concerned about the claims between the plaintiff-employees and Aeroframe, claims in which they are uninvolved.

In Section IV below we are recommending that the district court reconsider its previous mooting of Ashford's Motion for Summary Judgment in *Ashford 1*. On February 22, 2021, we ordered the plaintiffs in the original member case of *Cooley, et al v. Aeroframe Services, LLC, et al*, docket number 14-cv-987, to file motions for summary judgment against Aeroframe for their wages, penalties, and attorney fees, or risk recommendation that their claims be dismissed for failure to prosecute them. Doc. 104. On that same date we had the Clerk of Court issue Notice of Intent to Dismiss Aeroframe in the remaining cases either for failure to take a default (in those cases where no answer had been filed by Aeroframe) or for

failure to serve.[51] By so doing we are exercising our inherent power to take action "on [our] own initiative, to clear [our] calendars of cases that have remained dormant because of the inaction or dilatoriness of the parties seeking relief." *Link v. Wabash R. Co.*, 370 U.S. 626, 82 S.Ct. 1386, 1389, 8 L. Ed. 2d 734 (1962).

In our Report and Recommendation issued with respect to sanctions in *Ashford 1*, we said:

> On more than one occasion in open court we have asked, somewhat rhetorically, "who is representing Mr. Ashford?" It appears very clear that the answer is "no one." It is apparent that the only client about whom the Cox firm was concerned was Porter.

14-cv-992 (*Ashford 1*), doc. 283, p. 33 (Report and Recommendation adopted by the district court at doc. 294). We noted that Brown, on Ashford's behalf, did file a Motion

---

51. See docs. 102, 103. See also discussion at fn. 11. Aeroframe and Porter wanted to go forward with *Ashford 1* so Aeroframe filed an answer to Porter's claim for wages. Aeroframe also answered the claims of the plaintiff-employees in *Cooley* as it and Porter moved forward in that suit first. See fn. 13. In all other cases consolidated either Aeroframe did not bother to answer the plaintiff-employees claim for wages (thus were subject to dismissal for plaintiffs' failure to default) or the plaintiff-employees did not even bother to serve Aeroframe (thus were subject to dismissal for plaintiffs' failure to serve.) Remarkably (or not), the plaintiff-employees needed lift no finger to remedy their lapses in prosecution—Aeroframe just voluntarily answered each of the claims to keep them alive. Doc. 105. That is what litigants do when they are on the same team!

for Summary Judgment for his wages, penalties, and attorney fees[52] but that it was done "not to get [Ashford's] claim fixed but rather was an attempt to get around our ruling on jurisdiction." *Id.* We asked there:

> If Brown were truly representing Ashford, why would she not have had her client Porter include [in the declaration made by Porter and used by Aeroframe to "defend" against the claim] that the figures given by Ashford were correct? The answer is because she did not care about Ashford's claim; she only cared about Porter's bigger claim against ATS which he wanted handled in state court.

Id. Also:

> Brown also never investigated the extent to which Porter may have some culpability in Ashford's damages by either considering whether he improperly removed funds from the business (as was alleged in every other case for wages brought by former employees who were represented by attorneys other than the Cox firm) or his failure to pursue receivables allegedly owed to Aeroframe that were the [as per Porter] cause of its closure . . . .

Id. at pp. 33-34. And finally:

> [T]he record supports the inference that, although this suit was technically brought by

52. Discussed in Section IV below.

> Ashford, this entire litigation was pursued for Porter's (and Aeroframe's) benefit in coordination with Brown and Filo . . . . Ashford has been simply the vehicle, driven by Porter with the assistance of Brown and Filo, to keep this conflict with ATS in the forum for which Porter shopped.

Id. at p. 35. The same is true for all of the plaintiff-employees. No one in this litigation has been truly interested in their claims against Aeroframe. If anyone in this litigation had been truly interested in the claims of the plaintiff-employees against Aeroframe, they would have been resolved long ago.[53] Insofar as no attorney in this litigation has been or is currently concerned about the welfare of the plaintiff-employees, we recommend taking care of the matter differently.

While our inherent authority to "clear [our] calendars of cases" [*Link, supra*] would include the authority to dismiss the claims of the plaintiff-employees, we believe we are accomplishing this goal in a more appropriate procedural manner, one that is more fair to the plaintiff-

53. In fn. 8 of the Report and Recommendation on sanctions found at 14-cv-992 (*Ashford 1*), doc. 283, p. 10, we note that "*Valentine v. Aeroframe Services, LLC, et. al*, 2013 WL 10835400 (La. Dist. Ct. 14th 9/17/2013) was a lawsuit brought in state court by an Aeroframe employee against the company and Porter. All parties were represented by counsel not involved in this litigation. A consent judgment was entered in that matter in favor of Valentine against Aeroframe for Valentine's wages, ***penalties***, and attorney fees. 2014 WL 10077424 (La. Dist. Ct. 14th 9/25/2014)." All plaintiff-employee claims against Aeroframe could have been similarly resolved in 2014 had there been a real interest in resolution.

employees who all have been the unwitting pawns of Brown, Filo, Porter alter-ego Aeroframe, and Porter. Therefore, we recommend the court deny ATS's request for summary judgment in favor of Aeroframe on the plaintiff-employee's wage claims.

IV.

Recommendation to Reconsider District Court's Previous Ruling on Ashford's Motion for Summary Judgment in *Ashford 1*

As we note above and in *Ashford 1*, plaintiff-employee Ashford filed a Motion for Summary Judgment for his wages, penalties, and attorney fees against Aeroframe. The legal basis for his claim is the Louisiana "Last Paycheck Law." 14-cv-992, doc. 85. Ashford argued that he was employed by Aeroframe and "was terminated without warning" on August 9, 2013 and, as of his termination, he had worked two weeks for which he had not yet been paid. *Id.*, att. 1, p. 1. Having received no payment 15 days after his termination and having served a written demand upon Aeroframe that went unanswered, Ashford sought his wages, penalties and attorney fees pursuant to Louisiana Revised Statute 23:631, *et. seq. Id.*, pp. 1-2. In its opposition, Aeroframe argued that (1) ATS's actions were the "sole reason" why Aeroframe was unable to pay its former employees; (2) a good faith exception to the statutory penalties applied; and (3) Ashford had not met his initial burden of proof showing his entitlement of attorney's fees. *Id.* at doc. 90.

The district court denied Ashford's motion as moot, finding that "any claims among Ashford, Aeroframe and Porter" had already been resolved. *Id.* at doc. 104, p. 2. The court referred to its previous ruling on a Motion to Remand which found that the parties were aligned. *Id.*, p. 4. The court noted that Ashford signed a conflict waiver that would allow the Cox Firm to represent both Ashford and Porter in the same litigation. *Id.*, p. 2. Additionally, the court referenced the infamous email from Brown explaining the waiver, which "affirmatively stated that Aeroframe would not defend against the wage claims."[54] *Id.* It found Aeroframe's "opposition" to be "better read as a confirmation of [the agreement proposed by the Brown email] than an actual opposition to the motion." *Id.*, p. 3. The district court concluded that Ashford's motion for summary judgment was merely an attempt to re-litigate the issue of subject matter jurisdiction, and therefore dismissed the motion as moot. *Id.*, p. 4.

"An order denying summary judgment is interlocutory, and leaves the trial court free to reconsider and reverse its decision for any reason it deems sufficient." *Baisden v. I'm Ready Prods., Inc.*, 693 F.3d 491, 506 (5th Cir. 2012) (citing *Zarnow v. City of Wichita Falls, Tex.*, 614 F.3d 161, 171 (5th Cir. 2010); *See* Fed. R. Civ. P. 54(b). Louisiana Revised Statutes § 23:631 *et. seq.*, collectively referred to as Louisiana's "Last Paycheck Law," require that upon an employee's discharge, the employer must pay "the amount due under the terms of employment ...

54. The email referenced is the Brown email at doc. 46, att. 40.

on or before the next pay regular payday or no later than fifteen days following the date of discharge, whichever occurs first." La. R.S. § 23:631(A)(1)(a). In order to recover pursuant to § 23:632—the penalty section of the statute—a plaintiff must prove that "(1) wages were due and owing; (2) demand for payment was made where the employee was customarily paid; and (3) the employer did not pay upon demand." *Clay Heath v. Workforce Grp. LLC*, No. 20-839, 2020 U.S. Dist. LEXIS 140358, 2020 WL 4515210, at *2 (W.D. La. Aug. 5, 2020) (citing *Becht v. Morgan Building & Spas, Inc.*, 843 So.2d 1109, 1112 (La. 2003)). Here, the penalty for failure to comply with § 23:631 would be "ninety days wages at the employee's daily rate of pay." La. R.S. § 23:632(A). If the plaintiff brings a "well-founded" suit to recover unpaid wages, an award of reasonable attorney fees is mandatory. *Id.* at § 23:632(C). A suit is considered "well-founded" where the employee successfully recovers unpaid wages. *Taylor v. Washington Mut., Inc.*, No. 4-521, 2011 U.S. Dist. LEXIS 5077, 2011 WL 98838, at *11 (W.D. La. Jan. 12, 2011).

Ashford's declaration set forth facts that warrant success on his wage claim against Aeroframe: he was an employee of Aeroframe upon its closure, and he did not get paid for his final two weeks of work within 15 days of his termination. Doc. 14-cv-992, doc. 85, att. 3. The declaration provided his rate of pay, translating to $2,640 in wages. *Id.* Ashford also submitted the Contract of Retainer showing he hired Brown to pursue his wage claim, which provided for attorney fees in the amount of one-third of the recovery. *Id.*, att. 4. We find that Ashford met his burden of setting forth specific facts and demonstrating the lack

of a genuine issue for trial on his claims. See *Tubacex*, 45 F.3d at 954.

Aeroframe had the opportunity to oppose summary judgment—and did in fact file an opposition—but it failed to raise the existence of a genuine issue of material fact on these points. *Id.* at doc. 90. Aeroframe did not even attempt to dispute Ashford's general entitlement to wages or the amount thereof. *Id.* Aeroframe did not dispute that it failed to pay its former employees, but only blamed the failure on ATS. *Id.*, pp. 2-3. Aeroframe's submitted declaration stated that it filed a reconventional demand against ATS for the "unfair methods of competition and unfair practices" that damaged Aeroframe. *Id.* at doc. 90, att. 1, p. 2. Moreover, Aeroframe declared that "at no time" did it arbitrarily or capriciously refuse to pay wages from company funds, but it was unable to pay only because of ATS's actions. *Id.* This argument does not create an issue of material fact on the prerequisites for recovery of unpaid wages. The *reason* for Aeroframe's failure to pay is not a material fact for the wage claim. The statute does not require a bad faith[55] or arbitrary denial of payment to afford relief to the claimant on unpaid wages, but only requires a failure to pay after 15 days have passed. La. R.S. § 23:631(A)(1)(a) and 23:632(A). Thus, Aeroframe failed to show a genuine issue for trial as to Ashford's entitlement to his wages.

---

55. We note that the good faith exception was added to the statute in August 2014—a year after facts giving rise to Ashford's wage claim occurred. La. R.S. § 23:632. *Compare* Enacted Legislation Acts 1977, No. 317, § 1 *with* Enacted Legislation Acts 2014, No. 750, § 1.

Next, Ashford's sworn declaration attached to his motion for summary judgment claims ninety days wages in statutory penalties, which equates to $23,760. Doc. 85, att. 3. A demand for payment must be made upon the employer in order to receive penalties in addition to the ordinary unpaid wages. See *Clay Heath*, 2020 U.S. Dist. LEXIS 140358, 2020 WL 4515210, at *2. Ashford's declaration does not claim that he made a demand for wages upon Aeroframe—only that he was "seeking" wages and penalties. Doc. 85, att. 3. In his memorandum in support, however, he points out the Louisiana Supreme Court's holding that when an employer files a general denial of liability to a plaintiff's suit for unpaid wages, the employer waives any technical deficiencies in pre-suit demand. *Monroe Firefighters Ass'n v. City of Monroe*, 6-1092, 2009 U.S. Dist. LEXIS 25428, 2009 WL 805132, at *7 (W.D. La. Mar. 25, 2009) (citing *Carriere v. Pee Wee's Equip. Co.*, 364 So. 2d 555, 557 (La. 1978)). Here, Ashford filed suit for his unpaid wages, and Aeroframe filed a general denial of liability for his wages.[56] Under these facts, the *Carriere* holding requires that "technical deficiencies ... will not defeat the imposition of statutory penalties designed to enforce prompt payment." 364 So.2d at 557. We therefore find that there is no genuine issue of material fact as to whether Ashford is entitled to penalties under the statute as Aeroframe waived any deficiencies in the pre-suit demand. Moreover, more than ninety days have certainly elapsed since Ashford was terminated in August of 2013, so the amount of statutory penalties is not in dispute. La. R.S. § 23:632(A).

---

56. "Plaintiff was owed at least two-weeks wages'.... and, despite demand therefore, has not been paid for those two weeks..." Doc. 1, att. 12, p. 5, ¶ 5. Aeroframe denied these allegations. *Id.* at p. 116, ¶ 5.

Appendix C

With respect to Ashford's request for attorney fees, Aeroframe only complained that Ashford failed to specifically show the amount of time Brown spent on his claims. Such evidence is unnecessary to show entitlement to attorney fees. *Id.* at doc. 90, p. 5. Since Ashford provided his contingency fee agreement with Brown, the amount of attorney fees is readily calculable—the court merely needs to divide the ultimate recovery by a third. *Id.* at doc. 85, att. 4. Here, Ashford has demonstrated his entitlement to an amount of $26,400, a third of which is $8,800. *Id.* at doc. 85, p. 2. As Ashford pointed out, this amount is quite reasonable for a case taken on a contingency basis with a relatively low amount in controversy. *Id.* at att. 1, p. 5. Since we recommend granting Ashford's motion as to his wages, then his suit is indeed "well-founded" and the award of attorney fees is mandatory. See *Taylor*, 2011 U.S. Dist. LEXIS 5077, 2011 WL 98838, at *11 Thus, there is no genuine issue of material fact regarding an award of attorney fees.

Ashford set forth the specific facts demonstrating his entitlement to his unpaid wages, attorney fees and penalties, and Aeroframe has not been able to controvert those facts with competent summary judgment evidence. Notably, Aeroframe has not challenged whether Ashford was Aeroframe's employee or the amount he claims. Aeroframe only complained that ATS's actions were the reason Aeroframe failed to pay Ashford's wages. If the district court accepts our foregoing recommendation and dismisses all claims of the non-ATS litigants against ATS, there will remain no semblance of any genuine issue of material fact for trial save ATS's claims against Porter

and ATS.[57] With its demand against ATS dismissed, Aeroframe could no longer blame ATS for its failures.

The district court's initial finding of mootness of Ashford's request is understandable. No doubt the court assumed that at some point non-Ashford counsel would relinquish the ruse that the non-Ashford parties were adverse and that Brown would follow through on the promises made to her clients in her email that Aeroframe counsel would stipulate to their "entitlement to wages, penalties, and attorney's fees . . . ." Doc. 46, att. 40, p. 3.[58]

---

57. See discussion at Section I.C.

58. No doubt that is what happened in the *Valentine* matter discussed at fn. 53. Counsel for Porter and Aeroframe there (not any attorney in this litigation) stipulated to judgment in favor of the plaintiff-employee and against Aeroframe and Aeroframe alone for full wages, penalties, and attorney fees. Porter was more than happy at that time to agree to judgment against Aeroframe — he knew Aeroframe was worth nothing and was able to avoid personal liability. *Valentine* was filed 9/13/13. 2013 WL 10835400. *Cooley*, the first filed of these consolidated cases, was not filed until 9/24/13. 14-cv-987 (*Cooley*), doc. 1, att. 1, p. 1. We easily envision Porter attempting to paint the scenario used in these proceedings for his *Valentine* counsel who refused to play that game. Thus the need for Porter to seek out his old counsel, Filo, who had no difficulty ignoring Porter's mendacity and blazing forward with the assistance of his partner, Brown, taking the lead with the plaintiff-employees, starting the chain by only suing Aeroframe and ATS. For discussion of Porter's pre-suit conferencing with Filo, see Doc. 62 (R&R on the second removal of this case), doc. 62, p. 12. Once ATS circled back to bring in Porter they thought they were safely entrenched in state court, ready to proceed with whichever of the many lawsuits filed where they felt most likely to prevail on the meritless claims. And then ATS came into possession of the infamous Brown email which began the removal processes.

It has been nearly seven years since this litigation began and counsel continues to perpetuate the scam for the sole benefit of Porter and themselves, undoubtedly with the hopes that they can again convince a higher court to believe we lack subject matter jurisdiction and return to their state court land of promise. Ashford deserves to have at least a document validating his claim for wages, penalties, and attorney fees.

Assuming the court agrees this remedy is in order, this Report and Recommendation serves as notice of the court's intent to reconsider the interlocutory order in *Ashford 1* [14-cv-992 at doc. 104].[59] We recommend the court reconsider its previous ruling and grant Ashford's motion for summary judgment against Aeroframe as to his wages, attorney fees, and penalties.

V.

Conclusion

For the foregoing reasons, **IT IS RECOMMENDED** that ATS's Motion for Summary Judgment [doc. 92] be **GRANTED** as to all claims against it. Further, we **RECOMMEND** the court **DENY** ATS's request to grant summary judgment in favor of Aeroframe against the plaintiff-employees. Finally, we **RECOMMEND** the

59. Notably, the Fifth Circuit has approved of the *sua sponte* reconsideration of an interlocutory order and a request for additional briefing where one district court judge made the initial ruling, and another judge decided to revisit the issue after the case was reassigned to him. *See Harmon v. Dallas Cnty., Tex.*, 927 F.3d 884, 892 n. 14 (5th Cir. 2019).

court **RECONSIDER** its previous ruling in *Ashford 1* denying the Motion for Summary Judgment filed there by Michael Ashford against Aeroframe and that the motion be granted, and Ashford be awarded his wages, penalties, and attorney fees as prayed for against his former employer.

Pursuant to 28 U.S.C. § 636(b)(1)(C) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties have fourteen (14) days from receipt of this Report and Recommendation to file written objections with the Clerk of Court. Failure to file written objections to the proposed factual findings and/or the proposed legal conclusions reflected in this Report and Recommendation within fourteen (14) days of receipt shall bar an aggrieved party from attacking either the factual findings or the legal conclusions accepted by the District Court, except upon grounds of plain error. *See Douglass v. United Services Auto. Ass'n*, 79 F.3d 1415, 1428-20 (5th Cir. 1996), *superseded by statute on other grounds*, 28 U.S.C. § 636(b)(1)), *as recognized in Cruz v. Rodriguez*, 828 F. App'x 224, 2020 WL 6478502 (5th Cir. 2020) (unpubl.).

THUS DONE AND SIGNED in Chambers this 29th day of April, 2021.

/s/ Kathleen Kay
KATHLEEN KAY
UNITED STATES MAGISTRATE JUDGE

APPENDIX D — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA, LAKE CHARLES DIVISION, FILED JULY 2, 2020

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

CIVIL ACTION NO. 2:19-cv-610

MICHAEL ASHFORD

VERSUS

AEROFRAME SERVICES, LLC, ET AL.

Filed July 2, 2020

ORDER

JUDGE DONALD E. WALTER
MAGISTRATE JUDGE KAY

For the reasons stated in the Report and Recommendation of the Magistrate Judge previously filed herein, after an independent review of the record, a de novo determination of the issues, consideration of the objections filed, and having determined that the findings are correct under applicable law,

IT IS ORDERED that the Motions to Remand [docs. 7, 8, 10] and the requests for attorney's fees be **DENIED**.

Shreveport, Louisiana, this 2nd day of July, 2020.

/s/ DONALD E. WALTER
DONALD E. WALTER
UNITED STATES DISTRICT JUDGE

APPENDIX E — REPORT AND RECOMMENDATION OF THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF LOUISIANA, LAKE CHARLES DIVISION, FILED MAY 29, 2020

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

May 29, 2020, Decided; May 29, 2020, Filed

CIVIL ACTION NO. 19-cv-610

MICHAEL ASHFORD

VERSUS

AEROFRAME SERVICES, LLC, *et al.*

JUDGE WALTER
MAGISTRATE JUDGE KAY

REPORT AND RECOMMENDATION

This is the second time this matter has been brought to this court. Following the procedure set forth in detail below, the first proceeding ("Ashford 1"), bearing docket number 14-cv-992 of this court, was remanded to Evangeline Parish, Louisiana. Within thirty days of that remand and for reasons detailed below the matter was removed again.

Appendix E

Before us now are three Motions to Remand filed by plaintiff Michael Ashford ("Ashford"), titular defendant Aeroframe Services, LLC., ("Aeroframe"), and titular Third Party Defendant Roger Porter ("Porter") (collectively the "non-ATS parties" or "non-ATS litigants"). Docs. 7, 8, and 10. These matters have been referred to the undersigned for review, report, and recommendation in accordance with the provisions of 28 U.S.C. § 636 and the standing orders of this court.

After consideration of the memoranda in support and in opposition of the motions as well as oral argument and for the reasons stated below, **IT IS RECOMMENDED** that the motions be **DENIED**.

I.

Background

A. Ashford 1

Aeroframe, a Louisiana Limited Liability Company whose sole principal is and was Porter, was (when suit was originally filed) a citizen of Louisiana that operated a maintenance, repair, and overhaul ("MRO") facility at the Chennault International Airport located in Lake Charles, Louisiana. Ashford was an employee of Aeroframe which closed its doors August 9, 2013, without having paid its employees their last wages. Ashford filed suit in Evangeline Parish, Louisiana, against Aeroframe for wages, penalties, and attorney fees due under the Louisiana "Last Paycheck Law." La. R.S. § 23:631.

Ashford was represented by Somer Brown ("Brown") with the law firm of Cox, Cox, Filo, Camel & Wilson ("the Cox firm").

Ashford also sued Aviation Technical Services, Inc., ("ATS"), a Washington corporation. He claimed that Aeroframe and ATS had negotiated a possible partnership, merger, or buy-out that did not come to fruition. Thereafter, Aeroframe allegedly began negotiating with an ATS competitor, AAR Corporation ("AAR"). All expected negotiations with AAR would result in a "smooth continuation of the MRO business in Lake Charles" providing "adequate funding to cover all outstanding expenses of Aeroframe, including wages." Doc. 1, att. 12, p. 5. That "smooth continuation" came to an end when, according to the complaint, ATS, "in an apparent effort to either disrupt the deal altogether and/or force Aeroframe into premature closure and bankruptcy," purchased an outstanding loan (referred to as the "EADS note") on which Aeroframe had already defaulted and then "foreclosed on that loan and attempted to cease [sic] Aeroframe's assets to cause Aeroframe to go out of business." *Id.* at pp. 5-6. Ashford claimed ATS was indebted to him under Louisiana Civil Code Article 2315 for causing him harm (in no specified manner), for intentional interference with the contract between Aeroframe and AAR, and violation of the Louisiana Unfair Trade Practices Act ("LUTPA"), La. R.S. § 41:1401 *et. seq.*, rendering ATS liable to him for wages, past and future, statutory penalties, statutory attorney fees, and costs of the proceeding. *Id.* at pp. 6-8.

Eventually ATS filed a cross-claim against Aeroframe and a third party demand against Porter. Doc. 1, att. 12, p. 41. Porter, appearing in proper person, filed a very sophisticated counterclaim against ATS also claiming tortious interference with business relations with AAR, intentional interference with contractual relations, and unfair trade practices under the Louisiana Unfair Trade Practices Act.[2] Doc. 1, att. 12, p. 101. The following day Aeroframe filed a counterclaim against ATS under theories of intentional interference with contractual relations, tortious interference with business relations, and unfair trade practices under the Louisiana Unfair Trade Practices Act. Doc. 1, att. 12, p. 116. Aeroframe filed no claim against Porter. At that time Aeroframe was represented by Joseph Payne Williams ("J. Williams") and Richard Bray Williams ("R. Williams") of the Williams Family Law Firm ("the Williams firm").

On May 9, 2014, Tom Filo ("Filo"), partner of Brown at the Cox firm (who was representing plaintiff Ashford), was granted leave by the state court to enroll as counsel for Porter. Doc. 1, att. 12, p. 182. So at this point in the proceeding in state court, Brown (with the Cox firm) was representing Ashford against Aeroframe (represented by the Williams firm). For all intents and purposes, Aeroframe and Porter are one in the same. After ATS makes claims against Aeroframe and Porter then Porter

2. Porter's complaint against ATS [doc. 1, att. 12, pp. 105-110] provides more detail than the complaint of Ashford [*id.* at 4-8] or Aeroframe [*id.*at 124-128] but the factual allegations are basically the same. Unsurprisingly the allegations of Aeroframe are the same as Porter's as Porter is the only speaker for ATS.

makes his claim against ATS. Thereafter Filo (the partner of Ashford's attorney, also with the Cox firm) enrolls to represent him.

1. Removal

Ashford 1 was removed on May 14, 2014, after ATS came into possession of an email from Brown ("the Brown email") to multiple former Aeroframe employees she was representing, including Ashford.[3] The email was sent April

3. Ashford's suit was one of ten filed by Brown on behalf of multiple employees, all of which were removed by ATS. *Gallow et al. v. Aeroframe Services LLC, et al.*, 2:14-cv-00988, Doc. 1 (W.D. La. May 14, 2014) (Notice of Removal) (originally filed in Calcasieu Parish September 16, 2013); *Warner v. Aeroframe Services LLC, et al.*, 2:14-cv-00983, Doc. 1 (W.D. La. May 14, 2014) (Notice of Removal) (originally filed in Cameron Parish September 19, 2013); *Cooley, et al. v. Aeroframe Services LLC*, et al., 2:14-cv-00987, Doc. 1. (W.D. La. May 14, 2014) (Notice of Removal) (originally filed in Calcasieu Parish September 24, 2013); *Rackard v. Aeroframe Services LLC, et al.*, 2:14-cv-00991, Doc. 1 (W.D. La. May 14, 2014) (Notice of Removal) (originally filed in Beauregard Parish September 25, 2013); *Adams, et al. v. Aeroframe Services LLC, et al.*, 2:14-cv-00984, Doc. 1 (W.D. La. May 14, 2014) (Notice of Removal) (originally filed in Calcasieu Parish October 7, 2013); *Ashford v. Aeroframe Services LLC, et al.*, 2:14-cv-00992, Doc. 1 (W.D. La. May 14, 2014) (Notice of Removal) (originally filed in Evangeline Parish October 8, 2013); *Boring, et al. v. Aeroframe Services L L C et al.*, 2:14-cv-00985, Doc. 1 (W.D. La. May 14, 2014) (Notice of Removal) (originally filed in Calcasieu Parish October 18, 2013); *Cleaves, et al. v. Aeroframe Services LLC, et al.*, 2:14-cv-00986, Doc. 1. (W.D. La. May 14, 2014) (Notice of Removal) (originally filed in Calcasieu Parish November 5, 2013); *Decolongon, et al. v. Aeroframe Services LLC, et al.*, 2:14-cv-00989, Doc. 1 (W.D. La. May 14, 2014) (Notice of Removal)

17, 2014, after Brown, Filo (before he enrolled as counsel for Porter), and a member of the Williams firm appeared for depositions of ATS principals in Seattle, Washington. The email read as follows:

> For those of you who missed the Aeroframe client meeting on Friday, please allow this to serve as an update and a request for you to execute and return the attached waiver.

(originally filed in Calcasieu Parish February 21, 2014); *Blanton, et al. v. Aeroframe Services LLC, et al.*, 2:14-cv-00990, Doc. 1 (W.D. La. May 14, 2014) (Notice of Removal) (originally filed in Calcasieu Parish April 22, 2014).Four additional proceedings were filed by Brown after the initial removal of Ashford I. *Morvant, et al. v. Aeroframe Services LLC, et al.*, 2:14-cv-02323, Doc. 1. (W.D. La. July 16, 2014) (Notice of Removal) (originally filedin Jefferson Davis Parish June 3, 2014); *Coley, et al. v. Aeroframe Services LLC, et al.*, 2:14-cv-02324, Doc. 1 (W.D. La. July 16, 2014) (Notice of Removal) (originally filed in Calcasieu Parish April 3, 2014); *Barreda, et al. v. Aeroframe Services LLC, et al.*, 2:14-cv-02538, Doc. 1, (W.D. La. Aug. 20, 2014) (Notice of Removal) (originally filed by Brown's partner, Tina Wilson, in Calcasieu Parish August 1, 2014); *Day v. Aeroframe Services LLC, et al.*, 2:16-cv-01512, Doc. 1 (W.D. La. Oct. 26, 2016) (Notice of Removal) (originally filed in Calcasieu Parish August 5, 2016. All of these cases except *Day* were consolidated in Ashford 1 strictly for purposes of discovery. **Ashford 1**, Doc. 103 (W.D. La. Feb. 14, 2017) (Order) (*Day*, along with two other cases filed by other counsel were excluded from consolidation because there were pending motions to remand in these cases); *See Neathammer v. Aeroframe Services LLC et al.*, 16-cv-01378, Doc. 1 (W.D. La. Sept. 30, 2016) (Notice of Removal) *and Jackson v. Aviation Technical Services Inc, et al.*, 2:16-cv-01397, Doc. 1 (W.D. La. October 6, 2016) (Notice of Removal). To our knowledge no discovery on the merits was ever conducted.

Appendix E

In March we travelled to Seattle and took the deposition of ATS's corporate representatives. Those individuals confirmed that, ***as Roger Porter had previously told us***, ATS came in after knowing that AAR was doing a deal with Aeroframe. It is our belief, now confirmed by undisputed testimony from ATS and Roger Porter, that ***ATS was the cause of Aeroframe's closure*** and the loss of your employment and benefits.

[Porter] has filed a cross-claim against ATS for his own losses and those of Aeroframe. Aeroframe has retained counsel from Natchitoches [the Williams firm] ***who is working cooperatively with us*** and will not defend against your wage claims. ***In fact, your entitlement to wages, penalties, and attorney's fees will be stipulated to by Aeroframe***.

[Porter] has approached my partner, Tom Filo, and requested that he[] pursue [Porter's] individual claim against ATS. ***[Porter] has agreed to stipulate in writing that if we represent him, his [sic] clients will be paid first out of any monies that he collects***. He understands that we will not represent him absent this written agreement.

However, in order for our firm to get involved on behalf of [Porter], we need each of our employee-clients to sign the attached

> conflict waiver. Without this signed document from each of you, we cannot assist [Porter] in collecting money FOR YOU.
>
> If you have any questions, please feel free to call or email me. We need these documents back as soon as possible. ***If you are not willing to enter into this arrangement with us, please contact me so that I can get you in touch with other counsel, but please also be advised that [Porter]'s written stipulation of first payments will only apply to the employees who are represented by this law firm***.

Doc. 46, att. 40, p. 3 (bold and italicized emphasis added). ATS argued in its first notice of removal that this "other paper" was when it first ascertained this case was removable. **Ashford 1**, doc. 1, p. 3. It argued that we should realign the parties according to their interests such that Aeroframe would be considered a plaintiff. *Id.* at p. 5. The Brown email was the "other paper," receipt of which made it clear to ATS that Porter had been collaborating extensively with Ashford's attorney. ATS also pointed to the fact that neither Brown nor Williams asked any questions at all at the Seattle depositions, leaving all the work to Filo who, according to ATS, had obviously been in communication with Porter prior to the depositions. *Id.* at p. 15. ATS argued we should ignore the presence of Aeroframe as it was added only as a pretense, that Ashford and Porter were working cooperatively and joined Aeroframe in the litigation only to defeat diversity, and that the parties had clearly come to an agreement as evidenced by the Brown email. *Id.* at pp. 16-18.

2. Motions to Remand

The non-ATS parties filed for remand and we denied. **Ashford 1**, doc. 45. Although we did not find that ATS had adduced sufficient proof that these parties acted collaboratively since inception of the litigation—its proof at that point only being the Brown email and the fact that Filo handled the bulk of the Seattle depositions—we did find that we had subject matter jurisdiction. We concluded that the Brown email clearly established that any conflict between Ashford and Aeroframe had been resolved. The email informed Ashford that his "entitlement to wages, penalties, and attorney's fees" would be stipulated to by Aeroframe if Ashford would waive conflict so that Filo could enroll to represent Porter. The email promises that Porter "has agreed to stipulate in writing that if we represent him, his clients [sic] will be paid first out of any monies that he collects. ***He understands that we will not represent him absent this written agreement***." *Id.* Insofar as Filo did enroll for Porter we surmised the conflict between Ashford and Aeroframe must have been at an end. We said that "[w]e must assume that Ashford's counsel [procured the promised stipulation] insofar as that was one of the underlying elements of Porter's inducement to have Ashford waive privilege." **Ashford 1**, doc. 45, pp. 15-16. We noted that no evidence of a binding agreement was produced but we had no difficulty concluding it must exist for, "[a]bsent the binding nature of that agreement there would exist irreconcilable conflict" with Brown representing plaintiff and Filo, her partner, representing Porter who is, for all intents and purposes, Aeroframe. *Id.* at p. 17.

Contrary to ATS's argument we also failed to find that Aeroframe and Porter were one in the same, based in large part on the presence of the Williams firm in Aeroframe's representation. **Ashford 1**, doc, 45, p. 16, n. 19. Given the information uncovered by ATS since the time of that ruling, information discussed more fully below, we reverse that conclusion and do now find that there is no daylight between Porter and Aeroframe.

On appeal of our ruling to the district court and the Fifth Circuit, the non-ATS parties argued vociferously that that there was no settlement, there was no agreement between the parties, there was no writing period. **Ashford 1**, docs. 48, 50. Our conclusions were accepted by the district court. **Ashford 1**, docs. 60, 76. The non-ATS parties applied for an interlocutory appeal [*Id.* at doc. 73] but the Fifth Circuit dismissed for lack of jurisdiction. **Ashford 1**, doc. 75. A second effort at filing an interlocutory appeal was likewise made and rejected for the same reason. *Id.* Doc. 84.

3. Dismissal of the Case Against ATS

All claims against ATS by the non-ATS litigants were dismissed by the district court on summary judgment. **Ashford 1**, doc. 132.

4. Appeal to the Fifth Circuit

The non-ATS parties appealed the district court's ruling dismissing all claims as well as its finding that realignment was in order and that we did enjoy subject

matter jurisdiction over the claims. **Ashford 1**, docs. 106, 112, 134, 138. The appellate court reversed concluding remand should have been ordered and that we lacked jurisdiction to address the claims on the merits. Judge Higginson concluded that we committed error when we found jurisdiction because Ashford and Aeroframe were adverse at the time suit was filed. See *Ashford v Aeroframe Services, L.L.C.*, 907 F.3d 385, 387 (5th Cir. 2018). Judge Davis also found we erred, but he concluded that the information presented did not constitute sufficient evidence that the parties had reached an enforceable settlement agreement. *Id.*at 388-389. Specifically, he stated that the "email was drafted by Ashford's counsel. We have nothing from Aeroframe confirming a promise to pay and/or to stipulate to Ashford's requested relief." *Id.* at 389. Judge Jones, however, dissented and would have concluded that the parties were properly realigned with the Brown email serving as the "other paper" to invoke the 30 day period for removal. *Id.* at 389-399. She likewise would have affirmed the district court's granting of ATS's Motion for Summary Judgment. *Id.* at 398. What was not appealed by any party, and thus not considered on appeal, was whether we were correct in our findings that the interests of these parties should have been realigned at inception of the litigation. Ashford I was remanded.

Before remand, however, ATS filed a Motion for Sanctions in Ashford 1.[5] **Ashford 1**, doc. 159. It claimed that in December of 2018, while Ashford 1 was pending

5. The Report and Recommendation on that motion is issued today.

before the Fifth Circuit, trial was had in Tennessee in Porter's suit there against AAR.[6] ATS requested a transcript of the Tennessee proceeding and discovered for the first time that Porter ***testified there that he had in fact compromised the claims of the Aeroframe employees***. Specifically, he was asked, under oath, about the fact that Filo represented the employees and him in this Louisiana litigation.[7] When asked "[d]o you oppose the employees claims for unpaid wages?" he responded, "I do not." Doc. 46, att. 23, p. 3. When asked what arrangements had been made for the employees to recover in this litigation he responded "I've subordinated anything that I would get to the employees first, and I've worked with – this past week even signing documents and being involved with the case and working with the firm in Lake Charles. . . ." *Id.* When asked whether he put the agreement with the employees into writing he declared that he had done so and he referred to a retention agreement he signed with Filo, Brown, and Richard T. Haik, Jr. ("Haik"). We refer to

---

6. Porter sued AAR in Tennessee over the Louisiana dealings and a jury awarded a verdict in his favor for $250,000.00 representing one year of employment under the contract sued upon. This award was affirmed by the Sixth Circuit. *See Porter v. AAR Aircraft Services, Inc.*, 790 Fed.Appx. 708 (6th Cir. 2019). Note that Porter had sued ATS here for interfering with his contractual relations with AAR while having a contract with AAR over which he sued in Tennessee. This duplicity forms part of the basis of our conclusion in Ashford 1 that Porter acted in bad faith in this litigation so that sanctions are warranted.

7. We can surmise that counsel there was equally confused how Filo could be representing both a plaintiff and a defendant if in fact a conflict existed between the two.

this agreement as "the June 4, 2014, Cox-Porter Retention Agreement."[8] Doc. 46, att. 44.

The June 4, 2014, Cox-Porter Retention Agreement states that Porter is retaining the services of Filo, Brown, and Haik[9] to represent him in connection with damages arising from "that certain event that occurred on or about the 30th day of July, 2013, more specifically described as . . . ATS purchase of EAD's note and foreclosure of same." The final paragraphs of that document provide as follows:

---

8. ATS describes this document as a settlement agreement. The non-ATS litigants object to that denomination, each insisting this is a subrogation agreement. This illustrates the battle of nomenclature that has permeated these proceedings. At inception of the hearing on this matter we instructed the parties to refer to the document as "the June 4, 2014, Cox-Porter Retention Agreement" so that there would be no confusion in the record about the document to which the speaker was referring. See Doc. 7, att. 4, pp. 47-48; Doc. 54, pp. 47-48. Our success in avoiding confusion is highly questionable.

9. This agreement is actually the second agreement regarding Porter's personal representation. The first agreement, dated May 5, 2014, involved only Filo, Brown, and Porter. Doc. 46, att. 43. It was at that point Filo enrolled in the state court proceeding on Porter's behalf. *See* **Ashford 1**, doc. 1, att. 12, p. 182; Filo testified that he is a member of the Louisiana Law Review and graduated Order of the Coif and clerked for this court following graduation. Doc. 54, pp. 6-7 (pdf. pp. 165-66). Why this exceedingly bright and competent litigator with multiple partners or associates with his firm available to assist felt the need to affiliate Haik in this proceeding is a mystery, with no disrespect intended toward Mr. Haik.

Appendix E

> WAIVER OF CONFLICT: [Porter] understands that [the Cox firm] is currently representing a number of former employees of Aeroframe to collect unpaid wages. Client expressly waives any conflict regarding the law firm's representation of those former employees and, in addition, agrees that the claims of all former employees of Aeroframe represented by [the Cox firm] shall take priority over the individual claim of . . . Porter and/or Aeroframe against ATS. . . . Porter expressly agrees to fund those unpaid wage claims from proceeds received by Aeroframe or . . . Porter in the event either Aeroframe or . . . Porter receives a recovery before such former employees receives recovery.
>
> DEFENSE OF CLAIMS: The law firms of COX, COX, FILO, CAMEL & WILSON and MORROW, MORROW, RYAN & BASSETT [Haik's firm] hereby agree to represent . . . Porter in defense of any claims asserted by ATS for no additional fee.[10]

Id. at pp. 3-4.

---

10. It is interesting to note, as ATS points out in its Second Notice of Removal [doc. 1, p. 4], that this retention agreement does not obligate the Williams firm to defend Aeroframe against the claims of Ashford or any other former employee.

Appendix E

On January 23, 2019, ATS filed its Motion for Sanctions referenced previously. **Ashford 1**, doc. 159. This request for sanctions subsumed two previous requests for sanctions sought by ATS. *See* **Ashford 1**, docs. 135, 149. In this motion ATS argues, among other things, that the June 4, 2014, Cox-Porter Retention Agreement "exposes that a fraud was perpetuated on this Court and ATS. Despite the duty of candor owed to this Court, the [non-ATS parties] throughout the proceedings in this Court and in the Fifth Circuit steadfastly denied the existence of any stipulation to pay the Aeroframe employees claims." **Ashford 1**, doc. 159, att. 1, p. 6. Ashford (represented by Brown) filed a Motion for Entry of Remand Order and the following day Porter (represented by Brown's partner Filo) filed a virtually identical motion. **Ashford 1**, docs. 213, 214. In opposing the remand ATS argued that the June 4, 2014, Cox-Porter Retention Agreement was the agreement that was missing from our original consideration of the alignment of the parties, that the result at the Fifth Circuit would have been different if it had been privy to this agreement, and that, "[i]n asking that this Court remand this case back [sic] to state court, Ashford and Porter seek to take advantage of the fraud they perpetuated on both this Court and the Fifth Circuit." **Ashford 1**, doc. 227, p. 6. The "fraud" allegedly committed by the non-ATS parties was not just their failure to disclose the existence of the June 4, 2014, Cox-Porter Retention Agreement but also their steadfast and repeated arguments to this court and the Fifth Circuit that no such agreement existed. *Id.* at pp. 4-15. But-for this "fraud" committed by the non-ATS parties, according to ATS, the "outcome in the Fifth Circuit would undoubtedly

[have] be[en] different." *Id.* at p. 16 (emphasis omitted). ATS argues that this new information proves that there was a valid settlement between the non-ATS litigants.. *Id.* at pp. 17-21. ATS argued that this new information would allow this court to avoid the mandate of the Fifth Circuit to remand to state court, that this situation poses an exception to the mandate rule and would "allow [the] district court to reexamine issues resolved on appeal when there is new evidence or if the decision was clearly erroneous and would work a manifest injustice." *Id.* at p. 6, citing, *inter alia, Gene & Gene, LLC v. BioPay, LLC*, 624 F.3d 698, 702 (5th Cir. 2010).

In recommending the request for remand be denied pending consideration of the impact of this new information we suggested:

> This court undisputedly retains jurisdiction in order to decide the pending sanctions motion. Additionally, the alleged concealment from ATS and the court of a settlement that disposed of the nondiverse party's claims would render remand based on an assumption that no such settlement existed clearly erroneous and an instance of manifest injustice. Evidence of such a settlement as presented through the sanctions proceeding may also constitute new and substantially different evidence. The court therefore declines to remand any part of the case until it can reach a resolution on the allegations presented through ATS's sanctions

> motion [which allegations also formed the basis for ATS's objection to remand at that point].

Ashford 1, doc. 231, p. 3. Ashford and Porter (represented by partners Brown and Filo while clamorously arguing they are not aligned), but not Aeroframe, objected to the recommendation. **Ashford 1**, docs. 234, 237. The district court declined to adopt the Report and Recommendation and, on April 17, 2019, ordered remand of the claims "except for the pending sanctions issues." **Ashford 1**, doc. 247, p. 3.

B. Ashford 2

1. The Second Notice of Removal

On May 13, 2019, the day before the hearing on the Motion for Sanctions filed in Ashford 1, ATS removed again. Doc. 1. By the time this second removal was filed, ATS had access to the Tennessee transcript as we note above but also by the time of hearing it had engaged in discovery related to the Motion for Sanctions filed in Ashford 1. Information unearthed by that discovery has assisted our reaching the conclusions we reach today.

ATS maintains in its Second Notice of Removal that this court has subject matter jurisdiction under 28 U.S.C. §§ 1441 and 1446. This second notice begins with a recitation of facts learned after our ruling on jurisdiction in Ashford I as well as the Fifth Circuit's reversal thereof, and through discovery conducted on its rule for sanctions. Those facts include the following:

- "Within a month of the closure [of Aeroframe's facility][11], Porter was in discussions with . . . Filo . . . regarding lawsuits that [Filo's] firm was filing against Porter's company" and attaches an email from Porter to Brown advising he was "instructing previous employees to contact [her] to be added to the suite [sic]." Doc. 1, p. 2. According to responses provided by Porter to discovery propounded for the Ashford 1 sanctions hearing, that conversation was in August or September of 2013. In the email to Brown, Porter, acting for Aeroframe, asks for extensions to answer the complaints she is filing for employees against Aeroframe.

- Filo nominated the Williams firm to Porter to represent Aeroframe. Porter met with J. Williams. *Id.* at p. 3. The relationship between Filo's firm and the Williams firm was so intertwined that Williams found it necessary to have Porter, acting for Aeroframe, waive any conflict inherent in the representation.[12] Doc. 1, att. 3.

---

11. The facility closed August 9, 2013. Suit was filed October 8, 2013.

12. This fact removed the illusion previously created that counsel for Aeroframe was separate and acting independently which, in turn, lead us to believe that Aeroframe was not the alter-ego of Porter.

- Porter filed a *pro se* answer and incidental demand. *Id.* at p. 4. Although ATS does not mentioned this here but as we discuss *supra*, that answer and reconventional demand were drafted for Porter by Filo.[13]

The second notice brings to our attention again the evidence it characterizes as "fraud" and set out by ATS in its Motion for Sanctions in Ashford 1. ATS attaches to its Second Notice of Removal a transcript of trial testimony given by Porter in Tennessee where he denied having an ongoing conflict with his former employees and identifies the June 4, 2014, Cox-Porter Retention Agreement as proof of his compromise and that of Aeroframe.

ATS maintains that this document is the missing link that the district court and the Fifth Circuit wanted to see, the existence of which was denied, "although it is now known that it has existed since" late Spring of 2014. Doc. 1, p. 15. ATS points to the Brown email and suggests that this is the "offer" to compromise insofar as the email provided that, to Ashford's benefit, Aeroframe would stipulate to his wages, penalties, and attorney fees and Porter would stipulate that he, Ashford, would be "paid first out of any monies that he collects." *Id.* at 16 (citing att. 6).[14] ATS

13. In our Memorandum Ruling in Ashford 1 denying remand, we noted the sophistication of Porter's pleading and alluded to participation by Filo in its preparation. **Ashford 1**, Doc. 45, p. 11, fn. 15. Our suspicion was proved accurate by the testimony of Filo at the hearing on sanctions now a record of this proceeding. Doc. 54, p. 30.

14. In evidence at Doc. 46, att. 40.

claims that Ashford accepted the offer made by Brown when he signed his own waiver of conflict (demanded by Brown if he wished her to continue to represent and to be paid first from Aeroframe's and Porter's recovery).[15] *Id.* (citing att. 11).[16] Closing the circle then ATS suggests that the Brown email offer was accepted by Porter, on his own behalf and on behalf of Aeroframe, when he signed the June 4, 2014, Cox-Porter Retention Agreement. *Id.* at 17 (citing att. 8).[18]

The second notice then goes on to suggest that ATS has lawfully removed for a second time, that this newly discovered evidence allows us to "re-examine the issue of diversity." Doc. 1, p. 18. It claims that this second removal is not precluded by the earlier proceedings because of the information discovered since the ruling of the Fifth Circuit, new information from discovery related to the sanctions matter, and the June 4, 2014, Cox-Porter Retention Agreement. The agreement, it argues, was concealed and affirmatively denied by the non-ATS parties and that fact "constitute[s] a new and different ground for removal. [The June 4, 2014, Cox-Porter Retention Agreement] establishes that a written settlement exists that makes Aeroframe a nominal party for purposes of diversity." *Id.* at p. 20.

---

15. The voluntariness of this waiver is quite questionable considering the penalties for refusal—no agreement to be paid from Aeroframe and/or Ashford and no attorney.

16. In evidence at Doc. 46, att. 42.

18. In evidence at Doc. 46, att. 44.

ATS further notes this removal was filed within thirty days of the district court's remand of Ashford I, "the 30-day clock began to run on the day of the remand, April 17, 2019." *Id.* at p. 21. It alternatively suggests that the 30-day clock has not begun to run insofar as we have yet to determine whether there has been a settlement. Lastly it points out that only its consent is necessary because the remaining parties are aligned. *Id.*

2. Motions to Remand

All non-ATS parties move to remand. Docs. 7 (Porter), 8 (Ashford), and 10 (Aeroframe). Aeroframe adopts the arguments of the others [Doc. 10, att. 1, p. 1] and Porter and Ashford, in lockstep fashion (being represented by the same firm) claim:

- The second removal conflicts with the Fifth Circuit order. Doc. 8, att. 1, p. 5 (Ashford arguing this filing is "in blatant disregard of the United States Fifth Circuit Court of Appeals' ruling and mandate."); Doc. 10, att. 1, p. 7 (Aeroframe arguing "ATS has ignored the Fifth Circuit's Opinion.")

- The second removal presents the same facts as the original. Doc. 8, att. 1, p. 5 (Ashford); Doc. 10 att. 1, pp. 7-9 (Aeroframe);

- The Fifth Circuit has already concluded we do not have jurisdiction and its ruling is *res judicata*. Doc. 8, att. 1, p. 6 (Ashford); Doc. 10, att. 1, p. 10 (Aeroframe).

- There exists no legal basis for removal, citing *S.W.S. Erectors, Inc. v. Infax, Inc.*, 72 F.3d 438 (5th Cir. 1996). Doc. 8, att. 1, p. 8 (Ashford); Doc. 10, att. 1, p. 7 (Aeroframe); Doc. 7, att. 1, p. 11(Porter).

- There was no fraud – cites to transcripts of previous hearings where argument is made that Porter or Aeroframe may agree to something but nothing was concealed and ATS never asked for the June 4, 2014, Cox-Porter Retention Agreement. Doc. 8, att. 1, pp. 12-14 (Ashford).

- There is no settlement between the parties. Doc. 8, att. 1, p. 16 (Ashford); Doc. 10, att. 1, p. 13 (Aeroframe); Doc. 7, att. 1, p. 13 (Porter).

- Procedural defects bar this second removal, namely the voluntary/involuntary rule, one year rule, lack of consent, no established amount in controversy. Doc. 10, att. 1, pp. 12-14 (Aeroframe); Doc. 7, att. 1, pp. 19-22 (Porter)

Both Aeroframe and Porter ask for an award of attorney fees. Doc. 10, att. 1, p. 15 (Aeroframe); Doc. 7, att. 1, pp. 22-23 (Porter).

Appendix E

ATS filed a consolidated response to all motions. Doc. 25. It reiterates its point that the June 4, 2014, Cox-Porter Retention Agreement was unknown to this court and the Fifth Circuit as well. *Id.* at pp. 25-29. It distinguishes the current removal from that sought previously and ruled upon by the Fifth Circuit. *Id.* at pp. 29-30. It argues that neither the ruling of the Fifth Circuit on the first removal nor the district court's ordering of remand of Ashford I would have any preclusive effect on our consideration of the issues it raises here. *Id.* at pp. 31-32. It argues that the June 4, 2014, Cox-Porter Retention Agreement is in fact evidence of a settlement between the parties. *Id.* at pp. 32-44. It also addresses two of the procedural defects raised. *Id.* at pp. 44-46. Ashford, Aeroframe, and Porter all replied to the opposition [docs. 23, 22, and 21 respectively] but raised nothing new.

Following a hearing held before this court, ATS filed a supplemental memorandum in opposition. Doc. 49. In that memorandum, it notes that additional information was discovered in connection with the Motion for Sanctions filed in Ashford I; it argues we may reconsider whether the non-ATS litigants were aligned from the inception of this litigation in light of this new information. *Id.* at pp. 4-5. It raises a claim for sanctions in this proceeding [*Id.* at p. 5] and, as an alternative, it claims that, if we were to conclude that the June 4, 2014, Cox-Porter Retention Agreement was not a settlement between the parties, then "the Cox firm has an unethical conflict of interest in representing Ashford and Porter because Porter is Aeroframe" and "the Cox firm must be disqualified." *Id.* at pp. 5-6.

Appendix E

II.

Discussion

Well settled principles of removal and realignment have been detailed multiple times throughout this protracted litigation and will not be repeated here. We refer the reader instead to the well-reasoned dissent of Judge Jones that lists quite nicely the nuances that applied to this situation when Ashford I was before her and which still apply today. *See Ashford, infra*, at 389-399.

A. Propriety of Second Removal

The procedure for removal is governed by 28 U.S.C. § 1446. Generally, a defendant must file a notice of removal within thirty (30) days of its receipt of an "initial pleading setting forth the claim for relief. . . ." 28 U.S.C. § 1446(b)(1). When "the case stated by the initial pleading" does not provide grounds for removal, defendants may remove the action "within thirty days after receipt . . . of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable." 28 U.S.C. § 1446(b)(3).

"Nothing in § 1446 forecloses multiple petitions for removal." *Benson v. SI Handling Systems, Inc.*, 188 F.3d 780, 782 (7th Cir. 1999). Broadly, the Fifth Circuit recognizes a defendant's right to seek subsequent removals after remand [*see Browning v. Navarro*, 743 F.2d 1069, 1079-80 n. 29 (5th Cir.1984)], and in some cases a second removal may even be permissible when premised

on a jurisdictional theory previously alleged. *See*, *e.g.*, *S.W.S. Erectors, Inc. v. Infax, Inc.*, 72 F.3d 489, 493 (5th Cir. 1996). However, pursuant to 28 U.S.C. § 1447(d), "[a]n order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise . . . " Consistent with this provision, a defendant may not use a second removal as an attempt to get reconsideration of a prior remand order. *See O'Bryan v. Chandler*, 496 F.2d 403, 412 (10th Cir. 1974) ("To allow a subsequent court decision to provide a sufficient basis in itself for a second petition to remove under § 1446(b) would destroy the finality of an order to remand . . . "); *See also TKI, Inc. v. Nichols Research Corp.*, 191 F.Supp.2d 1307, 1310-11 (M.D. Ala. Mar. 12, 2002) ("If § 1446(b) is to allow the district court to consider a second removal, it must not conflict with § 1447(d).") As a result, successive notices of removal must generally "be based on information not available at the prior removal." *Sweet v. United Parcel Service, Inc.*, 2009 U.S. Dist. LEXIS 54909, 2009 WL 1664644, *3 (C.D. Cal. June 15, 2009) (citing *Mattel, Inc. v. Bryant*, 441 F.Supp.2d 1081, 1089 (C.D.Cal. 2005).

In *S.W.S. Erectors, Inc. v. Infax, Inc.*, 72 F.3d 489, 494 (5th Cir. 1996) the Fifth Circuit, characterized newly acquired facts from a deposition transcript as "a new paper or event that changed the facts regarding the removableness of the case." In *S.W.S.*, the complaint, initially filed in state court, "did not allege a specific amount of damages." *Id.* at 491. In its first notice of removal, the *S.W.S.* defendant attempted to establish the existence of diversity jurisdiction by providing its own affidavit stating the amount in controversy exceeded one

hundred thousand dollars. *Id.* at 493. Finding this removal had been effectuated to the wrong division, the case was remanded by the district court for improper venue with no mention of diversity jurisdiction or the amount in controversy. *Id.* at 491. Thereafter, plaintiff stated in a deposition that the actual damages exceeded the jurisdictional amount and defendant removed. *Id.* at 494. In deciding the propriety of the second removal, the Fifth Circuit, held that insofar as defendant's second removal "under diversity jurisdiction using newly acquired facts from [plaintiff's] deposition transcript. The deposition constitutes a new paper or event that changed the facts regarding the removableness of the case." *Id.* Based these newly acquired facts, the court found the second petition proper under section 1446(b). *Id.*

Other courts have similarly found that new facts can serve as the basis for a second removal. *See*, *e.g.*, *Amoche v. Guarantee Trust Life Ins. Co.*, 556 F.3d 41, 53 (1st Cir. 2009) (holding that removing defendants failed to meet their burden of establishing the amount exceeded the jurisdictional requirement, but noting the availability of a successive removal if the basis for removal became apparent through a subsequent paper); *TKI, Inc. v. Nichols Research Corp.*, 191 F.Supp.2d 1307, 1313 (M.D. Ala. 2002) (concluding that deposition testimony presented new factual basis where it directly contradicted affidavit on which court had relied in remanding case in the first instance.) For example, in *Benson v. SI Handling Systems, Inc.*, 188 F.3d 780, 783 (7th Cir. 1999), the Seventh Circuit reasoned a successive removal was proper when, after remand, the plaintiffs "fessed up" that the amount in

controversy actually exceeded the jurisdictional amount. As noted by Judge Easterbrook, "[t]he only effect of adopting an absolute one-bite rule would be to encourage plaintiffs to be coy." *Id.*

In the case before us, ATS's first removal petition sought removal under diversity jurisdiction. The evidence offered in support was the Brown email and cooperation among the non-ATS parties during the Seattle deposition. Although we concluded that the evidence then presented failed to establish that the non-ATS litigants were aligned from inception of the proceeding, we did find they were aligned at time of removal based upon our assumption that a settlement agreement was in place. We were comfortable with that assumption because, as we reasoned, Brown and Filo could not ethically represent Ashford and Porter (Aeroframe) absent a lack of controversy between them. Judge Higginson reasoned we lacked jurisdiction specifically because of our finding "that Ashford and Aeroframe were (at least initially) adverse." *Ashford*, 907 F.3d at 388.

ATS's second notice of removal contains many more facts not available to it at the time of the first, facts (detailed below) obtained through its own inquiry into the Tennessee proceedings as well as discovery propounded to the non-ATS parties against whom it seeks sanctions in Ashford I. In support of the initial finding that an agreement had been reached between the parties, it offers the June 4, 2014, retainer agreement as the previously missing proof of an agreement by Aeroframe to pay, a factor deemed lacking by Judge Davis in his concurring

opinion. But then it goes further to set forth new facts, recently learned, that would establish that Ashford, Aeroframe, and Porter have been aligned since the inception of this litigation. Like the defendants in *S.W.S.* and *Benson*, the basis for removal in the second notice is the same as the first—diversity jurisdiction. Also like the defendants in *S.W.S.* and *Benson*, ATS now possesses more facts to support its claims. This second removal in no way servers as an attempt to appeal the Fifth Circuit or Judge Walter's remand order. Accordingly, we find the previous rulings of the court serve as no bar to this second removal by ATS.

B. Reconsideration of the Issue of Alignment from Inception of the Litigation

In its original opposition to the original motions to remand in Ashford I, ATS encouraged us to conclude that the evidence it put forth established that these parties had been aligned from inception of the litigation. We found that the evidence adduced was not sufficient for us to reach such a conclusion. Since the filing of the Motion for Sanctions in Ashford I, however, ATS has uncovered additional evidence causes us to reconsider that conclusion. We do now conclude affirmatively that these parties were in fact aligned from inception of the litigation.

This court has inherent powers "that are 'governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.'" *Dietz v. Bouldin*, 136 S.Ct. 1885, 1891, 195 L. Ed. 2d 161 (2016)

(quoting *Link v. Wabash R. Co.* 370 U.S. 626, 82 S.Ct. 1386, 8 L. Ed. 2d 734 (1962)). This inherent authority includes "the power to modify or rescind its orders at any point prior to final judgment in a civil case." *Id.* at 1892 (citations omitted). In our original ruling on remand we concluded that the evidence adduced at that point was insufficient to conclude that the interests of Ashford, Aeroframe, and Porter were aligned before suit was filed. **Ashford I**, Doc. 45, p. 16, n. 19. That ruling was not appealed and was not ruled upon by the Fifth Circuit. *See Ashford v. Aeroframe Services, L.L.C.*, 907 F.3d 385, 387 (5th Cir.2018) ("the magistrate judge specifically *rejected* the argument that [Ashford and Aeroframe] were aligned from the beginning. This latter factual finding has not been appealed."). Insofar as that conclusion has not reached final judgment and being bound by no finding of the Fifth Circuit as the issue was not considered, we are not precluded from reconsideration.

What follows is a fair representation of new information obtained by ATS which, when taken with the Brown email and the involvement of Filo in the Seattle depositions, establishes to our satisfaction that indeed these parties have worked in concert with ATS as the main target. They further worked in concert to keep Porter from being named personally as a defendant in any action by the employees. It also establishes that these non-ATS litigants have worked diligently to hide their cooperation to lead this court and the court of appeal to conclude that no diversity exists. This new information is summarized as follows:

- Initially Brown was uninterested in representing the employee plaintiffs because she knew Aeroframe had no money. Doc. 53, p. 92.

- Porter spoke with Filo before this lawsuit was filed. Doc. 54, pp. 10-11.

- The Cox firm had previously represented Porter individually or Aeroframe or both. *Id.* at pp. 7-10.

- In his conversation with Filo, before this suit was filed, Porter consented to have the Cox firm represent the employee plaintiffs. *Id.* at 11.

- ATS was named in this litigation by Brown at the suggestion of Filo following his conversation with Porter. *Id.* at 12.

- The allegations against ATS in the original complaint came from information provided by Porter. *Id.*

- Seven days before the filing of this suit Porter wrote Brown stating, "I have talked with Tom Filo over the past month regarding the Aeroframe ATS petitions." Doc. 46, att. 28.

- In that same communication Porter tells Brown "I am instructing previous employees to contact you to be added to the suit[]." *Id.*
- In that same communication Porter asks Brown for an extension to reply to the suits filed against Aeroframe.[24]

Considering now all that we have learned it is exceedingly obvious that Filo has been involved since inception of this litigation and has acted continuously in the best interest of Porter. Porter did not want to be

24. The significance of this fact is two-fold. First it shows that Porter speaks for Aeroframe and Brown knows it. Second it shows that Brown had no intention of naming Porter personally in the litigation. In other suits related to the Aeroframe closure but where plaintiffs are represented by someone other than the Cox firm, Porter is named. In each of those cases it is alleged that Porter diverted funds from Aeroframe "to an outside corporation" rendering Porter, "as owner of Aeroframe" guilty of "fraud, ill-practices, and breach[of] his professional duty." *Neathammer v. Aeroframe Services, LLC, et. al*, 16-cv-1378, doc. 1, att. 2, p. 4; *Jackson v. Aeroframe Services, Inc., et. al.*, 16-cv-1397, doc. 1, att. 1, p. 4. *See also Valentine v. Aeroframe Services, LLC, et. al*, 2013 WL 10835400 (La. Dist. Ct. 14th 9/17/2013), a suit not removed to this court, where plaintiff, not represented by the Cox firm, named Porter as a defendant to the main demand and alleged that Porter "sought to conceal funds available for payment of wages by transferring said funds to an outside corporation" making him personally liable for wages due to the employee. This issue is discussed again when considering whether the Cox firm is truly representing Ashford or any other employee plaintiff and whether they can continue to act as counsel in this litigation or any other related to the Aeroframe plant closure.

sued personally so he steered the employees to Brown, the partner of his attorney Filo. Brown suddenly became interested in representing these plaintiffs because the design was to ultimately reach a deep pocket, ATS. Porter insured he would not be sued personally by Aeroframe by retaining the firm recommended to him by Filo who, according to Brown's email, "***is working cooperatively with us*** and will not defend against your wage claims." Doc. 46, att. 40, p. 3 (emphasis added). Porter's target all along was ATS but needed a friendly state court within which to proceed to have any hope at all of success given the specious nature of the claims against it.[25] Ashford has been but a pawn in this matter.[26]

Because Ashford, Aeroframe, and Porter have been aligned since inception of these proceedings, this court has subject matter jurisdiction in this matter as the citizenship of them all (Louisiana) is diverse from that of ATS (Washington).

---

25. In n. 3 we list the multiple cases that were filed in separate state court proceedings by the Cox firm for no discernable reason but to have multiple cases from which it could choose the friendliest forum. Judge Trimble also concluded the parties were engaging in forum shopping. See **Ashford 1**, doc. 104, p. 4. Judge Trimble's comment was noted approvingly by Judge Jones in her dissent. 907 F.3d 385, 393 (5th Cir. 2018).

26. We reach the same conclusion in the Report and Recommendation entered this date on the Motion for Sanctions in Ashford 1 and suggest it is for this reason that Mr. Ashford should not be held responsible for any penalties. It is very clear that there was no attorney in this proceeding that was representing his best interests.

C. The June 4, 2014, Cox-Porter Retention Agreement – What is it and Does it Create a New Factual Basis Upon Which ATS May Remove?

Given our conclusion that the parties have been aligned since inception of this litigation, our consideration of the impact of the June 4, 2014, Cox-Porter retention agreement on the holding of the Fifth Circuit becomes less important but it does bear scrutiny.

Persistent and incongruous arguments of the non-ATS parties to the contrary notwithstanding, neither ATS, the undersigned, Judge Trimble, Judge Higginson, Judge Davis, nor Judge Jones knew of the existence of the June 4, 2014, Cox-Porter retention agreement until after the Fifth Circuit had ruled. In fact, Aeroframe's own supposedly independent counsel was unaware of its existence until the Motion for Sanctions was filed in Ashford 1.[27] Doc. 54, p. 86 (pdf. p. 245). For the non-ATS litigants to argue to the contrary is not just false[28] but is also an effrontery to the intelligence of all.

Under Louisiana law "[a] compromise is a contract whereby the parties, through concessions made by one or more of them, settle a dispute or an uncertainty

---

27. This fact also supports our conclusion that the Williams firm was not truly acting independently for the benefit of Aeroframe but rather was participating as a courtesy in the ruse to its long-term business colleague the Cox firm.

28. And sanctionable. *See* Report and Recommendation on the Motion for Sanctions issued this day in Ashford I.

concerning an obligation or other legal relationship." La. C.C. art. 3071. Essential elements of a compromise include: (1) mutual intent to put an end to the litigation; and (2) reciprocal concessions of the parties in adjustment of their differences. *Rivett v. State Farm Fire and Cas. Co.*, 508 So.2d 1356, 1359 (La.1987). The "dispute" existing between Ashford and Aeroframe is one for unpaid wages plus penalties and attorney fees afforded by the "Last Paycheck Law," La. R.S. § 23:631.

We agree with the position of ATS with respect to the significance of the June 4, 2014, Cox-Porter Retention Agreement. We agree with its analysis that Brown made an "offer," through her email, to have Ashford's damages stipulated to, that Ashford accepted that offer when he signed the conflict waiver, and that the circle was completed when Porter, on his own behalf and on behalf of Aeroframe, agreed to fund Ashford's the unpaid wage claims from proceeds received by Aeroframe or Porter in their respective claims against ATS. *See generally* Doc. 25, pp. 32-39. While nothing in any of these documents places a dollar amount on Ashford's loss, those amounts have been stated in this proceeding affirmatively by Ashford and not objected to by either Aeroframe or Porter as we discuss below. The only reason those amounts are not part of a formal agreement is because Brown has refused to honor her promise to Ashford to have his "entitlement to wages, penalties, and attorney's fees" stipulated to by Aeroframe or Porter.

As part of the ruse that was Ashford I but not mentioned previously, Ashford (represented by Brown)

filed a Motion for Summary Judgment to establish the amount of his claim. **Ashford 1**, doc. 85. Aeroframe (represented by the Williams firm) opposed the motion (in contravention of Brown's email promise that the firm would "not defend against your wage claims") by attaching an affidavit, predictably signed by Porter (represented by Brown and Filo). **Ashford 1**, doc. 90, att. 1. Ashford attached his own affidavit in support of his motion stating precisely the wages he was owed and claiming written demand for those wages had been made which would then entitle him to damages and attorney fees under the Louisiana Last Paycheck Law. **Ashford 1**, doc. 85, att. 3. Through these filings Ashford provides a sum certain for what he would be owed. In its pseudo-opposition, Aeroframe, supported by Porter's affidavit (**Ashford 1**, doc. 90, att. 1), does not deny a single amount suggested by Ashford. Aeroframe simply restates the allegations of the complaint and argues it should not be obligated to pay penalties because its failure to make payroll was a result of the nefarious conduct of ATS and was through no fault of its own.[29]

---

29. At the time Ashford was terminated the Last Paycheck Law had no "good faith" exception to the penalty. The statute has subsequently been amended to add one. It bears reminding here as well that the facts relied upon by Aeroframe in that document as to why it closed – i.e. that ATS's actions with the EADS note precipitated its failure – are absolute fabrications. In granting ATS's Motion to Summary Judgment Judge Trimble concluded that not one non-ATS litigant produced any evidence at all that Aeroframe's closure was related to ATS's purchase of the EADS note, foreclosure on which occurred ***after*** Porter closed Aeroframe due to non-payment of invoices by a customer. Ashford 1, doc. 131.

Appendix E

The district court was not impressed with the motion or Aeroframe's response. It found that the motion appeared "to be nothing more than an attempt to re-litigate previously decided issues." **Ashford 1**, doc. 104, p. 2. It noted we had already concluded that Ashford's issues against Aeroframe had been resolved,

> based on a waiver signed by Ashford, which allowed the Cox Law Firm to represent both Ashford and the sole member and CEO of Aeroframe in the exact same litigation. In an email explaining the waiver, the Cox Law Firm affirmatively stated that Aeroframe would not defend against the wage claims. . . . For the conflict to be waivable and for the waiver to be effective, this statement would need to be true. . . . ***The opposition filed by Aeroframe is better read as a confirmation of this agreement than an actual opposition to the motion***. The only "opposition" that Aeroframe had to Ashford's Motion . . . was that Aeroframe believed that ATS caused its inability to pay wages and that without an affidavit of costs, attorney fees could not be assessed. . . . This aligns closely with the settlement promised by the Cox Law Firm in the email to its clients.

Id. at pp. 2-3 (citations to record omitted; footnote omitted; emphasis added). The court asks somewhat rhetorically "[w]hy the Cox Law Firm seems intent on putting itself in an ethical noose by continuing to argue that the parties are adverse while also representing Porter and

maintaining that Ashford gave informed consent for that representation is puzzling. The only reasonable conclusion seems to be that the Cox Law Firm is attempting to forum shop. . . ." *Id.* at pp. 3-4.

We specifically reject the argument of the non-ATS litigants that "everyone" knew of the June 4, 2014, Cox-Porter Retention Agreement when this matter was considered by the Fifth Circuit. We note above the multiple representations made by counsel about the lack of a "settlement" between the parties. None of that argument – and it is just that, argument, not evidence – is compelling. Brown, Filo, Haik, Porter, and Schiff knew about that agreement. No one else did. Not even the Williams firm, the supposed separate counsel for Aeroframe, knew of this agreement.[30] Doc. 54, p. 86. This litigation has been replete with semantic shenanigans designed to disguise the true

30. See testimony of R. Williams at Doc. 54, p. 86 (pdf. p. 245) "I was not aware of [the June 4, 2014, Cox-Porter Retention Agreement] until this motion for sanctions [in Ashford I] was filed [on 1/23/2019, five years after its representation began]." We find this fact extremely remarkable. The fact that neither Filo, Brown, nor Haik thought it necessary to advise Aeroframe's supposed counsel that its client had made such an agreement is proof of what we now conclude – the Williams firm was inserted into this litigation to perpetuate the ruse that a controversy existed between Ashford and Aeroframe so that federal court jurisdiction could be avoided. The participation of the Williams firm – a non-local firm about whose close connections with the Cox firm were not readily apparent – served as one of the underpinnings of our conclusion in Ashford I that Aeroframe and Porter were not to be treated as one and the same. See **Ashford I**, doc. 45, p. 16, n. 19. For this reason and many others, we conclude now that there is no daylight between Porter and Aeroframe.

alignment of these litigants yet the non-ATS litigants find it appropriate to argue that they were crystal clear in their representations. They were not.

ATS argues many times over that the non-ATS litigants perpetuated a fraud on this court and the Fifth Circuit by purposefully denying the existence of a settlement and failing to disclose or otherwise produce the June 4, 2014, Cox-Porter Retention Agreement. The non-ATS litigants, in unison, argue there was no fraud because everyone knew – an argument we discard above – but they also argue that they did not produce the document because they were never asked for it.

As often happens in cases where litigants are less than forthcoming about their interactions when they are working to avoid federal court subject matter jurisdiction, the information that ATS did have, the Brown email, came to it fortuitously and after Filo, Brown's partner, had enrolled as counsel for Porter. As we note above, all non-ATS litigants fought valiantly to keep us from even considering that information. *See* **Ashford 1**, doc. 45, pp. 9-15. For purposes of the ruling from this chambers that information plus the entry of Filo as counsel for Porter was sufficient to convince us that an agreement had been reached for, as we stated then, "[a]bsent the binding nature of [an agreement] there would exist irreconcilable conflict." **Ashford 1**, doc. 45, p. 17. ATS claims it asked for an opportunity to engage in jurisdictional discovery but no formal motion was filed – the suggestion was merely made to the district court in briefing. **Ashford 1**, doc. 20, p. 15. Such a request would have been necessary given ordinary

tools of discovery, namely Rule 26 of the Federal Rules of Civil Procedure, only allow for discovery pertaining to "claims" and "defenses." Perhaps if ATS had asked for jurisdictional discovery at that point it might have learned all that we know now but that is not a given. As should be apparent now given all that has been set forth above and all that is discussed in our Report and Recommendation on the Motion for Sanctions in **Ashford I**, these parties have done all in their power to obfuscate the true relationship between them so what success ATS might have had in that early stage of the matter is questionable.

Once the district court adopted the reasoning of the undersigned there was no avenue by which ATS could conduct additional discovery on that issue and, even if such an avenue did exist, it would be hard to imagine exactly what request could have been made by ATS that would have resulted in the production of that document. We know from the amount of parsing that has occurred in this litigation that ATS would have had to stumble upon a magical set of words that would not allow the non-ATS defendants to finagle their way out of production at which point they would undoubtedly claim that the material was protected by privilege just as they did with the email.[34]

---

34. Interestingly in response to discovery on the Motion for Sanctions in **Ashford I**, the non-ATS litigants repeatedly raised attorney client privilege when asked to provide information concerning contact between them. *See*, *e.g.*, Doc. 257, att. 8, p. 8, 13, 14, 15; att. 9, p. 11; att. 10, p. 13, 16; att. 12, p. 15. How could communications between them be protected by privilege absent some sort of shared defense theory, something we believe to be a more analogous assessment of their relationship.

So while it is true that ATS never requested the June 4, 2014, Cox-Porter Retention Agreement that can hardly be held against ATS. And, at the same time and for reasons stated more fully above, we do conclude that the non-ATS litigants purposefully and intentionally masked and obfuscated what did actually happen between them.

And so now we consider whether the opinion of the Fifth Circuit would have been different if it had known of the existence of the June 4, 2014, Cox-Porter Retention Agreement. We believe it would have been.

It is doubtful that the June 4, 2014, Cox-Porter Retention Agreement would change the conclusion of Judge Higginson, who authored the opinion, insofar as he concluded that "[t]here was no diversity at the time this suit was filed." *Ashford*, supra, at p. 387. Full stop. Judge Jones, who dissented, did not need the June 4, 2014, Cox-Porter Retention Agreement to conclude that our findings were absolutely correct. A change in the result would only have been occasioned if this document would have caused the opinion of Judge Davis to have been different. And we believe it would have been.

Judge Davis acknowledged that a suit "can become removable under federal diversity jurisdiction if the plaintiff and the nondiverse defendant enter into an irrevocable settlement agreement" (citing *Vasquez v. Alto Bonito Gravel Plant Corp*, 56 F.3d 689, 693 (5th Cir. 1995)), "no such agreement was ever produced in this case." *Ashford*, 907 F.3d at 388. Judge Davis did not find Brown's email to be proof of any agreement by Aeroframe as it

was drafted by Ashford's counsel. "We have nothing from Aeroframe confirming a promise to pay and/or to stipulate to Ashford's requested relief." 907 F.3d at 389. Had Judge Davis been given the benefit of the June 4, 2014, Cox-Porter Retention Agreement, that stated in no uncertain terms that proceeds received by Porter or Aeroframe would "first be allocated to repaying the wage, penalty and attorney's fee claims" of employees such as Ashford, then he would have had something from Aeroframe promising to pay. If he had the benefit of Porter's testimony from Tennessee he would have known that Porter considered the June 4, 2014, Cox-Porter Retention Agreement the written document evidencing his (and Aeroframe's) lack of conflict with the employees.

But given our suggestion that the previous finding of no collusion from inception of the proceeding be reversed, then whether the original opinion of the Fifth Circuit in Ashford I would have been different is moot. It is, however, illustrative of just how much time and how many resources could have been preserved if the non-ATS litigants had simply owned up to the existence of the document and not suggest repeatedly that there was no agreement of any kind or no writing of any kind.

D. Procedural Objections

Aeroframe and Porter raise procedural objections to the removal as well. Though presented in a different order (perhaps so we would not notice) the objections are identical.

Appendix E

1. The Voluntary/Involuntary Rule

Both Aeroframe and Porter argue that, when an event occurs subsequent to the filing of the original complaint that makes the complaint then removable, that event must be as the result of some voluntary act of the plaintiff. Doc. 10, att. 1, p. 12 (Aeroframe); Doc. 7, att. 1, p. 20 for Porter (both relying on *Weems v. Louis Dreyfus Corp.*, 380 F.2d 545 (5th Cir. 1967), and *S.W.S. Erectors, Inc., v. Infax, Inc.*, 72 F.3d 489 (5th Cir. 1996)). Both argue that the "other paper" claimed by ATS in its notice to have proven an agreement exists allowing for realignment of the parties, the June 4, 2014, Cox-Porter Retention Agreement, was an action by Porter who is not a plaintiff in these proceedings. Thus, they argue, this removal is procedurally barred.

We conclude above that this paper was just one of several that constituted the "agreement" between the parties, that being Ashford's waiver of conflict so Filo could represent Porter. That was a voluntary act of plaintiff. We reject this argument.

2. Subjective Belief of a Settlement is Not Sufficient

Both Aeroframe and Porter, relying on *S.W.S. Erectors, supra*, argue that "the defendant's subjective knowledge cannot convert a case into a removable action." Doc. 10, att. 1, p. 13 (Aeroframe); Doc 7, att. 1, p. 20 (Porter), (citing *S.W.S. Erectors*, 72 F.3d at 494).

Aeroframe says "ATS' [sic] argument that the subordination terms in Mr. Porter and Filo's contingency fee agreement is a settlement between Mr. Ashford and Aeroframe has been rejected by the Fifth Circuit and cannot serve as a legal basis for removal." Doc. 10, att. 1, p. 13. Truly this argument makes no sense but it is also factually incorrect – the Fifth Circuit was not privy to the June 4, 2014, Cox-Porter Retention Agreement so it could hardly have determined anything about it. Porter says "the Roger Porter conflict waiver/subordination agreement is not a voluntary act of the plaintiff to begin with and ATS's erroneous subjective belief that it constitutes a settlement between two non-parties (Ashford and Aeroframe) cannot form the basis for removal." Doc. 7, att. 1, p. 21. So this is, in actuality, just a repeat of the voluntary/involuntary argument made above and it is likewise rejected.

3. Non-Compliance with the One Year Rule

Both Aeroframe and Porter argue that 28 U.S.C. § 1446(b) prohibits removal of diversity cases one year after original filing. Doc. 10, att. 1, p. 13 (Aeroframe), doc. 7, att. 1, p. 21 (Porter). Both acknowledge the equitable tolling provisions set forth in *Tedford v. Warner-Lambert Co.*, 327 F.3d 423 (5th Cir. 2003) that would allow filing beyond one year when the plaintiff has acted in bad faith to prevent removal.

This entire litigation has been one huge exercise in bad faith designed to prevent removal engaged in by all non-ATS parties and attorneys Brown and Filo. Accordingly, we reject this argument.

4. Consent of Co-Defendant

Both parties likewise rely on 28 U.S.C. § 1446(b) barring removal unless all defendants join in and consent. Doc. 10, att. 1, p. 13 (Aeroframe); Doc. 7, att. 1, p. 22 (Porter). Insofar as all parties have been realigned, there is no need for consent of any non-ATS litigant. We concluded originally that there was no need to obtain consent of Aeroframe because Aeroframe is aligned with Ashford. **Ashford 1**, doc. 45, affirmed by the district court at doc. 60, and concurred with by Judge Jones in her dissent. *Ashford*, 907 F.3d, at 397. We reach the same conclusion here – that Ashford and Aeroframe are aligned and have been since inception of this litigation. Accordingly the agreement of Aeroframe is unnecessary.

5. Amount in Controversy

Both claim that the amount in controversy threshold has not been satisfied. Doc. 10, att. 1, p. 14 (Aeroframe); Doc. 7, att. 1, p. 19 (Porter). This issue was disposed of in our ruling on the first motion to remand and need not be litigated here again. **Ashford 1**, doc. 45, affirmed by district court at doc. 76. It is clear at this point that the only viable claim that exists is Ashford's claim against Aeroframe and that is worth $29,040. **Ashford 1**, doc. 85, att. 3. But our focus must be on the complaint as written and, with respect to Ashford's claim against ATS (as baseless as it may be we now know), we have already determined it was

> facially apparent from plaintiff's pleading that the amount in controversy as pled by him in his petition attached to the Notice of Removal exceeds $75,000. Although past wages due may be negligible, future lost wages, future benefits lost, and attorney fees for the prosecution of this matter place the amount in controversy well above the minimum threshold.

Ashford 1, Doc. 45, p. 19, adopted by the district court at doc. 76. Ashford and Porter challenged this conclusion at the Fifth Circuit but, given the conclusions of Judges Higginson and Davis, the challenge was not addressed except in the dissent where Judge Jones found our evaluation to be proper. *Ashford*, supra, 907 F.3d at 397.

Both Aeroframe and Porter claim, using the exact same language in their memoranda, that "[p]laintiff Michael Ashford filed into the state court record a stipulation that the total amount sought by him does not exceed $50,000." Doc. 10, att. 1., p. 14 (Aeroframe); doc. 7, att. 1, p. 19 I havewo(Porter). This is incorrect. What was filed in the state court record was a "stipulation" that bore only the signature of Somer Brown, not Ashford.[37] Doc. 1, att. 12, p. 197.

---

37. Pretending for a moment that there exists a viable and valuable claim against deep pocket ATS, whose interests are being protected here – Brown client Ashford or Brown client Porter?? According to the June 4, 2014, Cox-Porter Retention Agreement, the less Ashford gets the more Aeroframe/Porter get.

E. Request for Attorney Fees and Costs

Both Aeroframe and Porter ask for an award of attorney fees and costs as a result of this removal that they allege was defective. Given our determinations above we recommend this request be denied.

F. ATS's Suggestion that the Cox Firm should be Disqualified

Given our conclusion that Ashford and Aeroframe/Porter are aligned, there is no basis to reach this issue raised in ATS's Supplemental Memorandum in Opposition to Motions to Remand, for the reasons stated therein at least. Doc. 49.

III.

Conclusion

For the foregoing reasons we recommend that the Motions to Remand [Docs. 8, 10, 7] be **DENIED**. It is further recommended that the requests of Aeroframe and Porter for an award of attorney fees and costs be **DENIED**.

Under the provisions of 28 U.S.C. §636(b)(1)(C) and Fed.R.Civ.Proc. 72(b), parties aggrieved by this recommendation have fourteen (14) days from service of this Report and Recommendation to file specific, written objections with the Clerk of Court. A party may respond to another party's objections within fourteen (14) days

after being served with a copy thereof. Failure to file written objections to the proposed factual findings and/or the proposed legal conclusions reflected in this Report and Recommendation within fourteen (14) days following the date of its service shall bar an aggrieved party from attacking either the factual findings or the legal conclusions accepted by the District Court, except upon grounds of plain error. *See Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1429-30 (5th Cir. 1996).

THUS DONE this 29th day of May, 2020.

/s/ Kathleen Kay
KATHLEEN KAY
UNITED STATES MAGISTRATE JUDGE

APPENDIX F — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, FILED OCTOBER 26, 2018

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17-30142

MICHAEL ASHFORD,

Plaintiff-Appellant Cross-Appellee

v.

AEROFRAME SERVICES, L.L.C.,

Defendant-Appellee Cross-Appellant

AVIATION TECHNICAL SERVICES, INCORPORATED,

Defendant-Appellee

consolidated with 17-30483

MICHAEL ASHFORD,

Plaintiff-Appellant

v.

Appendix F

AVIATION TECHNICAL SERVICES, INCORPORATED,

Defendant-Third-Party Plaintiff-Appellee

v.

ROGER A. PORTER,

Third-Party Defendant-Appellant

Appeals from the United States District Court for the Western District of Louisiana.

Before DAVIS, JONES, and HIGGINSON, Circuit Judges.

STEPHEN A. HIGGINSON, Circuit Judge:

Plaintiff-Appellant Michael Ashford commenced this litigation in October 2013, bringing claims under Louisiana law in Louisiana court against Defendant-Appellee Aeroframe Services, LLC, and Defendant-Appellee Aviation Technical Services, Inc. (ATS). Both Ashford and Aeroframe are Louisiana citizens. The litigation proceeded in state court for some months until ATS removed to federal court on the theory that Ashford and Aeroframe had settled. On the contrary, Ashford's claims remained pending against Aeroframe.

As the Supreme Court has emphasized, federal diversity-of-citizenship jurisdiction "depends upon the

state of things at the time of the action brought." *Grupo Dataflux v. Atlas Glob. Grp., L.P.*, 541 U.S. 567, 570-71, 124 S. Ct. 1920, 158 L. Ed. 2d 866 (2004) (quoting *Mollan v. Torrance*, 22 U.S. (9 Wheat.) 537, 539, 6 L. Ed. 154 (1824)). "This time-of-filing rule is hornbook law (quite literally) taught to first-year law students in any basic course on federal civil procedure." *Id.* (footnote omitted). And the law is no different in cases removed from state court. "Consistent with general principles for determining federal jurisdiction, . . . diversity of citizenship must exist *both* at the time of filing in state court *and* at the time of removal to federal court." *Coury v. Prot*, 85 F.3d 244, 248-49 (5th Cir. 1996) (emphases added); *see also*, *e.g.*, *Stevens v. Nichols*, 130 U.S. 230, 231-32, 9 S. Ct. 518, 32 L. Ed. 914 (1889); 14C Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure § 3723 & n.16 (4th ed. updated Sept. 2018).

There was no diversity of citizenship at the time this suit was filed. At that point, two of the parties, Plaintiff Michael Ashford and Defendant Aeroframe Services, were Louisiana citizens. It is true, of course, that courts must "look beyond the pleadings, and arrange the parties according to their sides in the dispute." *City of Indianapolis v. Chase Nat. Bank of City of N.Y.*, 314 U.S. 63, 69, 62 S. Ct. 15, 86 L. Ed. 47 (1941). It is also true that the magistrate judge in this case found that Ashford and Aeroframe became aligned as the litigation progressed. But the magistrate judge specifically *rejected* the argument that the two parties were aligned from the beginning. This latter factual finding has not been appealed. So even accounting for the possibility of

realignment, "the state of facts that existed at the time of filing" failed to meet the jurisdictional prerequisite of complete diversity. *Grupo*, 541 U.S. at 571.

According to the dissenting opinion, we "recognized" in *Zurn Industries, Inc. v. Acton Construction Co.*, 847 F.2d 234 (5th Cir. 1988), that realignment of the parties "is an exception" to the time-of-filing rule. With respect, *Zurn* says no such thing. The cited portion of the opinion merely describes the principle, familiar from *City of Indianapolis*, that federal courts are not bound by the labels the parties give themselves in the pleadings. *See id.* at 236. Nowhere did *Zurn* obviate the hornbook law that diversity must exist "at the inception of the lawsuit." *Id.* at 238. To the contrary, *Zurn*'s jurisdictional analysis refused to consider post-commencement events like "cross-claims and counterclaims filed by the defendants," and instead held that the parties' alignment for jurisdictional purposes "is to be determined by the plaintiff's principal purpose *for filing suit*." *Id* at 237 (emphasis added). Because the magistrate judge found that Ashford's "principal purpose" for suing Aeroframe was legitimate (a finding that no one appeals), fidelity to *Zurn* requires relinquishing the case.

The dissenting opinion also relies on a provision of the removal statute, which contemplates that a suit may "become removable" after it is filed. 28 U.S.C. § 1446(b)(3). No doubt, that is sometimes true. For example, a suit may "become removable" when a plaintiff amends the complaint to add a federal cause of action. *See* § 1331. It may become removable when a defendant discovers that he qualifies as a federal officer. *See* § 1442(a)(1); *Morgan*

v. Huntington Ingalls, Inc., 879 F.3d 602, 607 (5th Cir. 2018). And it may even become removable when the only nondiverse defendant is formally dropped from the suit. *See* § 1332(a); *Grupo*, 541 U.S. at 572-73; *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68-69, 117 S. Ct. 467, 136 L. Ed. 2d 437 (1996). But none of these circumstances obtains here.

Finally, the dissenting opinion cites *Peters v. Standard Oil Co. of Texas* for the proposition that "any realignment of parties should take place *before* jurisdiction is decided." That assertion seems undoubtedly correct. In *Peters*, for example, our court examined the facts in existence at the time of filing and concluded that the "real interest" of one defendant aligned him with the plaintiffs. 174 F.2d 162, 163 (5th Cir. 1949). We therefore treated him as a plaintiff in the diversity analysis. *See id.* Likewise, a proper jurisdictional analysis in this case would begin by looking for potential realignment. But again, unlike in *Peters*, the magistrate judge here found that Ashford and Aeroframe were (at least initially) adverse. And because that plaintiff and that defendant are both citizens of Louisiana, it cannot be said that diversity of citizenship existed "at the time of filing in state court." *Coury*, 85 F.3d at 248-49.

Accordingly, the district court's judgment is VACATED, and the matter is REMANDED with instructions to remand to state court.[1]

1. Because the district court lacked jurisdiction, all its orders are vacated. This resolves the consolidated case.

Appendix F

W. EUGENE DAVIS, Circuit Judge, concurring in the judgment:

I would conclude that diversity jurisdiction is lacking in this matter because the record does not contain a sufficient basis to find that Ashford and Aeroframe are not adverse parties. Although our precedent provides that a case can become removable under federal diversity jurisdiction if the plaintiff and the nondiverse defendant enter into an irrevocable settlement agreement, *Vasquez v. Alto Bonito Gravel Plant Corp.*, 56 F.3d 689, 693 (5th Cir. 1995), no such agreement was ever produced in this case. "[A]bsent such an irrevocable settlement, the nondiverse defendant remain[s] a party to the case." *Id.* at 690.

Furthermore, assuming that realignment is permitted to establish diversity jurisdiction upon removal, it was improper to realign Aeroframe as a plaintiff in this matter based on an email generated by Ashford's counsel. I acknowledge that diversity jurisdiction cannot be manufactured "by the parties' own determination of who are plaintiffs and who defendants." *City of Indianapolis v. Chase Nat'l Bank*, 314 U.S. 63, 69, 62 S. Ct. 15, 86 L. Ed. 47 (1941). However, we cannot cast aside the rule that the alignment of parties "must be ascertained from the 'principal purpose of the suit' and the 'primary and controlling matter in dispute.'" *Id.* at 69-70 (citations omitted).[1]

1. We have noted that "[t]he determination of the 'primary and controlling matter in dispute' . . . is to be determined by plaintiff's principal purpose for filing [his] suit." *Zurn Industries, Inc. v. Acton Const. Co., Inc.*, 847 F.2d 234, 237 (5th Cir. 1988).

Appendix F

In his petition, Ashford sued Aeroframe, his former employer, under the Louisiana Last Paycheck Law, La. R.S. 23:631, for unpaid wages and related damages. Ashford also sued ATS for negligence, interference with contract, and unfair trade practices and again sought as damages unpaid wages and other lost benefits, as well as future wages. Thus, the principal purpose for the filing of Ashford's suit was to recover his unpaid wages and related damages resulting from the termination of his employment by Aeroframe. In its answer, Aeroframe denied the allegations in Ashford's petition and further prayed for judgment in its favor and against Ashford. The record shows that since the filing of its answer, Aeroframe itself has made no assertions, admissions, and/or stipulations inconsistent with its answer.[2] Moreover, in its appellate brief, Aeroframe specifically asserts that it "has never agreed that statutory penalties are owed to Mr. Ashford, even if he can establish he is owed any back owed wages (which Aeroframe has disputed and continues to dispute)." Consequently, the necessary "collision of interest," *City of Indianapolis*, 314 U.S. at 69, exists between Ashford and Aeroframe such that no realignment is warranted.[3]

---

2. Further corroborating that Ashford and Aeroframe continue to be adverse is that Aeroframe has separate counsel in this appeal, who has briefed the issues and argued on behalf of Aeroframe.

3. This case is unlike *City of Indianapolis* wherein the plaintiff sought a judgment declaring the validity and binding nature of a lease, and the realigned defendant denied "[i]n its answer . . . that it had ever contended or admitted that the said . . . lease was not and is not a valid and binding obligation upon the defendants." 314 U.S. at 71.

Appendix F

Judge Jones takes the position that an email, which was drafted by Ashford's counsel to Ashford and other former employees of Aeroframe whom counsel is representing, reflects "Aeroframe's promise to pay Ashford" and "states that all of Ashford's requested relief ('wages, penalties, and attorney's fees') would be stipulated to by Aeroframe." Judge Jones posits that the email constitutes "proof that Aeroframe and Ashford had the same 'ultimate interests' in the outcome of the action."

My problem with such "proof " is that the email was drafted by Ashford's counsel. We have nothing from Aeroframe confirming a promise to pay and/or to stipulate to Ashford's requested relief. This one-sided email would certainly not qualify as an irrevocable settlement under *Vasquez*, nor is it sufficient proof under *City of Indianapolis* that Ashford and Aeroframe are aligned.

For these reasons, I respectfully concur.

EDITH H. JONES, Circuit Judge, dissenting:

The majority today refuse to realign the parties according to their true and ultimate interests in the litigation, leading them to incorrectly conclude that this court lacks diversity jurisdiction.

Even more disturbing, the majority refuse to discuss the Rule 11 sanctions request by appellee Aviation Technical Services predicated on the bad faith filing by its opponents of cross-summary judgment motions as an endrun around unfavorable district court rulings, and their subsequent contrived appeal to this court. I see nothing in the Rule preventing the district court from imposing sanctions despite the (erroneous) dismissal of this case. I respectfully dissent.

Because realignment of the parties and possible sanctions involve highly fact-specific inquiries, and because the majority opinion does not detail the history of the underlying litigation, it is necessary to elaborate on the factual and procedural background of this case before proceeding to an analysis of diversity jurisdiction.

BACKGROUND

I. Facts

Aeroframe Services, LLC ("Aeroframe") used to have an aircraft maintenance, repair, and overhaul business at Chennault International Airport in Louisiana. Due to financial difficulties, Aeroframe began to look for a

partner or purchaser in 2012. Aeroframe was in default on a $9,775,500 note held by EADS, Inc., which was secured by Aeroframe's equipment. In November 2012, Aeroframe entered into a non-disclosure agreement ("NDA") with Aviation Technical Services ("ATS") for the purpose of discussing partnership. This agreement stated that both parties would disclose certain confidential information to each other and "any such information will be kept secret and strictly confidential." ATS decided it was not interested. In February 2013, Aeroframe offered to sell the company to ATS. Again, ATS declined. Roger Porter was the owner and manager of Aeroframe, and was Aeroframe's primary representative in these negotiations. Along with the acquisition of Aeroframe, Porter was also seeking employment or a consulting position with ATS.

In May 2013, ATS and Aeroframe entered into another NDA. This agreement only prevented *Aeroframe* from disclosing confidential information. This NDA stated that it was the "entire agreement of the parties in respect to the subject matter hereof." In June 2013, the parties entered into an Exclusivity Agreement, which among other things, prevented Aeroframe from soliciting any similar proposals for at least 30 days. The Exclusivity Agreement referenced an NDA: "Other than the NDA, which shall remain in full force and effect, this Agreement expresses the entire understanding of the parties with respect to the subject matter of the Agreement." As noted by the district court, the Agreement does not clearly specify which NDA it references.

ATS and Porter agree that a key component for any transaction would be the settlement of the EADS note. ATS's CFO testified that Porter asked for a loan to buy the note, but they said no. He also testified that Porter told ATS that they would have to buy it because he would not be able to.

In July, Porter began negotiating with another aircraft maintenance outfit named AAR. ATS sent Porter a proposed consulting agreement on July 11, which he rejected. On July 12, Aeroframe's attorney emailed ATS the contact information for EADS's counsel. ATS and EADS began negotiating the price of the note. On July 17, ATS sent Porter a revised agreement and informed Porter that it knew he had "other potential buyers" and needed to know what Porter was thinking. AAR executed a Letter of Intent on July 19, which contained a 30 day exclusivity period. The same day, Porter texted an employee of ATS stating that he "started a dialog with another company" and advised AAR to pull out its people who had been at ATS.

Negotiations between Porter and ATS did not end there. Porter and the CEO of ATS emailed about Porter's possible employment, and the CEO sent Porter an outline of an employment agreement on July 20. Porter told the COO of ATS that he was in an exclusive agreement with another party on July 22. Porter later confirmed to the COO that AAR was the other potential buyer.

As noted above, ATS began negotiating with EADS for the note earlier in July. These parties continuously

bargained until they agreed on a price on July 23 and finalized the note purchase on July 30th. ATS then informed Porter, Aeroframe, and AAR. The next day, ATS and AAR contacted the Chennault Airport about taking over Aeroframe's lease. Porter visited the airport with AAR. On the same day, ATS offered Porter employment, which he accepted. On August 1, ATS's COO asked Porter to keep him updated about communications from AAR and Porter said he would. Later that day, the COO texted Porter asking about a rumored meeting between AAR and Chenault Airport. Porter did not inform the COO that he had attended the meeting. In fact, Porter represented that he was having dinner with the executive director of Chennault Airport that evening, but he met with AAR instead. That evening he signed an employment contract with AAR.

When the president of the board of commissioners for Chennault Airport learned that Porter had signed an employment agreement with AAR, he called an emergency meeting for August 3. At this meeting, Porter surrendered Aeroframe's lease and recommended that the Board award the lease to AAR. The board voted to do so. The president of the board testified that he relied on Porter's judgment when he voted on the lease award.

Porter emailed the COO of ATS the next day and stated that he was informed "via email that AAR had secured the lease at Chennault and they are requesting I remove all aeroframe assets over the next two weeks." On August 4, Porter agreed on behalf of Aeroframe to vacate the premises by August 31. A couple days later, ATS sent a

demand letter to Aeroframe advising it to cure its default on the EADS note within five days or face acceleration. Porter decided to close Aeroframe's operations on August 9. He has stated that this was due to the failure of a customer to pay its invoices, lack of funds for payroll, and "imminent foreclosure of the equipment by ATS."

Aeroframe did not cure its default, and ATS sent a letter accelerating the note. Aeroframe signed a strict foreclosure agreement on August 20.

AAR did not end up hiring Porter, and Porter sued. This lawsuit is still pending in the Western District of Tennessee.[1] Emails among AAR employees suggest that they could not hire Porter because he did not make payroll at least twice and blamed his failure on his customers.[2]

---

1. *See Porter v. AAR Aircraft Servs., Inc.*, 2:15-cv-02780-JTF-tmp (W.D. Tenn.).

2. Part of one email states:

> Two reasons why Roger cannot go into an operating position at our new business in Lake Charles:
>
> 1. He has committed the most grievous of business leadership/ownership mistakes by missing at least two payrolls. This will totally diminish employee trust, confidence and therefore his leadership effectiveness.
>
> 2. He blames his failure on his customers FedEx and ILFC. We can't afford to have a leader who blames his customers for his failure. In my brief conversations I did not hear him take ownership for his failure. I only want leaders who take ownership.

II. Procedural History

Michael Ashford, a former employee of Aeroframe, sued Aeroframe and ATS in October 2013 in state court. Ashford claimed that under Louisiana's Last Paycheck Law, Aeroframe owed him an amount equal to his unpaid wages and vacation time. He also sought statutory penalties equal to 90 days of wages, attorney's fees, costs, and interest under La. Rev. Stat. 23:632. Ashford sued ATS for interference with a contract, violations of the Louisiana Unfair Trade Practices Act ("LUTPA"), and violations of La. Civ. Code Art. 2315. ATS cross-claimed against Aeroframe and brought a third-party claim against Porter. Porter and Aeroframe cross-claimed against ATS. Ashford, Porter, and Aeroframe are citizens of Louisiana. ATS is a Washington corporation.

a. Jurisdiction Disputes

ATS removed the case to federal court in May 2014. During discovery in state court, ATS received a copy of an email written by Ashford's counsel that, ATS argued, showed that the parties should be realigned so that ATS would be the only defendant and there would be complete diversity. The email sent by Ashford's counsel, Somer Brown at the Cox Law Firm, states:

> For those of you who missed the Aeroframe client meeting on Friday, please allow this to serve as an update and a request for you to execute and return the attached waiver.

Appendix F

In March we traveled to Seattle and took the deposition of ATS's corporate representatives. Those individuals confirmed that, as Roger Porter had previously told us, ATS came in after knowing that AAR was doing a deal with Aeroframe. It is our belief, now confirmed by undisputed testimony from ATS and Roger Porter, that ATS was the cause of Aeroframe's closure and the loss of your employment and benefits.

Roger has filed a cross-claim against ATS for his own losses and those of Aeroframe. Aeroframe has retained counsel from Natchitoches who is working cooperatively with us and will not defend against your wage claims. In fact, your entitlement to wages, penalties, and attorney's fees will be stipulated to by Aeroframe.

Roger has approached my partner, Tom Filo, and requested that her [sic] pursue Roger's individual claim against ATS. Roger has agreed to stipulate in writing that if we represent him, his clients will be paid first out of any monies that he collects. He understands that we will not represent him absent this written agreement.

However, in order for our firm to get involved on behalf of Roger, we need each of our employee-clients to sign the attached conflict waiver. Without this signed document from

> each of you, we cannot assist Roger in collecting money FOR YOU.
>
> If you have any questions, please feel free to call or email me. We need these documents back as soon as possible. If you are not willing to enter into this arrangement with us, please contact me so that I can get you in touch with other counsel, but please also be advised that Roger's written stipulation of first payments will only apply to the employees who are represented by this law firm.

In response to a motion to remand, the magistrate judge rejected ATS's argument that this email was evidence that Ashford's claim against Aeroframe was a pretense. However, the magistrate judge read the letter to show that "since inception of this litigation, these parties have voluntarily entered into an agreement which aligns all of their interests against those of ATS." *Ashford v. Aeroframe Servs., LLC*, No. 2:14-CV-992, 2015 U.S. Dist. LEXIS 193889, 2015 WL 13650549, at *9 (W.D. La. Jan. 30, 2015). The judge held that the letter could be considered for purposes of removal because "[c]ompromise with an adverse litigant is . . . a voluntary action that will support removal." *Id.* (citations omitted).

The magistrate judge noted the absence of a written agreement among Ashford, Aeroframe, and Porter. If no such agreement existed, however, the magistrate judge held there would be an irreconcilable conflict because the same law firm was representing Ashford and Porter.

Id. at *10.[3] The judge held that consent to removal by Aeroframe was not required because it had compromised with Ashford. *Id.* at *11. The district court used different reasoning: it focused on the law of realignment rather than whether Ashford and Aeroframe had a binding settlement. The court held that the "[t]he decision to look past the pleadings and realign the parties on removal was neither clearly erroneous nor contrary to law in light of the admission that Aeroframe had agreed to stipulate to Ashford's damages." *Ashford v. Aeroframe Servs., LLC*, No. 2:14-CV-992, 2015 U.S. Dist. LEXIS 58323, 2015 WL 2089994, at *3 (W.D. La. May 4, 2015). However, the court reversed and remanded in part for the magistrate judge to consider whether the amount in controversy was greater than $75,000. *Id.* at *4.

Ashford filed an affidavit stating that his claims fell below the jurisdictional amount. He then attempted to appeal the diversity decision to this court, but his appeal was dismissed for lack of jurisdiction. The district court issued an amended order holding that it was "facially apparent from plaintiff's pleading" that the amount in controversy exceeded the jurisdictional requirement.

---

3. "The arrangement obviously came to fruition as Mr. Filo [an attorney at the Cox Law Firm] did in fact enroll as counsel some three weeks following the date of the e-mail and plaintiff has admitted as much in brief. The only document missing from this scenario is the written agreement by Aeroframe stipulating Ashford's damages. We must assume that Ashford's counsel insured this step was completed, however, insofar as that was one of the underlying elements of Porter's inducement to have Ashford waive privilege." (internal citation omitted).

Ashford and Aeroframe then appealed to this court, which denied interlocutory review because the questions at issue were primarily factual.

Ashford then filed for summary judgment against Aeroframe, and Aeroframe filed a motion to dismiss against Ashford. The district court stated that these motions "appear to be nothing more than an attempt to re-litigate previously decided issues." *Ashford v. Aeroframe Servs. LLC*, No. 2:14-CV-992, 2017 U.S. Dist. LEXIS 21147, 2017 WL 660578, at *1 (W.D. La. Feb. 14, 2017). The court denied both motions as moot:

> . . . Because the court previously found that the claims between Ashford and Aeroframe are resolved, the Motion for Summary Judgment is moot and will be denied.
>
> Aeroframe's Motion to Dismiss is an even more blatant attempt of the parties to re-litigate their failed motions to remand. . . . These exact arguments were addressed in the Memorandum Ruling denying their motions to remand. While the parties may not be happy with the result, they cannot continuously forum shop with thinly veiled motions to remand. The claims between Ashford and Aeroframe have been resolved.

Id. at *2. The court also noted that it thought ethical rules would be violated if Aeroframe and Ashford were actually adverse. *Id.* at *1 n.5.

Ashford and Aeroframe appealed this decision, which is appeal number 17-30142 pending before us. ATS moved to be added to that case as a party-appellee and Ashford opposed the motion. This court granted the motion.

b. Summary Judgment

ATS moved for summary judgment. Ashford, Porter, and Aeroframe moved to continue deadlines in order to conduct more discovery before summary judgment. The court denied this motion as "simply an effort to delay and prolong these proceedings."

The parties disagreed about how the EADS note should be settled. Porter stated in a declaration that Aeroframe never agreed "to allow ATS to purchase the EADS note." *Ashford v. Aeroframe Servs. LLC*, No. 2:14-CV-00992, 2017 U.S. Dist. LEXIS 79936, 2017 WL 2293109, at *3 (W.D. La. May 24, 2017). The district court found that "plaintiffs' attempt to distinguish between the settlement and purchase of the debt" was a "semantic distinction." *Id.* The court found that:

> none of the plaintiffs offer evidence of another agreed upon method of settling or eliminating the debt. The only evidence provided supports ATS's interpretation of how the debt was to be settled, by purchasing the note from EADS, especially considering that Aeroframe put ATS into direct contact with EADS, ATS rejected Aeroframe's request to borrow the money to pay EADS on the defaulted loan, and

> Aeroframe has failed to offer the court any other viable method of settling the debt.

Id. (footnote omitted).

When discussing Ashford's LUTPA claim,[4] the court decided that the May NDA, which only imposed confidentiality requirements on Aeroframe, was the NDA in effect in July. *Id.* at *12. Therefore, the court decided that ATS did not violate an NDA by communicating with EADS. *Id.* The court also stated that Ashford "presented no evidence that ATS was required to get Aeroframe's authorization to purchase the note." *Id.* The court also held that Ashford had failed to present evidence that "ATS bought the note to sabotage the agreement between Aeroframe and AAR." *Id.* Alternatively, the court held that Ashford's LUTPA claims should also fail because he did not provide evidence of causation: "[Ashford] offers no evidentiary support for the contention that AAR intended to employ and pay back wages for Aeroframe's employees, and this court is unwilling to make such a speculation." *Id.* at *13.

The court used similar reasoning for Porter's LUTPA claim. The court had already held ATS did not breach an NDA by communicating with EADS. The court first noted that "a simple breach of contract claim does not rise to the level of a LUTPA claim." *Id.* at *20. Second, Aeroframe had not provided any evidence that the parties

4. The district court granted ATS's summary judgment motion for all of Ashford's claims, but Ashford only appeals on his LUTPA claim.

intended to settle the debt in a different manner. Even if it had, Porter had failed to show that "ATS intended to sabotage Porter's deal by purchasing or foreclosing on the EADS note." *Id.* The evidence presented by Porter did not show "an element of fraud, deceit, or misrepresentation," as required for a successful LUTPA claim. *Id.* Finally, the court held that Porter had failed to show causation because "AAR extended an offer [of employment] after the purchase of the EADS note and . . . AAR did not employ Porter based on reasons independent from ATS's actions." *Id.* at *21.

The court granted summary judgment to ATS on Porter's tortious interference with business relations claim. Porter had failed to raise a genuine, material fact issue that he was "actually prevented . . . from dealing with a third party" because AAR continued to deal with him after ATS bought the note. *Id.* at *19. The court also held that the evidence "shows that ATS purchased the EADS note for business reasons, not out of malice." *Id.* Alternatively, as with the LUTPA claim, Porter failed to establish a genuine fact issue regarding causation. *Id.*

Finally, the court granted summary judgment against Porter on his intentional interference with contractual relations claim. The court held that "Porter's claim could only survive by expanding Louisiana tort law" because "the Louisiana Supreme Court has only recognized this cause of action against a corporate officer, not a corporate entity." *Id.*

The court also granted summary judgment against Aeroframe, which has not appealed. Ashford and Porter

appealed from the summary judgment decision, yielding case number 17-30483, which was consolidated with appeal number 17-30142.

STANDARD OF REVIEW

This court reviews removal decisions *de novo. Estate of Martineau v. ARCO Chemical Co.*, 203 F.3d 904, 910 (5th Cir. 2000). This court reviews the "district court's determination of the amount in controversy *de novo*." *White v. FCI USA, Inc.*, 319 F.3d 672, 674 (5th Cir. 2003) (citation omitted).

The standard of review on summary judgment is *de novo. Rayborn v. Bossier Par. Sch. Bd.*, 881 F.3d 409, 414 (5th Cir. 2018) (citation omitted). Summary judgment is proper "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Id.* (quoting Fed. R. Civ. P. 56(a)). "All facts and evidence are viewed in the light most favorable to the nonmovant." *In re Larry Doiron, Inc.*, 879 F.3d 568, 570-71 (5th Cir. 2018). This court reviews discovery orders for abuse of discretion. *Grogan v. Kumar*, 873 F.3d 273, 280 (5th Cir. 2017) (citation omitted).

DISCUSSION

I. Diversity Jurisdiction Exists in This Case

The general rule is that diversity of citizenship must exist at the time of filing in state court *and* at the time of removal. *Coury v. Prot*, 85 F.3d 244, 249 (5th Cir. 1996).

A removing defendant bears the burden of establishing removal jurisdiction. Ashford and Porter contend that this case could not properly be removed because, even if the Somer Brown email showed realignment, the magistrate judge found that the realignment of interests occurred *after* the case was filed. Their argument ignores the plain text of the removal statute, which explicitly states that a case may be removed upon "receipt . . . of . . . [a] paper from which it may first be ascertained that the case is one which is *or has become* removable." 28 U.S.C. § 1446(b)(3) (emphasis added). The statute makes it clear that an initially non-removable case may become removable.

One way a case may become removable is through the realignment of interests. We recognized in *Zurn Industries, Inc. v. Acton Construction Co., Inc.* that realignment of parties is an exception to the general rule that diversity of citizenship is decided at the start of the suit. 847 F.2d 234, 236 (5th Cir. 1988). This ruling comports with *Peters v. Standard Oil Co. of Tex.*, which states that any realignment of parties should take place *before* jurisdiction is decided. 174 F.2d 162, 163 (5th Cir. 1949). These decisions accord with Supreme Court precedent, which states that courts must "look beyond the pleadings, and arrange the parties according to their sides in the dispute." *City of Indianapolis v. Chase Nat. Bank of City of New York*, 314 U.S. 63, 69, 62 S. Ct. 15, 17, 86 L. Ed. 47 (1941) (citation omitted).[5] Although in *City of Indianapolis*,

5. For over one hundred years, the Supreme Court has demonstrated that "when the arrangement of the parties is merely a contrivance between friends for the purpose of founding a jurisdiction which otherwise would not exist, the device cannot

the Court realigned the parties and found diversity jurisdiction lacking, nothing in the decision suggests that the opposite result should not also be possible.[6] Indeed, the Wright & Miller treatise confirms that realignment should be determined before jurisdiction, and it states that realignment may destroy or create diversity jurisdiction. 13E Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 3607 (3d ed.).[7]

---

be allowed to succeed." *City of Dawson v. Columbia Ave. Saving Fund, Safe Deposit, Title & Tr. Co.*, 197 U.S. 178, 181, 25 S. Ct. 420, 422, 49 L. Ed. 713 (1905).

6. *Cf. Standard Oil Co. of Tex.*, 174 F.2d at 163-64 (realigning the parties and thereby creating diversity jurisdiction); *City of Vestavia Hills v. Gen. Fid. Ins. Co.*, 676 F.3d 1310, 1313-14 (11th Cir. 2012) ("This Court concludes that the converse of this principle—that parties cannot *avoid* diversity by their designation of the parties—is also true.") (emphasis in original); *Cleveland Hous. Renewal Project v. Deutsche Bank Tr. Co.*, 621 F.3d 554, 559-60, 568 (6th Cir. 2010) ("For the foregoing reasons, we uphold the district court's realignment of the parties to establish complete diversity.").

7. Wright & Miller states:

> Realignment of the parties usually will have the effect of leading the court to decide that subject matter jurisdiction is defeated; the rule works both ways, however, and subject matter jurisdiction will be sustained if diversity of citizenship exists when the parties are aligned properly, even though it is lacking on the face of the pleadings.

13E Wright & Miller, *Federal Practice and Procedure* § 3607 at 308.

Ashford and Aeroframe argue that according to *Vasquez v. Alto Bonito Gravel Plant Corp.*, there had to be an enforceable settlement agreement between them in order for the district court to realign Aeroframe as a plaintiff. 56 F.3d 689 (5th Cir. 1995), *abrogated on other grounds by Estate of Martineau*, 203 F.3d at 911. In *Vasquez*, a defendant attempted to remove because the non-diverse defendant had settled with the plaintiff. *Id.* at 690. This court held that the enforceability of the settlement was a question of state law, found it not sufficiently binding to be enforceable, and dismissed. *Id.* at 693-94.

Vasquez, however, was not a realignment case, nor does this case turn on whether Aeroframe is still a party to this suit. Instead, it turns on whether Aeroframe's promise to pay Ashford was proof that Aeroframe and Ashford had the same "'ultimate interests' in the outcome of the action." *Griffin v. Lee*, 621 F.3d 380, 388 (5th Cir. 2010) (citation omitted).

Likewise, this case is not controlled by *Caterpillar Inc. v. Lewis* or *Grupo Dataflux v. Atlas Global Group, L.P. Caterpillar* held that a jurisdictional defect was cured when the non-diverse party was dismissed from the lawsuit before judgment was entered. 519 U.S. 61, 73, 117 S. Ct. 467, 475, 136 L. Ed. 2d 437 (1996). *Grupo Dataflux* explained that *Caterpillar* had not changed the long-standing principle that one of the original parties to a lawsuit cannot change its citizenship during the lawsuit to preserve or defeat diversity. 541 U.S. 567, 572-75, 124 S. Ct. 1920, 1924-26, 158 L. Ed. 2d 866 (2004). Neither of

these cases involved realignment. I would hold that the district court did not err when it considered events after this lawsuit was filed in state court to determine whether the parties had realigned their interests and the suit had become removable.

This circuit determines proper alignment by asking "whether the parties with the same 'ultimate interests' in the outcome of the action are on the same side." *Griffin*, 621 F.3d at 388 (citation omitted).[8] As pointed out by the district court, the Somer Brown email states that all of Ashford's requested relief ("wages, penalties, and attorney's fees") would be stipulated to by Aeroframe. Therefore, it was proper to realign Aeroframe as a plaintiff.

---

8. In deciding if parties share the same ultimate interests, the Fifth Circuit—along with the Third, Fourth, Sixth, and Ninth Circuits—applies the "primary purpose" test, which looks at whether the parties' interests are aligned regarding the "plaintiff's principal purpose for filing its suit." *See Zurn*, 847 F.2d at 237 ("If the parties are not realigned on that [principal] claim, and there is no showing that the claim was a sham simply asserted for federal jurisdiction, subject matter jurisdiction exists."); *Palisades Collections LLC v. Shorts*, 552 F.3d 327, 337 (4th Cir. 2008); 15 *Moore's Federal Practice: Civil* § 102.20 (Matthew Bender 3d ed.). "Use of this 'primary purpose' test often requires realignment." 15 *Moore's Federal Practice: Civil* § 102.20; *cf. Lowe v. Ingalls Shipbuilding, A Div. of Litton Sys., Inc.*, 723 F.2d 1173, 1178 (5th Cir. 1984); *Indem. Ins. Co. of N. Am. v. First Nat. Bank at Winter Park, Fla.*, 351 F.2d 519, 523 (5th Cir. 1965); *Cleveland Hous. Renewal Project*, 621 F.3d at 559-60; *Dev. Fin. Corp. v. Alpha Hous. & Health Care, Inc.*, 54 F.3d 156, 160 (3d Cir. 1995); *Dolch v. United California Bank*, 702 F.2d 178, 181 (9th Cir. 1983).

It was also proper not to require Aeroframe's consent to removal. Normally all co-defendants must consent to removal. 28 U.S.C. § 1441(a). There is an exception for "nominal" defendants. *See Tri-Cities Newspapers, Inc. v. Tri-Cities Printing Pressmen and Assistants' Local 349*, 427 F.2d 325, 326 (5th Cir. 1970). A defendant is "nominal" if "in the absence of the (defendant), the Court can enter a final judgment consistent with equity and good conscience which would not be in any way unfair or inequitable to the plaintiff." *Id.* at 327 (citation omitted). Aeroframe's stipulation of all requested relief to Ashford rendered it a "nominal" defendant.

Finally, Ashford and Porter challenge whether the jurisdictional amount is met in this case. They rely on Ashford's post-removal affidavit, which stated that the amount in controversy was less than the jurisdictional threshold. This court has held that "if it is facially apparent from the petition that the amount in controversy exceeds $75,000 at the time of removal, post-removal affidavits . . . reducing the amount do not deprive the district court of jurisdiction." *Gebbia v. Wal-Mart Stores, Inc.*, 233 F.3d 880, 883 (5th Cir. 2000) (citing *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 292, 58 S. Ct. 586, 592, 82 L. Ed. 845 (1938)). The magistrate judge found, and the district court affirmed, that Ashford's pleading facially met the jurisdictional amount. Ashford sued ATS for unpaid wages, lost benefits, lost future wages, and attorney's fees. The magistrate judge held that "[a] lthough lost wages may be negligible, future lost wages, future benefits lost and attorney fees for the prosecution of this matter place the amount in controversy well above

the minimum threshold." *Ashford v. Aeroframe Servs., LLC*, 2015 U.S. Dist. LEXIS 58323, 2015 WL 2089994, at *11. In sum, ATS successfully established that diversity existed between it and the realigned parties pursuant to 28 U.S.C. § 1446(b)(3).

II. The 17-30142 Appeal and Sanctions Request

As detailed above, Aeroframe and Ashford filed dispositive motions against each other shortly after their second failed attempt at an interlocutory appeal. The district court found that these motions were "nothing more than an attempt to re-litigate previously decided issues" and denied both motions as moot. *Ashford*, 2017 U.S. Dist. LEXIS 21147, 2017 WL 660578, at *1-2. Given that the briefs in this appeal were almost completely dedicated to the jurisdiction issue, it seems clear that these motions were filed merely to re-litigate jurisdiction. Having concurred with the district court's findings and conclusion of diversity jurisdiction, I would affirm the court's denial of Aeroframe's motion to dismiss and the court's dismissal as moot of Ashford's motion for summary judgment against Aeroframe.

ATS, as intervenor on appeal, has moved for sanctions under 28 U.S.C. § 1927 and Federal Rule of Appellate Procedure 38.

ATS argues that it is entitled to sanctions because Aeroframe and Ashford perpetrated a fraud on the court by (1) manufacturing "an elaborate false conflict between Ashford and Aeroframe to defeat removal" and

(2) attempting "to posture these appeals in such a way that ATS did not have the right to participate such that this Court would not be presented with a clear picture of the facts and circumstances of these appeals." ATS asserts that the 17-30142 appeal violates Rule 3.1 of the Rules of Professional Conduct. ATS argues that the appeals should be dismissed with prejudice and ATS should be awarded costs and fees. To the date of its brief, ATS's total legal expenses have well exceeded $600,000.

Ashford responds that ATS has already moved for sanctions against Porter in district court. The court stayed the underlying case until the two appeals are resolved. Ashford argues that ATS is trying to avoid the district court's stay order and deny due process to Ashford by bypassing a discovery hearing on these issues. Ashford denies that ATS has proven collusion. Ashford contends that ATS is the reason that Porter is in this case, and "[h]ow ATS's actions in bringing a party into this lawsuit amounted to fraud by Mr. Ashford's counsel is unfathomable."

These cases have more than a whiff of professional impropriety and shenanigans. From this court's vantage point, it is difficult to separate real litigation abuse from "mere" hardball litigation tactics. Sanctions must also, lamentably, take into consideration the majority's insistence on dismissing this case. Because Rule 11 does not seem to preclude the imposition of post-dismissal sanctions, I believe the district court should consider this possibility, on whom sanctions should be imposed, and what amount is appropriate.

III. The 17-30483 Appeal

a. The District Court Did Not Abuse Its Discretion when It Denied Ashford's Request for Additional Discovery Before Summary Judgment

Ashford argues that the district court abused its discretion when it denied his motion for further discovery before granting summary judgment. He also argues that he was at a disadvantage because many of ATS's facts came from a litigation involving AAR in Tennessee to which Ashford is not a party. Ashford did not, however, comply with Fed. Rule Civ. Pro. 56(d) by submitting an affidavit "that it cannot present facts essential to justify its position." ATS responds that the documents from the Tennessee litigation were Porter's pleadings and affidavit, and Ashford is represented by the same law firm as Porter. ATS also points out that Ashford was able to conduct depositions of ATS's CFO and COO, who were involved in the Aeroframe negotiations. Given Ashford's vexatious behavior, the district court did not abuse its discretion when it found that this motion was "simply an effort to delay and prolong these proceedings" and denied the motion.

b. The Summary Judgment Ruling

As detailed above, the district court granted summary judgment to ATS on the LUTPA claims after holding that Porter and Ashford had failed to present evidence of causation. Ashford argues that "[w]hether Aeroframe could have made payroll and/or whether AAR would

have already taken over operations but for the ATS Note purchase and foreclosure are issues that should not be decided summarily and as a matter of law." However, he cites no proof that AAR had intended to hire Aeroframe's employees. Porter fails to address the causation issue and has therefore waived it. *N.W. Enterprises Inc. v. City of Houston*, 352 F.3d 162, 183 n.24 (5th Cir. 2003). Ashford provides some arguments regarding causation in his reply brief. Because these are brought up for the first time in the reply brief, they are waived. *DePree v. Saunders*, 588 F.3d 282, 290 (5th Cir. 2009). Even if they were not waived, they suffer from the same defect the original brief did because they fail to point the court to evidence that supports Ashford's causation theory. Summary judgment against Porter and Ashford on their LUTPA claims should be affirmed.[9]

CONCLUSION

For the foregoing reasons, I would uphold diversity jurisdiction in this case. I would dismiss the 17-30142 appeal. I would affirm the district court's denial of Ashford's motion for further discovery and grant of summary judgment to ATS on all claims. I urge the district court to consider Rule 11 sanctions as authorized. Given the majority's differing conclusion on these points, I respectfully dissent.

---

9. Porter does not explicitly state which claims he is appealing. He has failed to address the district court's reasoning regarding his two other claims, so they are also waived. *N.W. Enterprises Inc.*, 352 F.3d at 183 n.24.

APPENDIX G — DENIAL OF REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, FILED JUNE 24, 2024

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 22-30288

MICHAEL ASHFORD,

Plaintiff-Appellant-Appellee,

versus

AEROFRAME SERVICES, L.L.C.,

Defendant-Appellant,

versus

AVIATION TECHNICAL SERVICES, INCORPORATED,

Defendant-Third Party Plaintiff-Appellee,

versus

ROGER ALLEN PORTER, II,

Third Party Defendant-Appellant,

Appendix G

CONSOLIDATED WITH

No. 22-30185

LAWRENCE ADAMS; TIMOTHY COWAN; JOSEPH DEBARTOLA; KATHLEEN DEBARTOLA; KAREN W. DEJEAN; ERIC DRAYTON; FRANK HAYES; DIANA D. PENA; GERALD K. RATHER; TRACY REED; ALLISON WILLIAMS,

Plaintiffs-Appellees-Appellants,

versus

AEROFRAME SERVICES, L.LC.,

Defendant-Appellant,

versus

AVIATION TECHNICAL SERVICES, INCORPORATED,

Defendant-Appellee,

CONSOLIDATED WITH

No. 22-30186

TIMOTHY CLEAVES; MICHAEL J. DAIGLE; MOHAMMAD ELBJEIRMI; JOSEPH HEIN;

Appendix G

DERRICK ROBERSON; ERIC ROGILLIO;
AMY SARVER,

Plaintiffs-Appellees-Appellants,

versus

AEROFRAME SERVICES, L.L.C.,

Defendant-Appellant,

versus

AVIATION TECHNICAL SERVICES,
INCORPORATED,

Defendant-Appellee,

CONSOLIDATED WITH

No. 22-30187

DON BORING; EMILY GRIMMETT; JAY ABBOTT;
RONNIE ORGERON; NATHAN M. SCALISI,

Plaintiffs-Appellees-Appellants,

versus

AEROFRAME SERVICES, L.L.C.,

Defendenat-Appellant,

versus

AVIATION TECHNICAL SERVICES, INCORPORATED,

Defendant-Appellee,

CONSOLIDATED WITH

No. 22-30188

KEITH COOLEY; KOURI DONAHOO; DONALD R. HEBERT; JAKE MANISCALCO; ERIC R. MARTIN; ELMER DEWAYNE NICK, JR.; ROGER LADELL PARIS; JASON SOILEAU; JOHN UPMEYER; CARL WARD; JONATHAN WILSON; TERRA SOILEAU,

Plaintiffs-Appellees-Appellants,

versus

AEROFRAME SERVICES, L.L.C.,

Defendant-Appellant,

versus

AVIATION TECHNICAL SERVICES, INCORPORATED,

Defendant-Appellee,

Appendix G

CONSOLIDATED WITH

No. 22-30189

BRIAN MORVANT; GORDON ST. GERMAIN,

Plaintiffs-Appellees-Appellants,

versus

AEROFRAME SERVICES, L.L.C.,

Defendant-Appellant,

versus

AVIATION TECHNICAL SERVICES, INCORPORATED,

Defendant-Appellee,

CONSOLIDATED WITH

No. 22-30190

BRUCE DAY,

Plaintiff-Appellant,

Appendix G

versus

AEROFRAME SERVICES, L.L.C.,

Defendant-Appellant,

versus

AVIATION TECHNICAL SERVICES, INCORPORATED,

Defendant-Appellee,

CONSOLIDATED WITH

No. 22-30191

RONALD BLANTON; TOM FRANCE; DUSTIN GILLEY; MICHAEL HEATH; RICHARD D. HOLT; SEAN HUDNALL; HOLLY LABOVE; ROBERT LAFLEUR; MICHAEL MCCLOUD; PHILIP WELLS; RAMIL IVAN R. DECENA; SHIRLEY A. OLIVIER; SANDRA PEAK; CAROLYN MANSON,

Plaintiffs-Appellees-Appellants,

versus

Appendix G

AEROFRAME SERVICES, L.L.C.,

Defendant-Appellant,

versus

AVIATION TECHNICAL SERVICES, INCORPORATED,

Defendant-Appellee,

CONSOLIDATED WITH

No. 22-30192

JOEY T. DECOLONGON: BRIDGETTE KING; CRAIG LAFLEUR; CHRISTOPHER MECHE; JARED ROBERSON; CLARA ROY,

Plaintiffs-Appellees-Appellants,

versus

AEROFRAME SERVICES, L.LC.,

Defendant-Appellant,

versus

Appendix G

AVIATION TECHNICAL SERVICES, INCORPORATED,

Defendant-Appellee,

CONSOLIDATED WITH

No. 22-30193

MARIO BARREDA; MYRA B. BOURQUE; DANNY LEE BUSH; BRENDAN CALLAHAN; KAREN CHASSON; ANTONIO CHAVEZ; BARRON CLARK; CYNTHIA DAVIDSON; DARICK DAVIDSON; MICHAEL P. ELENBAAS; MICHAEL FONTENOT; PATRICK GAYNOR; JUDY MARCEAUX; KENNETH MILLER; GEOFFREY OMEARA; STEPHEN ROBINSON; GEROGE SANTARINA; FRANKLIN K. WELCH,

Plaintiffs-Appellees-Appellants,

versus

AEROFRAME SERVICES, L.L.C.,

Defendant-Appellant,

versus

Appendix G

AVIATION TECHNICAL SERVICES, INCORPORATED,

Defendant-Appellee,

CONSOLIDATED WITH

No. 22-30194

JENNY WARNER,

Plaintiff-Appellee-Appellant,

versus

AEROFRAME SERVICES, L.L.C.,

Defendant-Appellant,

versus

AVIATION TECHNICAL SERVICES, INCORPORATED,

Defendant-Appellee,

Appendix G

CONSOLIDATED WITH

No. 22-30196

HAROLD J. GALLOW; IRMA CHAPMAN; CHRISTINE QUEBODEAUX; DUSTIN REGAN; ANGELLA M. GUARJARCLE; SONITA JOSEPH; JASON FRUGE; DONALD B. DUPRE; KRISTY DAVID; ROBBIE W. ELLIS; CLINT THIBODEAUX,

Plaintiffs-Appellees-Appellants,

versus

AEROFRAME SERVICES, L.L.C.,

Defendant-Appellant,

versus

AVIATION TECHNICAL SERVICES, INCORPORATED,

Defendant-Appellee,

CONSOLIDATED WITH

No. 22-30198

ROBERT COLEY; MORRIS W. DOMINGUE; LINDSAY HALPIN; TROY HAYES; VERNON

Appendix G

HOLZKNECHT; SIMONA LASALLE; ALFRED MUELLER; RICHARD THERIOT,

Plaintiffs-Appellees-Appellants,

versus

AEROFRAME SERVICES, L.L.C.,

Defendant-Appellant,

versus

AVIATION TECHNICAL SERVICES, INCORPORATED,

Defendant-Appellee,

CONSOLIDATED WITH

No. 22-30201

CORY COGDILL; HOWARD GUILLORY; JESSE PLUMBER; KEITH PLUMBER,

Plaintiffs-Appellees-Appellants,

versus

Appendix G

AEROFRAME SERVICES, L.L.C.,

Defendant-Appellant,

versus

AVIATION TECHNICAL SERVICES, INCORPORATED,

Defendant-Appellee,

CONSOLIDATED WITH

No. 22-30209

ROBERT RACKARD,

Plaintiff-Appellee-Appellant,

versus

AEROFRAME SERVICES, L.L.C.,

Defendant-Appellant,

versus

AVIATION TECHNICAL SERVICES, INCORPORATED,

Defendant-Appellee,

Appendix G

CONSOLIDATED WITH

No. 22-30207

CHARLES JACKSON,

Plaintiff,

versus

AVIATION TECHNICAL SERVICES, INCORPORATED,

Defendant-Appellee,

versus

AEROFRAME SERVICES, L.L.C.,

Defendant-Appellant,

CONSOLIDATED WITH

No. 22-30212

RUSSELL NEATHAMMER

Plaintiff,

Appendix G

versus

AVIATION TECHNICAL SERVICES, INCORPORATED,

Defendant-Appellee,

versus

AEROFRAME SERVICES, L.L.C.,

Defendant-Appellant

June 24, 2024, Filed

Appeals from the United States District Court for the Western District of Louisiana. USDC Nos. 2:19-CV-610, 2:14-CV-984, 2:14-CV-986, 2:14-CV-985, 2:14-CV-987, 2:14-CV-2323, 2:16-CV-1512, 2:14-CV-990, 2:14-CV-989, 2:14-CV-2538, 2:14-CV-983, 2:14-CV-988, 2:14-CV-2324, 2:14-CV-2325, 2:16-CV-1397, 2:14-CV-991, 2:16-CV-1378.

ON PETITION FOR REHEARING EN BANC

Before BARKSDALE, SOUTHWICK, and HIGGINSON, Circuit Judges.

PER CURIAM*:

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

Appendix G

Treating the petition for rehearing en banc as a petition for panel rehearing (5TH CIR. R. 35 I.O.P.), the petition for panel rehearing is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R. APP. P. 35 and 5TH CIR. R. 35), the petition for rehearing en banc is DENIED.

APPENDIX H — RELEVANT STATUTORY PROVISIONS

28 U.S.C. § 1332. Diversity of citizenship; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between--

(1) citizens of different States;

(2) citizens of a State and citizens or subjects of a foreign state, except that the district courts shall not have original jurisdiction under this subsection of an action between citizens of a State and citizens or subjects of a foreign state who are lawfully admitted for permanent residence in the United States and are domiciled in the same State;

(3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

(4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

28 U.S.C. § 1441. Actions removable generally

(a) Generally.--Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or

the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

(b) Removal based on diversity of citizenship.--(1) In determining whether a civil action is removable on the basis of the jurisdiction under section 1332(a) of this title, the citizenship of defendants sued under fictitious names shall be disregarded.

(2) A civil action otherwise removable solely on the basis of the jurisdiction under section 1332(a) of this title may not be removed if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

28 U.S.C. § 1359. Parties collusively joined or made

A district court shall not have jurisdiction of a civil action in which any party, by assignment or otherwise, has been improperly or collusively made or joined to invoke the jurisdiction of such court.