XII.

APPENDICIES

SEE ATTACHMENTS

1. The Mandate of the Fifth Circuit Court of Appeals.

2. The judgment of the Fifth Circuit Court of Appeals.

3. The judgment of the United States District Court for the Eastern District of Louisiana.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

January 07, 2025

Ms. Carol L. Michel
U.S. District Court, Eastern District of Louisiana
500 Poydras Street
Room C-151
New Orleans, LA 70130

No. 23-30918 Woods v. Smith
USDC No. 2:20-CV-482

Dear Ms. Michel,

Enclosed is a copy of the judgment issued as the mandate and a copy of the court's opinion.

Sincerely,

LYLE W. CAYCE, Clerk

Roeshawn Johnson

By: _____
Roeshawn Johnson, Deputy Clerk
504-310-7998

cc: Mr. Max Victor Camp
Mr. Anthony J. Woods

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
December 30, 2024
Lyle W. Cayce
Clerk

No. 23-30918

ANTHONY J. WOODS,

Plaintiff—Appellant,

versus

N'GAI SMITH, *officially and individually*,

Defendant—Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:20-CV-482

ON PETITION FOR REHEARING EN BANC

Before ELROD, *Chief Judge,* and DENNIS and HIGGINSON, *Circuit Judges.*

PER CURIAM:

Treating the petition for rehearing en banc as a petition for panel rehearing (5TH CIR. R.40 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.40 and 5TH CIR. R.40), the petition for rehearing en banc is DENIED.

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
November 4, 2024
Lyle W. Cayce
Clerk

No. 23-30918

ANTHONY J. WOODS,

Plaintiff—Appellant,

versus

N'GAI SMITH, *officially* and *individually*,

Defendant—Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:20-CV-482

Before ELROD, *Chief Judge*, and DENNIS and HIGGINSON, *Circuit Judges*.

PER CURIAM:*

Appellant Anthony J. Woods alleges that his former supervisor, Appellee N'Gai Smith, created a hostile work environment by calling him a racial epithet in front of other employees. The district court granted Smith's motion for summary judgment, concluding that Woods's Title VII claim was time-barred. Because Woods filed his EEOC charge more than 300 days after

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

the date of the alleged incident without grounds supporting equitable tolling, we AFFIRM.

I

A

Woods worked at French Market Corporation in New Orleans, Louisiana, as a painter with Smith as his immediate supervisor. Woods alleges that French Market leadership racially discriminated against him. Specifically, Woods alleges that on June 22, 2018, Smith called him a racial epithet. This alleged use of a slur is the only instance of a hostile work environment supported by record evidence.[1] Woods filed a grievance in June 2018 requesting authorization to file a lawsuit, compensation, and termination of Smith. After Smith received a suspension and was enrolled in a supervisor course, Woods requested review of the determination, but later recanted his grievance and stated that he was "satisfied with the disciplinary" action in September 2018. Woods continued working for French Market Corporation until his termination on August 23, 2019. Woods later filed his Equal Employment Opportunity Commission charge on October 21, 2019, and received notice of a right to sue shortly after.[2]

B

Woods originally filed this lawsuit in the Eastern District of Louisiana in 2020, naming the mayor and City of New Orleans and several French

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[1] Woods identifies that this incident happened on June 22, 2018, in his grievance form and deposition testimony. Smith does not dispute making the alleged statement in the motion for summary judgment or response brief.

[2] As we have previously held, "Title VII's administrative exhaustion requirement is not a jurisdictional bar to suit but rather a prudential prerequisite under our binding precedent . . . ." *Davis v. Fort Bend County*, 893 F.3d 300, 308 (5th Cir. 2018), *aff'd*, *Fort Bend County v. Davis*, 587 U.S. 541, 552 (2019).

Market management-level employees as defendants. Woods's complaint alleged several claims, including race discrimination and a hostile work environment under Title VII and various other violations of civil rights statutes. The defendants moved to dismiss all claims, contending that Woods failed to state a claim upon which relief could be granted. The district court granted the defendants' motion to dismiss, and Woods first appealed to this court in 2021.

On appeal, we agreed with the district court on all but the hostile-work-environment claim and remanded for further consideration. *Woods v. Cantrell*, 29 F.4th 284, 285–86 (5th Cir. 2022).

On remand, Smith moved for summary judgment, insisting that Woods's hostile-work-environment claim was time-barred. Specifically, Smith asserted that Woods did not file his EEOC charge within 300 days after the alleged racial epithet. In support of his motion, Smith set forth summary judgment evidence that showed Woods testified in a deposition that Smith uttered the alleged racial slur on June 22, 2018, but that he did not file his EEOC charge until October 21, 2019—486 days later. The district court granted Smith's motion on the basis that Woods's claim was time-barred and found no grounds for equitable tolling. *Woods v. Cantrell*, No. 20-CV-482, 2023 WL 8716587, at *3 (E.D. La. Dec. 18, 2023). The district court determined that, even though Woods asserted that the "alleged misconduct occurred between January 1, 2018 and August 23, 2019," there was only one discrete incident of discrimination on record and each discriminatory act has its own limitations period which begins at the time of the conduct. *Id.*

II

Woods now appeals the district court's grant of summary judgment. "We review the district court's ruling on a motion for summary judgment *de novo*, viewing the evidence in the light most favorable to the non-moving

party." *Ramirez v. Killian*, 113 F.4th 415, 421 (5th Cir. 2024). "Summary judgment is appropriate '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)). A genuine dispute of material fact exists if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Sweetin v. City of Texas City*, 48 F.4th 387, 391 (5th Cir. 2022) (quoting *McCarty v. Hillstone Rest. Grp., Inc.*, 864 F.3d 354, 357–58 (5th Cir. 2017)).

"This Circuit has long required plaintiffs to exhaust their administrative remedies before bringing suit under Title VII." *Price v. Choctaw Glove & Safety Co., Inc.*, 459 F.3d 595, 598 (5th Cir. 2006) (citing *Wheeler v. Am. Home Prod., Corp.*, 582 F.2d 891, 897 (5th Cir. 1977)). "In order to file suit under Title VII, a plaintiff first must file a charge with the EEOC within 180 [or 300] days of the alleged discriminatory act." *Id.* (footnote omitted). 42 U.S.C. § 2000e-5(e)(1) extends the limitations period to 300 days for individuals who file with a "State or local agency." Louisiana has declared itself a "deferral state" which extends the period to file to 300 days. La. Rev. Stat. § 51:2231(A).[3]

In addition, "[e]ach discrete discriminatory act starts a new clock for filing charges alleging that act. The charge, therefore, must be filed within the 180- or 300-day time period after the discrete discriminatory act occurred." *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 113 (2002). A party may file past the 300-day period if there are grounds for equitable

[3] *See Lavigne v. Cajun Deep Founds., L.L.C.*, 654 F. App'x 640, 643 (5th Cir. 2016) ("To effectively exhaust administrative remedies, '[a] Title VII plaintiff must file a charge of discrimination with the EEOC no more than 180 days—300 days in a deferral state such as Louisiana—after the alleged discriminatory employment action occurred.'") (quoting *Carter v. Target Corp.*, 541 F. App'x 413, 419 (5th Cir. 2013)).

tolling. *Id.* We have recognized at least three bases for equitable tolling: "(1) the pendency of a suit between the same parties in the wrong forum; (2) plaintiff's unawareness of the facts giving rise to the claim because of the defendant's intentional concealment of them; and (3) the EEOC's misleading the plaintiff about the nature of [his] rights." *Granger v. Aaron's, Inc.*, 636 F.3d 708, 712 (5th Cir. 2011) (quoting *Wilson v. Sec'y, Dep't of Veterans Affs.*, 65 F.3d 402, 404 (5th Cir. 1995)).

III

We now turn to the parties' arguments.[4] Woods asserts that his hostile-work-environment claim is not time-barred under Title VII. He contends that his claim is within the Title VII limitations period to file his EEOC charge because Louisiana Revised Statute § 23:301 *et seq.*[5] provides an additional six months to "file." Woods also asserts the hostile work environment lasted until his last day of employment.

Smith, by contrast, maintains that the hostile-work-environment claim is time-barred because Woods failed to file the EEOC charge within 300 days of the alleged misconduct. Smith cites Woods's deposition

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[4] Woods's original and reply briefs will be construed liberally because he submitted both as a *pro se* litigant. *Brown v. Sudduth*, 675 F.3d 472, 477 (5th Cir. 2012) ("We give *pro se* briefs a liberal construction.") (citing *Mayfield v. Tex. Dep't of Crim. Just.*, 529 F.3d 599, 604 (5th Cir. 2008)). "While we 'liberally construe briefs of *pro se* litigants and apply less stringent standards to parties proceeding *pro se* than to parties represented by counsel, *pro se* parties must still brief the issues and reasonably comply with the standards of Rule 28.'" *Rui Yang v. Holder*, 664 F.3d 580, 589 (5th Cir. 2011) (quoting *Grant v. Cuellar*, 59 F.3d 523, 524 (5th Cir. 1995)).

[5] Construing Woods's reply brief liberally as he is a *pro se* litigant, we understand his reference to an additional six months to "file" as referring to Louisiana Revised Statute § 23:303(D) because § 23:303(D) provides a suspension period of no longer than six months while a Louisiana Employment Discrimination Law claim is investigated by EEOC.

testimony and grievance form, which both show the date of the alleged incident as June 22, 2018.

Though Woods makes several of the same arguments that he raised in the district court, the only issue before us is the timeliness of the hostile-work-environment claim under Title VII.

We agree with the district court that Woods's Title VII claim is time-barred because he filed his EEOC charge more than 300 days after the alleged misconduct.

A

First, Woods asserts that his EEOC charge was timely because the alleged race-based harassment that contributed to the hostile work environment continued until the day he was terminated, August 23, 2019. However, the only discriminatory act that is supported by the summary judgment record is Smith's alleged utterance of the racial epithet in 2018. Woods testified in his deposition and submitted in his grievance form that Smith made the alleged statement on June 22, 2018. Although Woods insists that he endured a hostile work environment until his last day of employment, Woods puts forth no summary judgment evidence of any sort that could support this assertion, and we have already determined that the only basis for the hostile-work-environment claim is the June 2018 slur. *Woods*, 29 F.4th at 285.

His EEOC charge, therefore, was required to be filed within 300 days after June 22, 2018—or at least by April 18, 2019. Here, Woods, filed his EEOC charge on October 21, 2019, more than a year after the date of the alleged incident, and more than 186 days past his April 2019 deadline. Accordingly, Smith is correct that Woods's hostile-work-environment claim is time-barred.

B

Although Woods filed after the 300-day period, failure to timely file an EEOC charge may be acceptable when there are grounds for equitable tolling.[6] While Woods has not asserted grounds for equitable tolling, even interpreting his briefs liberally, we see no evidence that justifies tolling the limitations period in this case. This suit has never been pending in the wrong forum, Woods has always been fully apprised of the facts giving rise to his claim, and the EEOC did not mislead Woods about the nature of his rights. *See Aaron's, Inc.*, 636 F.3d at 712. Therefore, there is no summary judgment evidence supporting the tolling of the 300-day limitations period.

C

Last, Woods contends that Louisiana Revised Statute § 23:303(D) provides an additional six months to file, which would place his EEOC complaint within the Title VII limitations period. While Woods is correct that § 23:303(D) suspends certain limitations periods, the statute's tolling period only applies to claims arising under Louisiana state law, not Title VII. La. Rev. Stat. § 23:303(D) (specifying that § 23:303 applies to "[a]ny cause of action provided in *this* Chapter" (emphasis added)); *see Menson v. City of Baton Rouge*, 539 F. App'x 433, 434 (5th Cir. 2013) (applying federal limitations periods to claims arising under federal law and applying § 23:303 to state-law claims). Therefore, this argument cannot salvage his hostile-work-environment claim brought under Title VII.

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[6] Here, Woods's only basis for his hostile-work-environment claim is the alleged racial epithet on June 22, 2018, and he filed his EEOC charge more than 300 days after the occurrence. Thus, he may proceed only if equitable tolling applies.

IV

In sum, we see nothing in the record that shows a genuine dispute of any material fact. The parties agree on the date of the alleged slur and the date that Woods filed his EEOC charge. None of Woods's authorities supports his contention that his EEOC charge was nonetheless timely filed. Nor does Woods set forth any competent summary judgment evidence that would create a genuine fact dispute as to his claim being time-barred, such as reasonable grounds for equitable tolling or another specific instance of sufficiently severe discrimination within the 300 days before October 21, 2019. Accordingly, we agree with the district court that summary judgment was proper because Woods's Title VII claim is time-barred. Because we agree with Smith that summary judgment was proper, we do not reach Woods's remaining arguments pertaining to remand.

The district court's grant of summary judgment is AFFIRMED.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

ANTHONY WOODS	**CIVIL ACTION**
VERSUS	**No. 20-482**
LATOYA CANTRELL ET AL.	**SECTION I**

ORDER & REASONS

Before the Court is defendant N'Gai Smith's ("defendant") motion for summary judgment.[1] *Pro se* plaintiff Anthony Woods ("plaintiff") opposes the motion.[2] For the reasons that follow, the Court grants defendant's motion for summary judgment.

I. BACKGROUND

This case arises from plaintiff's employment with the French Market Corporation ("French Market") and his subsequent termination. The Court previously set forth the procedural history of this case and need not repeat it in full.[3] The facts relevant to the determination of the instant motion for summary judgment, as stated in plaintiff's complaint, are as follows. Plaintiff alleges that he was terminated from his position at French Market on August 23, 2019.[4] On August 26, 2019, plaintiff appealed his termination to the Civil Service Commission ("the Commission") for the City of New Orleans.[5]

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[1] R. Doc. No. 112.
[2] R. Doc. No. 139.
[3] R. Doc. No. 74.
[4] R. Doc. No. 1, at 5.
[5] *Id.*

The case was terminated after an attorney for the City of New Orleans, a dismissed defendant in this matter, allegedly fraudulently represented that an agreement had been reached with plaintiff.[6] Plaintiff was subsequently assigned a new appeal.[7] On November 21, 2019, the Commission held a hearing on his appeal.[8]

Plaintiff's complaint asserts that he exhausted his administrative remedies by filing a complaint with the Equal Employment Opportunity Commission ("EEOC") and receiving a notice of right to sue letter.[9] Plaintiff filed his complaint with the EEOC on October 21, 2019.[10] The EEOC mailed plaintiff a notice of his right to sue on November 13, 2019.[11] The notice from the EEOC states "that the EEOC is unable to conclude that the information obtained establishes violations of the statute. This does not certify that [plaintiff] is in compliance with the statutes."[12] Plaintiff filed his complaint in this Court on February 11, 2020.[13]

This Court previously issued an order dismissing all of plaintiff's federal claims, finding that plaintiff's allegations did not constitute cognizable, triable claims.[14] Plaintiff appealed this Court's judgment to the U.S. Fifth Circuit Court of

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[6] *Id.* at 6.
[7] *Id.* at 7.
[8] *Id.* As noted by the parties and the Court in its previous order, the Commission had not ruled on this appeal at the time of this Court's previous order. R. Doc. No. 74, at 10 n.68. The Court has not been made aware of any ruling by the Commission that would be relevant to this matter.
[9] R. Doc. No. 1, at 12.
[10] R. Doc. No. 139-1, at 11.
[11] *Id.* at 10.
[12] *Id.*
[13] R. Doc. No. 1.
[14] R. Doc. No. 74.

Appeals. The Court of Appeals affirmed on all counts except one. Specifically, the Fifth Circuit found that plaintiff had stated an actionable claim of hostile work environment by pleading that his supervisor, defendant, "called him a 'Lazy Monkey A__ N___' in front of his fellow employees. *Woods v. Cantrell*, 29 F.4th 284, 285 (5th Cir. 2022). Accordingly, this claim against defendant is the only claim remaining in this action.

Defendant filed a motion for summary judgment, arguing that plaintiff did not timely file his complaint with the EEOC and that plaintiff cannot establish a hostile work environment claim.[15] In response, plaintiff argues that his EEOC complaint was timely filed and that his allegations are factually sufficient to support a hostile work environment claim.[16]

II. STANDARDS OF LAW

Summary judgment is proper when, after reviewing the materials in the record, a court determines that there is no genuine dispute of material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). "[A] party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of [the record] which it believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The party seeking summary judgment need not produce evidence negating the existence of a material fact; it need only point out

[15] *See generally* R. Doc. No. 112-1.
[16] *See generally* R. Doc. No. 139-1.

the absence of evidence supporting the other party's case. *Id.*; *see also Fontenot v. Upjohn Co.*, 780 F.2d 1190, 1195–96 (5th Cir. 1986) ("There is no sound reason why conclusory allegations should suffice to require a trial when there is no evidence to support them even if the movant lacks contrary evidence.").

Once the party seeking summary judgment carries that burden, the nonmoving party must come forward with specific facts showing that there is a genuine dispute of material fact for trial. *See Matsushita Elec. Indus. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). The showing of a genuine issue is not satisfied by creating "'some metaphysical doubt as to the material facts,' by 'conclusory allegations,' by 'unsubstantiated assertions,' or by only a 'scintilla' of evidence." *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994) (citations omitted). Rather, a genuine issue of material fact exists when the "evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). If the nonmovant fails to meet their burden of showing a genuine issue for trial that could support a judgment in favor of the nonmovant, summary judgment must be granted. *See Little*, 37 F.3d at 1075–76.

The party responding to the motion for summary judgment may not rest upon the pleadings but must identify specific facts that establish a genuine issue. *See Anderson*, 477 U.S. at 248. The nonmoving party's evidence, however, "is to be believed, and all justifiable inferences are to be drawn in [the nonmoving party's] favor." *Id.* at 255.

III. ANALYSIS

As mentioned, the only claim that remains in this action is the hostile work environment claim against defendant in which plaintiff alleges that defendant called him a "Lazy Monkey A__ N___" in front of his fellow employees. Defendants argue that this claim is time barred.

"When an employment discrimination claim is brought in a deferral state, an aggrieved employee must file a claim with the designated state agency [responsible for the administration of complaints of employment discrimination] or the EEOC within 300 days of the alleged unlawful employment action." *Kirkland v. Big Lots Store, Inc.*, 547 F. App'x 570, 572 (5th Cir. 2013). Louisiana is a "deferral state." *Conner v. La. Dep't of Health & Hosps.*, 247 F. App'x 480, 481 (5th Cir. 2007).

"Discrete discriminatory acts are not actionable if time barred, even when they are related to acts alleged in timely filed charges." *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 113 (2002). "Each discrete discriminatory act starts a new clock for filing charges alleging that act. The charge, therefore, must be filed within the . . . 300–day time period after the discrete discriminatory act occurred." *Id.* "[A] suit based upon the untimely charge should be dismissed." *Kirkland*, 547 F. App'x at 572 (citing *Barrow v. New Orleans S.S. Ass'n*, 932 F.2d 473, 476–77 (5th Cir.1991)).

"[The Fifth Circuit has] recognized at least three circumstances where failure to timely file may be excused under the equitable tolling doctrine: (1) a suit is pending between the parties in the incorrect forum; (2) the claimant is unaware of facts supporting [his] claim because the defendant intentionally concealed them; and (3)

the claimant is misled by the EEOC or designated state agency about [his] rights." *Id.* "The party who invokes equitable tolling bears the burden of demonstrating that it applies in his case." *Manning v. Chevron Chem. Co., LLC*, 332 F.3d 874, 880 (5th Cir. 2003) (citing *Ramirez v. City of San Antonio*, 312 F.3d 178, 183 (5th Cir. 2002)).

The Court notes that plaintiff in this matter is proceeding *pro se*. "Federal courts, [the Fifth Circuit] included, have a 'traditional disposition of leniency toward *pro se* litigants.'" *Davis v. Fernandez,* 798 F.3d 290, 293 (5th Cir. 2015). "Of course, this is not to say that *pro se* plaintiffs don't have to submit competent evidence to avoid summary judgment, because they do." *Id.* (citing *Gordon v. Watson*, 622 F.2d 120, 123 (5th Cir. 1980)).

In this action, plaintiff testified at his deposition that defendant's comment, which serves as the basis for his only remaining claim, was made on June 22, 2018,[17] and he submitted an internal grievance form on June 29, 2018.[18] Plaintiff did not file a claim with the EEOC until October 21, 2019. At that point, the 300-day filing period had expired.

Plaintiff argues that his complaint was timely filed with the EEOC because the alleged misconduct occurred between January 1, 2018 and August 23, 2019.[19] However, as mentioned, "[e]ach discrete discriminatory act starts a new clock for filing charges alleging that act." *See Nat'l R.R. Passenger Corp.*, 536 U.S. at 113. Because only one claim remains before this Court, the timing of the other alleged acts

[17] R. Doc No. 112-2, at 18.
[18] R. Doc No. 112-3, at 1.
[19] R. Doc. No. 139-1, at 5.

is not relevant to this motion. Accordingly, plaintiff's hostile work environment claim against defendant is time-barred.

Additionally, while plaintiff has not asserted equitable tolling applies, nothing in the record indicates that the failure to timely file was excused by equitable tolling. Plaintiff's lawsuit was not filed in the incorrect forum. There is no evidence that defendant intentionally concealed facts supporting plaintiff's claims. The record does not indicate that the EEOC mislead plaintiff about his rights.[20] Even extending the traditional leniency toward plaintiff, *see Davis,* 798 F.3d at 293, plaintiff has not identified specific facts that establish a genuine issue. *See Little*, 37 F.3d at 1075–76.

IV. CONCLUSION

Accordingly,

IT IS ORDERED that defendant's motion for summary judgment is **GRANTED.** Plaintiff's claim is **DISMISSED WITH PREJUDICE.**

New Orleans, Louisiana, December 18, 2023

LANCE M. AFRICK
UNITED STATES DISTRICT JUDGE

[20] Because the claim is time-barred, the Court need not address whether plaintiff has sufficient evidentiary support for his claim.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

ANTHONY WOODS	**CIVIL ACTION**
VERSUS	**NO: 20-482**
THE CITY OF NEW ORLEANS, ET AL.	**SECTION: "I" (4)**

REPORT AND RECOMMENDATION

Before the Court is a **Motion to Enforce Settlement (R. Doc. 99)** filed by the Defendants, the City of New Orleans (the "City"), Mayor Latoya Cantrell, French Market Corporation, Rhonda Sidney, N'Gai Smith, Robert Matthews, and Deputy City Attorney Elizabeth Robins (collectively "Defendants"). Defendants seek a Court Order to enforce the settlement confected between Plaintiff, Anthony Woods ("Woods" or "Plaintiff"), and Defendants. The motion is opposed. R. Doc. 100. This matter was referred to the undersigned under 28 U.S.C. § 636 (b)(1)(B) and (C).

I. Background

A. Introduction

This case arises from Woods' employment with the French Market and his subsequent termination. R. Doc. 1. Woods alleged that he was the subject of a racial slur by his supervisor, N'Gai Smith. *Id.* Further, Woods alleged that he was the subject of on-going harassment by his supervisor and others at his workplace. *Id.* The record reflects that the City of New Orleans terminated Woods on August 23, 2019. *Id.* Woods then filed his EEOC complaint on October 21, 2019 as a result of his alleged harassment by Defendants. *Id.*

Woods asserted several claims including: 1) Title VII race discrimination based on Plaintiff's termination, French Market's alleged failure to promote him, and hostile work environment claim; 2) Race discrimination in violation of 42 U.S.C. § 1981 based on his termination; 3) Religious discrimination and retaliation under Title VII; 4) Violations of the First Amendment related to his termination brought under 42 U.S.C. 1983, with the individual defendants sued in both their individual and official capacities; 5)

Violations of the Fourteenth Amendment related to his termination, brought under 42 U.S.C. § 1983; and 6) A conspiracy in violation of 42 U.S.C. § 1985. *Id.*

The record shows that Defendants filed a Rule 12 motion to dismiss which was granted and reversed only on a limited basis by the Fifth Circuit. *See* R. Doc. 82. The remaining claim was a single count hostile work environment claim.

While the remaining claim was pending, a settlement conference was held before the undersigned on January 10, 2023. *See* R. Doc. 94-95. Plaintiff and his counsel as well as counsel for Defendants were present at this conference. A settlement was ultimately reached between the parties before the undersigned and was memorialized on the record. *See* R. Doc. 98. Specifically, Plaintiff agreed to accept $7,500.00 and in return, Plaintiff agreed to sign a settlement release and voluntarily dismiss his case. *See id.* The terms of the agreement were stated on the record and transcribed by a court reporter. *Id.*

B. Instant Motion

Defendants filed the instant motion on February 16, 2023. R Doc. 99. In the motion, Defendants allege that Plaintiff's counsel expressed that Plaintiff no longer intends to settle the case and refused to sign the circulated settlement agreement. *Id.* Defendants contend they gave Plaintiff a few weeks to reconsider his decision. *Id.* However, as of this date, Defendants allege that Plaintiff's counsel indicated that Plaintiff continues to refuse to sign the release, and no longer agrees to the terms of settlement reached on January 10, 2023, before the undersigned. Defendants now move to enforce the settlement. *Id.*

Plaintiff filed a response to Defendants' instant motion on February 28, 2022. R. Doc. 100. Plaintiff asserts and does not dispute that Plaintiff, his counsel, and Defendant's counsel achieved a settlement agreement in a settlement conference before the undersigned on January 10, 2023. *Id.* However, at the settlement conference Plaintiff alleges that the undersigned emphasized that all previous defendants sued by Plaintiff had previously been dismissed by the Fifth Circuit and were now "gone." *Id.* Yet, Plaintiff alleges that when he reviewed the Confidential Settlement and Release Agreement tendered by the defendants, all previous defendants' names (including current defendant, N'Gai Smith) were apart of the settlement and release. *Id.*

Plaintiff contends that this inclusion of previous defendants was contrary to the assurances on the record that these defendants had already been dismissed. *Id.* Based on these events, Plaintiff avers that he could not in good faith sign the Settlement Agreement.

II. Standard of Review

Federal law determines whether a settlement agreement is valid "where the substantive rights and liabilities of the parties derive from federal law." *Mid-South Towing Co. v. Har-Win, Inc.*, 733 F.2d 386, 389 (5th Cir. 1984). Under federal law, settlement agreements are contracts. *Guidry v. Halliburton Geographical Services, Inc.*, 976 F.2d 938, 940 (5th Cir. 1992). A binding settlement agreement exists where there is a manifestation of mutual assent, usually in the form of an offer and an acceptance. *See Courtney v. Andersen*, 264 F. App'x 426, 430 (5th Cir. 2008); *Lopez v. Kempthorne*, No. H–07–1534, 2010 WL 4639046, at *4 (S.D. Tex. Nov. 5, 2010) (citing *Triche v. Louisiana Ins. Guaranty Assoc.*, No. 08–3931, 2010 WL 891000, at *5 (E.D. La. Mar. 5, 2010); *Turner Marine Fleeting, Inc. v. Quality Fab and Mechanical, Inc.*, No. Civ.A.02–0091, 2002 WL 31819199, at *4 (E.D. La. Dec.13, 2002)). "If a party to a [federal] suit who has previously authorized a settlement changes his mind when presented with the settlement documents, that party remains bound by the terms of the agreement." *Fulgence v. J. Ray McDermott & Co.*, 662 F.2d 1207, 1209 (5th Cir. 1981).

III. Analysis

Here, the Plaintiff does not dispute that a settlement was reached on January 10, 2023. However, Plaintiff takes issue with the fact that defendants that were previously dismissed by the Fifth Circuit (the City of New Orleans, Mayor Latoya Cantrell, French Market Corporation, Rhonda Sidney, Robert Matthews, and Deputy City Attorney Elizabeth Robins) were named in the settlement agreement on January 10, 2023.

The Fifth Circuit has held that "a motion to enforce a settlement agreement cannot be granted to enforce a term that is not included in the settlement at issue." *Sunshine Kids Found. v. Sunshine Kids Juvenile Prods., LLC*, 540 F. App'x 402, 403 (5th Cir. 2013). The record reflects that the Fifth Circuit upheld the District Judge's ruling, with the exception of the hostile work environment claim. Therefore, the

hostile work environment claim against N'Gai Smith was the only claim at issue during settlement negotiations, as the other claims against the other defendants had been dismissed. As such, the previously dismissed defendants were not apart of the settlement terms, yet were named in the settlement agreement.

The Court finds that enforcing a settlement agreement to include defendants that had been previously dismissed would be done in error. Thus, the Court recommends that the parties should be instructed to modify the settlement agreement to name the correct defendant: N'Gai Smith, as the hostile work environment claim was the only claim at issue during the settlement.

IV. Recommendation

Accordingly,

IT IS RECOMMENDED that the Defendants' **Motion to Enforce Settlement (R. Doc. 99)** be **DENIED.**

IT IS FURTHER RECOMMENDED that the Defendants be ordered to remove the previously dismissed parties from the proposed release agreement, namely: Mayor Latoya Cantrell, City of New Orleans, French Market Corporation, Kathleen Turner, Rhonda Sidney, Robert Matthews, and Elizabeth Robins.

IT IS FURTHER RECOMMENDED that the parties should be instructed to modify the settlement agreement **no later than fourteen (14) days** from the issue of this Court's order to name the correct defendant: N'Gai Smith.

A party's failure to file written objections to the proposed findings, conclusions, and recommendation in a magistrate judge's report and recommendation **within fourteen (14) days** after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court, provided that

the party has been served with notice that such consequences will result from a failure to object. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996).[1]

New Orleans, Louisiana, this 26rd day of June 2023.

KAREN WELLS ROBY
UNITED STATES MAGISTRATE JUDGE

[1]*Douglass* referenced the previously applicable ten-day period for the filing of objections. Effective December 1, 2009, 28 U.S.C. § 636(b)(1) was amended to extend the period to fourteen days.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

ANTHONY WOODS	**CIVIL ACTION**
VERSUS	**NO: 20-482**
LATOYA CANTRELL, ET AL	**SECTION: "I" (4)**

ORDER

The Court, having considered the record, applicable law, the Report and Recommendation of the United States Magistrate Judge, and the failure of the plaintiff to file an objection to the Magistrate Judge's Report and Recommendation, hereby approves the Report and Recommendation of the United States Magistrate Judge and adopts it as its opinion in this matter.

Therefore,

IT IS ORDERED that the defendants' motion to enforce settlement[1] is **DENIED.**

IT IS FURTHER ORDERED that the defendants are ordered to remove the previously dismissed parties from the proposed release agreement, namely: Mayor Latoya Cantrell, City of New Orleans, French Market Corporation, Kathleen Turner, Rhonda Sidney, Robert Matthews, and Elizabeth Robins.

IT IS FURTHER ORDERED that the parties are instructed to modify the settlement agreement, no later than **JULY 25, 2023**, to name the only remaining defendant, N'Gai Smith. The parties shall then sign the settlement agreement.

New Orleans, Louisiana, this 11th day of July, 2023.

LANCE M. AFRICK
UNITED STATES DISTRICT JUDGE

[1] Rec. Doc. No. 99