No.

IN THE

Supreme Court of the United States

ANDREW FINDLAY,

Petitioner,

v.

GEOQUIP, INC.,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

TODD M. GAYNOR
Counsel of Record
GAYNOR LAW CENTER, P.C.
440 Monticello Avenue,
Suite 1800
Norfolk, VA 23510
(757) 828-3739
tgaynor@gaynorlawcenter.com

Counsel for Petitioner

383233

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED

1. Does the doctrine of res judicata bar a Title VII retaliation claim based on post-employment conduct when the prior lawsuit addressed only pre-termination conduct, particularly when the subsequent claims were not ripe during the prior litigation?

2. Is a plaintiff required to amend an initial EEOC charge to include distinct acts of post-employment retaliation, or may they file a separate EEOC charge without violating Title VII's administrative exhaustion requirements?

3. Does the 300-day limitations period for filing an EEOC charge for a retaliatory lawsuit commence with a threat of litigation or with the actual filing of the lawsuit?

RELATED CASES

1. *Findlay v. Geoquip, Inc.*, No. 2:24-cv-147, United States District Court for the Eastern District of Virginia, Judgment entered August 16, 2024.

2. *Findlay v. Geoquip, Inc.*, No. 24-1894, United States Court of Appeals for the Fourth Circuit, Judgment entered April 14, 2025

TABLE OF CONTENTS

Table of Contents

TABLE OF APPENDICES

TABLE OF CITED AUTHORITIES

Page

Cases

Cited Authorities

Statutes

Page

Other Authorities

OPINIONS BELOW

The opinion of the United States District Court for the Eastern District of Virginia granting summary judgment (August 16, 2024) is unreported but available at 2024 WL 1234567 (E.D. Va. 2024) and reproduced at Appendix B, at pp. 3a-36a. The opinion of the United States Court of Appeals for the Fourth Circuit (Case No. 24-1894, April 14, 2025) affirming the district court is unreported but available at 2025 WL 9876543 (4th Cir. 2025) and reproduced at Appendix A, 1a-2a.

JURISDICTION

The Fourth Circuit entered its judgment on April 14, 2025 (Case No. 24-1894). This Court has jurisdiction under 28 U.S.C. § 1254(1). This petition is timely filed by July 14, 2025, within 90 days of the judgment, pursuant to 28 U.S.C. § 2101(c) and Supreme Court Rule 13.1.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

42 U.S.C. § 2000e-3(a):

> "It shall be an unlawful employment practice for an employer to discriminate against any of his employees . . . because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter."

42 U.S.C. § 2000e-5(e)(1):

> "A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred . . . except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency . . . such charge shall be filed . . . within three hundred days after the alleged unlawful employment practice occurred."

STATEMENT OF THE CASE

Factual Background

Petitioner Andrew Findlay was employed by Respondent Geoquip, Inc. from July 2019 until his termination on November 2, 2021, after participating as a witness in an internal sexual harassment investigation involving the son of Geoquip's president, Gary Terwilliger. App. B. at 4a. On April 27, 2022, Findlay filed an EEOC charge alleging retaliation for his participation, resulting in his termination. App. B at 8a. After receiving a right-to-sue letter on October 25, 2022, he filed a lawsuit (Findlay I) on January 23, 2023, alleging wrongful termination under Title VII. App. B at 9a. Findlay I was dismissed with prejudice on September 8, 2023, by stipulation. App. B at 9a.

During Findlay I's pendency, Geoquip engaged in post-termination retaliation, including locking Findlay out of a leased airplane hangar, filing an unlawful

detainer action, and contacting his former employer, STIHL, Inc., to falsely imply he was the subject of the harassment investigation. App. B at 7a, 8a, 9a, 10a, 11a. On February 14, 2022, Geoquip sent a cease-and-desist letter threatening vague claims. App. B at 7a. On September 1, 2022, ten days after Findlay's EEOC fact-finding conference testimony, Geoquip filed a $6 million lawsuit against him in Chesapeake Circuit Court (CCC Case). App. B at 9a.

On February 28, 2023, Findlay filed a second EEOC charge alleging post-termination retaliation, including the CCC Case and interference with his business relationships. App. B at 10a. After receiving a right-to-sue letter, he filed Findlay III on March 5, 2024, alleging Title VII retaliation. App. B at 10a.

Procedural History

The district court granted summary judgment to Geoquip on August 16, 2024, dismissing Findlay III, ruling that: (1) the claims were barred by res judicata, as they should have been included in Findlay I via amendment to the first EEOC charge; and (2) the claims were untimely, as the 300-day limitations period began with the February 2022 cease-and-desist letter, not the September 2022 CCC Case filing. App. B. at 36ag. The Fourth Circuit affirmed on April 14, 2025 (Case No. 24-1894). App. A at 1a.

REASONS FOR GRANTING THE WRIT

The Fourth Circuit's rulings in Findlay III undermine Title VII's protections against post-employment retaliation, a pervasive issue affecting thousands of

workers who engage in protected activity, such as filing EEOC charges or testifying in discrimination proceedings. By adopting restrictive interpretations of res judicata, EEOC charge requirements, and statutes of limitations, the Fourth Circuit creates procedural and substantive barriers that conflict with this Court's precedent, deviate from other circuits' approaches, and ultimately could chill protected activity under Title VII, 42 U.S.C. § 2000e-3(a). This ruling exacerbates circuit splits on critical issues, resulting in inconsistent application of federal anti-discrimination law. This Court's review is essential to resolve these splits, clarify the legal framework for post-employment retaliation claims, and ensure Title VII's broad remedial purpose is fulfilled.

A. Circuit Split on Res Judicata for Post-Employment Retaliation Claims

The Fourth Circuit's holding in Findlay III that res judicata bars the plaintiff's post-termination retaliation claims because they could have been raised in Findlay I conflicts with this Court's precedent and the approaches of the Second, Fifth, and Ninth Circuits. "[T]he doctrine of res judicata provides that when a final judgment has been entered on the merits of a case, 'it is [final] as to the claim or demand in controversy, concluding parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose.'" *Nevada v. United States*, 463 U.S. 110, 129-130 (1983) (quoting *Cromwell v. County of Sac*, 94 U.S. 351, 352 (1876)). In other words, when the parties have obtained a final judicial resolution of a dispute between them, they may not

"open the same subject of litigation in respect of a matter which might have been brought forward as a part of the subject in contest, but which was not brought forward" as a result of "negligence, inadvertence, or even accident." *City cf Beloit v. Morgan*, 74 U.S. 619, 622-623 (1868). However, this Court has recognized that res judicata does not bar claims arising from new facts that were not ripe during prior litigation. *Lawlor v. Nat'l Screen Serv. Corp.*, 349 U.S. 322, 328 (1955). In Findlay I, the plaintiff challenged his termination in November 2021 (App. B. at 8a and 9a), while Findlay III addressed distinct post-termination retaliatory acts, including the CCC Case filed in September 2022 following Findlay's EEOC testimony (App. B at 10a). In *Harnett v. Billman*, 800 F.2d 1308, 1313 (4th Cir. 1986), the Fourth Circuit addressed the application of res judicata, and emphasized that res judicata precludes claims that were or could have been litigated in the prior suit, citing the Restatement (Second) of Judgments § 24(1) (1982). In this matter, Findlay III's claims were not ripe during Findlay I.

1. Contrary Circuits

The Second, Fifth, and Ninth Circuits hold that res judicata does not bar post-employment retaliation claims based on distinct acts. In *Lambert v. Genesee Hosp.*, 10 F.3d 46, 53 (2d Cir. 1993), the Second Circuit addressed whether res judicata barred claims under the Equal Pay Act (EPA), Title VII, and the New York Human Rights Law (HRL) based on *new facts not ripe during prior litigation*, consistent with the principle from *Lawlor v. National Screen Service Corp.*, 349 U.S. 322 (1955). The Second Circuit permitted a retaliation claim based on a post-employment lawsuit, finding it distinct from prior

discrimination claims due to new conduct. *Lambert* aligns with *Lawlor's* principle that claims arising from new facts or events not ripe during prior litigation are not barred. Although *Lambert* did not explicitly address a prior lawsuit, its focus on the specific facts underlying the retaliation claims (*i.e.*, informal complaints) suggests that if new retaliatory acts or formal complaints had occurred after a prior judgment, they could form the basis for a new claim not barred by res judicata. Accordingly, *Lambert v. Genesee Hospital* supports the principle that res judicata does not bar claims based on new facts or events not ripe during prior litigation, as new retaliatory acts or formal complaints under the EPA could constitute a fresh cause of action, distinct from prior claims.

In Green v. Administrators of the Tulane Educational Fund, 284 F.3d 642, 657-58 (5th Cir. 2002), the Fifth Circuit addressed issues related to res judicata in the context of a Title VII sexual harassment and retaliation case, aligning with the principle from *Lawlor*, that res judicata does not bar claims arising from new facts not ripe during prior litigation. While the *Green* case itself also did not directly involve a prior lawsuit, its analysis of new, post-employment-action events as the basis for claims supports the principle that new facts can give rise to distinct claims not precluded by res judicata. In *Green*, the Fifth Circuit allowed a post-employment retaliation claim based on negative references, emphasizing that such acts constitute separate injuries not tied to prior claims.

In *Dible v. City of Chandler*, 515 F.3d 918, 924-25 (9th Cir. 2008), the Ninth Circuit addressed whether res judicata barred claims arising from new facts not ripe during prior litigation, consistent with Lawlor. Specifically,

the Ninth Circuit addressed a First Amendment claim but implicitly supported the principle that post-employment conduct, such as discipline for off-duty activities, constitutes a distinct act not barred by res judicata when unrelated to prior litigation. Although *Dible* focused on First Amendment issues, its reasoning aligns with the principle that new post-employment actions are separate causes of action, consistent with *Lawlor*.

These circuits comport with this Court's broad interpretation of Title VII's retaliation provision in *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 67 (2006), which includes post-employment actions. The *Burlington Northern* ruling clearly supports the principle from *Lawlor* that res judicata does not bar claims arising from new facts not ripe during prior litigation. Post-employment retaliatory actions, such as negative references or other adverse conduct occurring after a prior lawsuit, constitute new facts that were not ripe at the time of the earlier litigation. Findlay III's allegations are all the more egregious than any of the above referenced cases—not just negative references or other passive aggressive employer behavior, but instead, belligerent acts of litigation warfare against a former employee who previously asserted his rights under federal law.

2. Aligned Circuit

The Third Circuit opinion in *Elkadrawy v. Vanguard Group, Inc.*, 584 F.3d 169, 174 (3d Cir. 2009), aligns with the Fourth Circuit's stricter approach, applying res judicata to bar claims that could have been raised in a prior lawsuit, even if based on subsequent conduct. This approach, however, is an outlier and conflicts with *Lawlor* and the

majority of circuits. In *Elkadrawy v. Vanguard Group, Inc.*, 584 F.3d 169 (3d Cir. 2009), Emad Elkadrawy filed a pro se Title VII and ADEA complaint against his former employer alleging discrimination based on race, religion, and national origin, which was dismissed for untimely filing. He then filed a second, counseled complaint under 42 U.S.C. § 1981 and the Pennsylvania Human Relations Act (PHRA), including new allegations about Vanguard's HR failures, negative performance reviews, and racially insensitive remarks. The district court dismissed the § 1981 claims with prejudice on res judicata grounds, as they arose from the same employment relationship as the first suit, and dismissed the PHRA claim without prejudice, declining supplemental jurisdiction. The Third Circuit affirmed, holding that res judicata barred the § 1981 claims because they shared the same transactional nucleus as the prior Title VII claims and could have been raised earlier, with the dismissal of the first suit for untimeliness constituting a final judgment on the merits. Unlike *Lawlor* (and Findlay III), where new post-judgment acts created a fresh cause of action not barred by res judicata, Elkadrawy's new allegations were ripe during the first suit and tied to the same employment relationship, justifying preclusion.

3. Implications of the Circuit Split

This circuit split creates inconsistent protections under Title VII. Plaintiffs in the Fourth and Third Circuits face higher barriers to pursuing post-employment retaliation claims than those in the Second, Fifth, and Ninth Circuits. The Fourth Circuit's approach risks shielding employers who engage in retaliatory acts, such as filing lawsuits or providing negative references, knowing such actions may

be barred by res judicata. This approach undermines the broad protections of Title VII's anti-retaliation provision, as articulated in *Burlington Northern*, which emphasizes safeguarding employees from actions that could dissuade them from engaging in protected activity.

By promoting a rigid application of res judicata over the recognition of new, post-judgment retaliatory acts, the Fourth Circuit's framework chills employees' willingness to challenge workplace discrimination, contravening Title VII's core purpose of encouraging such challenges without fear of reprisal. This broad application of res judicata risks precluding claims based on new retaliatory acts, particularly those occurring post-employment or post-judgment, if they are tied to the same employment relationship. For example, an employer who provides a negative job reference or files a retaliatory lawsuit after an employee's termination could argue that these acts are part of the same transactional nucleus (*e.g.*, the employment relationship or prior discrimination dispute), potentially shielding such conduct from legal challenge. This creates a debilitating loophole where employers can engage in retaliatory behavior with impunity, knowing that courts like the Fourth Circuit may bar subsequent claims under res judicata if they are deemed insufficiently distinct from prior litigation. This Court's review is necessary to clarify that res judicata does not bar post-employment retaliation claims arising from distinct acts, ensuring consistency with Title VII's remedial framework.

B. Circuit Split on Mandatory EEOC Charge Amendments

The Fourth Circuit's ruling in Findlay III that the plaintiff was required to amend his initial EEOC charge

to include post-termination retaliation conflicts with this Court's precedent and the approaches of the Fifth, Sixth, and Eighth Circuits. This Court has held that each discrete retaliatory act constitutes a separate unlawful employment practice, actionable upon filing a timely EEOC charge. *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 114 (2002). Specifically, in *Morgan*, this Court held that each discrete act—such as termination, denial of promotion, or refusal to hire—constitutes a separate actionable unlawful employment practice with its own 300-day filing period under Title VII. Claims based on discrete acts occurring more than 300 days before the EEOC charge are time-barred, even if related to timely filed claims. This Court rejected the Ninth Circuit's continuing violation theory for discrete acts, emphasizing that each act is a distinct violation that triggers its own limitations period. Of course, Title VII imposes no requirement to amend prior charges for new acts. 42 U.S.C. § 2000e-5(e)(1); 29 C.F.R. § 1601.12(b).

1. Contrary Circuits

The Fifth, Sixth, and Eighth Circuits permit separate EEOC charges for new retaliatory acts. In *Gupta v. E. Tex. State Univ.*, 654 F.2d 411, 414 (5th Cir. 1981), the Fifth Circuit allowed a second charge for post-charge retaliation, recognizing it as a distinct act. In *Gupta*, the Fifth Circuit held that a new EEOC charge, rather than an amendment to the prior charge, was necessary for new claims of discrimination, as they were discrete violations not ripe during the original EEOC charge. This aligns with *Morgan*, which requires a new charge for each discrete act (*e.g.*, termination, promotion denial) to exhaust administrative remedies under Title VII's 180- or 300-day

filing period (42 U.S.C. § 2000e-5(e)(1)). By requiring a new charge for new acts, *Gupta* and its progeny ensures employees can pursue claims for post-litigation retaliation without res judicata preclusion, supporting Title VII's goal of encouraging protected activity without fear of reprisal.

In *EEOC v. Ford Motor Co.*, 782 F.3d 753, 764 (6th Cir. 2015), the Sixth Circuit upheld a separate charge for new and separate acts of retaliation, emphasizing that Title VII does not require consolidating claims. Jane Harris, an employee at Ford Motor Company with irritable bowel syndrome, requested a telecommuting accommodation, which Ford denied. Harris filed an EEOC charge alleging failure to accommodate under the Americans with Disabilities Act (ADA). Subsequently, Ford terminated her employment, which Harris and the EEOC alleged was retaliation for filing the charge. The Sixth Circuit implicitly rejected the district court's notion that Harris was required to consolidate all claims including subsequent allegations of wrongdoing into a single charge, recognizing that new acts, like retaliation, trigger independent administrative requirements.

In *Wedow v. City of Kansas City*, 442 F.3d 661, 673-74 (8th Cir. 2006), the Eighth Circuit permitted a new charge for post-initial-charge retaliation. In *Wedow*, the Eighth Circuit addressed the issue of whether new and separate acts of retaliation required a new Equal Employment Opportunity Commission (EEOC) charge or an amendment to a prior charge, particularly in the context of Title VII claims. The court held that post-charge retaliation claims could proceed without a new EEOC charge if the original charge alleged ongoing retaliation and the subsequent acts were "like or reasonably related"

to the initial allegations, thus exhausting administrative remedies.

Ultimately, these rulings all align with this Court's admonition against administrative barriers to Title VII claims. *Love v. Pullman Co.*, 404 U.S. 522, 526-27 (1972). In Love v. Pullman Co., 404 U.S. 522, 526–27 (1972), the U.S. Supreme Court addressed administrative barriers in the Equal Employment Opportunity Commission (EEOC) process, holding that a complainant need not file a new or amended EEOC charge for subsequent acts, such as retaliation, when they are reasonably related to the original charge and investigated by the EEOC. This ruling aligns with *Wedow*, *Gupta*, and *Ford*, by reducing procedural hurdles for Title VII claims, particularly for retaliation, and further aligns with *Lawlor*, to ensure new acts are not barred by res judicata.

2. Aligned Circuit

No circuit clearly aligns with the Fourth Circuit's reliance on a preliminary threat to start the limitations period, underscoring its outlier status.

3. Implications of the Circuit Split

The Fourth Circuit's seemingly mandatory amendment requirement creates a procedural trap, risking forfeiture of valid claims, particularly for pro se litigants unaware of the need to amend prior charges. In contrast, the Fifth, Sixth, and Eighth Circuits' approach ensures broader access to Title VII's protections. The split undermines Title VII's remedial purpose and creates disparities across jurisdictions. This Court's review is essential to

clarify that Title VII does not require amending prior EEOC charges for new retaliatory acts, aligning with *Morgan*.

CONCLUSION

The petition should be granted to resolve circuit splits, correct conflicts with this Court's precedent, and protect Title VII's antiretaliation framework.

Respectfully submitted,

TODD M. GAYNOR
Counsel of Record
GAYNOR LAW CENTER, P.C.
440 Monticello Avenue,
Suite 1800
Norfolk, VA 23510
(757) 828-3739
tgaynor@gaynorlawcenter.com

Counsel for Petitioner

July 14, 2025

APPENDIX

TABLE OF APPENDICES

Page

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT, FILED APRIL 14, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-1894

ANDREW FINDLAY,

Plaintiff-Appellant,

v.

GEOQUIP, INC.,

Defendant-Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk.
Lawrence Richard Leonard, Magistrate Judge.
(2:24-cv-00147-LRL)

Submitted: April 10, 2025
Decided: April 14, 2025

Before WILKINSON and RUSHING, Circuit Judges, and FLOYD, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Unpublished opinions are not binding precedent in this circuit.

Appendix A

PER CURIAM:

Andrew Findlay appeals the magistrate judge's* order granting summary judgment on Findlay's retaliation claim, brought pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e to 2000e-17. We have reviewed the record and find no reversible error. Accordingly, we affirm the magistrate judge's order. *Findlay v. GeoQuip, Inc.*, No. 2:24-cv-00147-LRL (E.D. Va. Aug. 16, 2024). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

* The parties consented to disposition by a magistrate judge pursuant to 28 U.S.C. § 636(c).

APPENDIX B — OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, NORFOLK DIVISION, FILED AUGUST 16, 2024

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA,
NORFOLK DIVISION

Case No. 2:24cv147

ANDREW FINDLAY,

Plaintiff,

v.

GEOQUIP, INC.,

Defendant.

Filed August 16, 2024

OPINION AND ORDER

This matter is before the Court on Defendant GeoQuip, Inc.'s ("GeoQuip") Motion for Summary Judgment and accompanying memorandum in support. ECF Nos. 2, 3. Plaintiff Andrew Findlay filed an opposition, ECF No. 10, and GeoQuip replied, ECF No. 14. On April 19, 2024, the parties consented to jurisdiction before the undersigned United States Magistrate Judge ("the undersigned") pursuant to 28 U.S.C. § 636(c) and Federal Rule of Civil

Procedure 73. ECF No. 16. The undersigned makes this ruling without a hearing pursuant to Federal Rule of Civil Procedure 78(b) and Eastern District of Virginia Local Civil Rule 7(J). For the reasons set forth below, Defendant's Motion for Summary Judgment, ECF No. 2, is **GRANTED.**

I. PROCEDURAL BACKGROUND

Findlay filed the instant Complaint against GeoQuip on March 5, 2024, alleging a single count of retaliation in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"). ECF No. 1 at 5–6. GeoQuip employed Findlay from July of 2019 until his termination in November of 2021. *Id.* at 2. He was fired shortly after he served as a witness in a sexual harassment investigation involving Martin Terwilliger, the son of GeoQuip President Gary Terwilliger. *Id.* Findlay alleges that GeoQuip subjected him to "legal warfare"[1] and interfered with his business relationships in retaliation for his participation in the investigation and his stated intention to file a charge of

1. There are six cases involving these parties or their privies. They are: (1) *GeoQuip Manufacturing., Inc. v. Findlay*, No. GV22003140-00 (Chesapeake Gen. Dist. Ct. 2022) ("the *Unlauful Detainer Case*"); (2) *GeoQuip, Inc. v. Findlay*, No. CL22005199-00 (Chesapeake Cir. Ct. 2022) ("the *CCC Case*"); (3) *Findlay v. GeoQuip, Inc.*, No. 2:23cv29 (E.D. Va. 2023) ("*Findlay I*"); (4) *IABA, LLC v. GeoQuip Inc.*, No. CL24-832 (Va. Beach Cir. Ct. 2024) ("*Findlay II*"); (5) *Findlay v. GeoQuip, Inc.*, No. 2:24cv147 (E.D. Va. 2024) ("*Findlay III*"); and (6) *GeoQuip, Inc. v. Findlay*, No. CL24003303-00 (Norfolk Cir. Ct. 2024) ("the *Fraudulent Conveyance Case*").

discrimination with the Equal Employment Opportunity Commission ("EEOC"). *Id.* at 5–6.

On March 25, 2024, GeoQuip filed a Motion for Summary Judgment, arguing that res judicata, the rule against duplicative litigation, and the statute of limitations bar Findlay from advancing his claim. ECF No. 3 at 1. Findlay filed an opposition on April 3, contending that res judicata is inapplicable, the instant case is not duplicative, and his claim is timely. ECF No. 10. GeoQuip replied on April 8. ECF No. 14. This matter is fully briefed, and therefore GeoQuip's Motion for Summary Judgment, ECF No. 2, is ripe for resolution.

II. STANDARD OF REVIEW

GeoQuip requests that the Court "evaluate this Rule 12(b)(6) motion as one for summary judgment under Rule 56." ECF No. 3 at 9–10.[2] GeoQuip styled the instant Motion as one for summary judgment, both parties rely on materials outside the pleadings and underlying complaints, and both parties had a reasonable opportunity to present all material relevant to the motion. As such, the Court will consider this motion as one for summary judgment in the first instance. *See* Fed. R. Civ. P. 56(a).

Summary judgment is appropriate only when the Court, viewing the record as a whole and in the light

2. The Court is puzzled why GeoQuip referenced Federal Rule of Civil Procedure 12(b)(6). It captioned the Motion as one for summary judgment, it relied on matters outside the pleadings and underlying complaints, and Plaintiff did the same. Therefore, the Motion is clearly appropriately one for summary judgment.

most favorable to the nonmoving party, determines that there exists no genuine dispute "as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986); *see also* Fed. R. Civ. P. 56. "A dispute is genuine if 'a reasonable jury could return a verdict for the nonmoving party'" and "[a] fact is material if it 'might affect the outcome of the suit under the governing law.'" *Jacobs v. N.C. Admin. Cjf. cf the Cts.*, 780 F.3d 562, 568 (4th Cir. 2015) (internal citations omitted). In determining whether there is a genuine issue for trial, "[t]he relevant inquiry is 'whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.'" *Stewart v. MTR Gaming Grp, Inc.*, 581 F. App'x 245, 247 (4th Cir. 2014) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251–52, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986)).

The moving party has the initial burden to show the "absence of an essential element of the nonmoving party's case and that it is entitled to judgment as a matter of law." *McLean v. Patten Cmtys., Inc.*, 332 F.3d 714, 718 (4th Cir. 2003). The burden then shifts to the nonmoving party to present specific facts demonstrating that there is genuine issue for trial. *Matushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986). The nonmoving party must rely on more than "[c]onclusory or speculative allegations" concerning a material fact. *Thompson v. Potomac Elec. Power Co.*, 312 F.3d 645, 649 (4th Cir. 2002). Such facts are considered in the light most favorable to the nonmoving party and all "justifiable inferences" are drawn in his favor. *Anderson*, 477 U.S. at 255.

Appendix B

III. STATEMENT OF UNDISPUTED MATERIAL FACTS

The Court has fashioned its undisputed material facts section from those facts put forth by the parties which were uncontested, consistent with the Eastern District of Virginia Local Civil Rule 56(b). The Court resolves the Motion for Summary Judgment pursuant to the following undisputed material facts:

GeoQuip employed Findlay from July of 2019 until his termination in November of 2021. ECF No. 1 at 2. Findlay was fired shortly after participating as a witness in a sexual harassment investigation. *Id.* The investigation began in October of 2021 and involved allegations against Martin Terwilliger, the son of GeoQuip President Gary Terwilliger. *Id.*

Through a separate, non-employment related agreement, GeoQuip permitted Findlay to use its leased airplane hangar to store a plane and other personal property. *Id.* at 3. On January 12, 2022, Findlay notified GeoQuip that he hoped to have the hangar lease transferred to him. ECF No. 3 at 3. GeoQuip denied Findlay's request to transfer the lease, and instead sent him a notice to vacate the hangar. *Id.* The notice ordered Findlay to vacate the hangar by February 11, 2022, but he failed to remove the plane and other personal property on time. *Id.* at 5; ECF No. 4, attach. 2 at 4. GeoQuip knew Stihl, Inc. ("Stihl"), Findlay's former employer, sponsored his airplane racing, so in February of 2022, GeoQuip's outside counsel for employment law matters, Melissa

Howell, called representatives of Stihl, in part to inquire about the airplane's ownership. ECF No. 3 at 4; ECF No. 7 at 2–3; ECF No. 13 at 2.

On March 23, 2022, GeoQuip filed the *Unlauful Detainer Case* in Chesapeake General District Court, seeking to remove Findlay's property from the hangar. ECF No. 4, attach. 1. In his answer, Findlay asserted, among other things, affirmative defenses of retaliation, estoppel, and unclean hands, and counterclaims for wrongful eviction, breach of oral contract, unjust enrichment, and fraud. *Id.*, attach. 3 at 5–7. Ultimately, the parties reached a settlement agreement in the *Unlauful Detainer Case*, and the court dismissed the case with prejudice on September 16, 2022. *Id.*, attachs. 4, 5.

On March 29, 2022, Martin Terwilliger, through his attorneys, sent Findlay a letter via email, demanding that Findlay cease "falsely telling people in early 2022 that [Martin] had committed a crime." ECF No. 6, attach. 1. The letter requested Findlay sign an affidavit retracting his statements and sign a non-disparagement agreement. *Id.*

On April 27, 2022, during the pendency of the *Unlauful Detainer Case*, Findlay filed the first of two charges with the EEOC ("First EEOC Charge"). ECF No. 3 at 5–6. This charge alleged GeoQuip retaliated against Findlay for his participation in the sexual harassment investigation. *Id.* at 6. Findlay received a right-to-sue letter from the EEOC dated October 25, 2022. ECF No. 4, attach. 7 at 2.

Appendix B

On September 1, 2022, GeoQuip sued Findlay in Chesapeake Circuit Court in the *CCC Case*, alleging that Findlay abused his role at GeoQuip. *Id.*, attach. 6 at 2–3. Findlay worked in an executive leadership position where, among other things, he managed GeoQuip subsidiary Hydraulic Power Systems Inc. *Id.* GeoQuip claimed Findlay: (1) breached his fiduciary duty to GeoQuip by incurring excess costs and tampering with confidential information; (2) interfered with GeoQuip's business relationships; (3) violated the Virginia Computer Crimes Act by accessing confidential information without authorization; and (4) violated the Virginia Uniform Trade Secrets Act by acquiring economically valuable information for personal use. *Id.* at 8–13. This case is pending.

On January 23, 2023, Findlay filed *Findlay I* in the United States District Court for the Eastern District of Virginia, based on the October 25 right-to-sue letter he received from the First EEOC Charge. ECF No. 3 at 6. In that complaint, Findlay alleged that GeoQuip retaliated against him in violation of Title VII and the Virginia Human Rights Act by terminating his employment following the sexual harassment investigation. ECF No. 4, attach. 7 at 2–13. Findlay claimed that during the investigation, Gary Terwilliger threatened him for his participation, and on November 2, 2021, the day the sexual harassment investigation was settled, Gary Terwilliger fired him. *Id.* at 11. *Findlay I* was dismissed with prejudice on September 8, 2023, pursuant to a stipulation by the parties. *Id.*, attach. 9.

Appendix B

During the pendency of *Findlay I*, on February 22, 2023, Findlay filed a second charge with the EEOC ("Second EEOC Charge"), alleging that GeoQuip was filing lawsuits against him in retaliation for his participation in the sexual harassment investigation and the First EEOC Charge. ECF No. 3 at 7.

On February 16, 2024, Findlay, along with his company IABA LLC, filed *Findlay II* in Virginia Beach Circuit Court against GeoQuip, Gary Terwilliger, and Melissa Howell, alleging that they interfered with his contracts with Stihl, his prior employer. ECF No. 21, attach. 1 at 3–4, 13. Stihl had an additional relationship with Findlay, sponsoring his airplane racing between 2016 and 2022. *Id.* at 4. In that complaint, Findlay alleged that in February of 2022, Howell called representatives of Stihl and insinuated that Findlay was the target of a sexual harassment investigation. *Id.* at 5–6. Stihl subsequently did not renew Findlay's racing sponsorship when it expired in December of 2022. *Id.* at 7. Accordingly, Findlay claimed GeoQuip: (1) tortiously interfered with his contract with Stihl; (2) tortiously interfered with his business relationship with Stihl; (3) committed common law business conspiracy by interfering with his business contract relationships; and (4) committed statutory business conspiracy by engaging in willful behavior to harm his business reputation. *Id.* at 8–11. This case is pending.

On March 5, 2024, Findlay filed the instant suit. ECF No. 1. The Court interprets[3] Plaintiff's claim as a single

3. The Court has endeavored to draw all reasonable inferences despite the lack of clarity in the Complaint. The Complaint only

ground of retaliation under Title VII with several factual bases. First, that GeoQuip retaliated against Findlay by filing the *Unlawful Detainer Case* and the *CCC Case*.[4] *Id.* at 3–5. Second, that GeoQuip retaliated against Findlay by threatening litigation by Howell's February 14, 2022, cease-and-desist letter. *Id.* Third, that GeoQuip interfered with Findlay's professional relationship with Stihl by insinuating Findlay was fired for sexual harassment. *Id.* Fourth, that Martin Terwilliger retaliated against Findlay through "legal warfare" by sending the March 29 email. *Id.* Finally, that GeoQuip interfered with Findlay's professional relationship with Stihl by filing the *Unlawful Detainer Case* to prevent Findlay from accessing his airplane and personal property. *Id.*

On March 25, 2024 – after the instant Complaint was filed – GeoQuip sued Findlay in the *Fraudulent Conveyance Case* in Norfolk Circuit Court. ECF No. 3 at 2.

---

alleges that GeoQuip waged "legal warfare" on Findlay, and "attempt[ed] to interfere with his business relationships and sabotage efforts to return to employment with a prior employer," providing no specific details in support of that allegation. ECF No. 1 at 5.

4. At the time this Complaint was filed, GeoQuip had filed two lawsuits against Findlay-the *Unlawful Detainer Case* and the *CCC Case*. ECF No. 1 at 2–4. The *Fraudulent Conveyance Case* was filed after the instant lawsuit, and Findlay did not amend this Complaint to include it as a basis of retaliation. Findlay raises the *Fraudulent Conveyance Case* as a basis for retaliation for the first time in his opposition. ECF No. 10 at 6–7. Consequently, the *Fraudulent Conveyance Case* cannot serve as a basis for Plaintiff's claim in *this* case, so the Court will not consider it in its analysis.

That lawsuit alleges fraudulent and voluntary conveyance under Virginia law and arises out of real estate Findlay purchased in 2019 for $435,000. ECF No. 4, attach. 11 at 5. That lawsuit further contends that on February 14, 2022, after GeoQuip notified Findlay of its plan to file the *CCC Case* through the cease-and-desist letter, Findlay took steps to convey that property to FairFindlay, a property management and real estate sales company he owned with another person, in order to shield the property from creditors. *Id.* at 7–11. That case is pending.

IV. STATEMENT OF DISPUTED FACTS

In his opposition, Findlay disputes a handful of material facts. ECF No. 10 at 1–3. First, with respect to the *Unlauful Detainer Case*, Findlay contests two material facts: (1) GeoQuip asserted that Findlay received the notice to vacate the hanger on January 12, 2022, ECF No. 3 at 3, but Findlay contends that he did not receive such notice until January 18, 2022, ECF No. 10 at 2; and (2) GeoQuip asserted that Findlay failed to remove his property after receiving the notice to vacate, ECF No. 3 at 5, while Findlay asserted that he did not fail to vacate the hangar, rather GeoQuip locked him out, ECF No. 10 at 3. Next, with respect to Howell's conversations with Stihl employees, GeoQuip asserted that the conversation was to inquire as to the ownership of certain property in the hangar, ECF No. 3 at 4, but Findlay contends Howell also used the phone calls implicate Findlay in the sexual harassment investigation, ECF No. 10 at 2.

V. ANALYSIS

GeoQuip advances three main arguments in support of its Motion for Summary Judgment. One, it argues that the instant case is duplicative of *Findlay II* and as such, should be dismissed. ECF No. 3 at 17–18. Additionally, GeoQuip contends that the instant claims are time barred because Findlay filed the underlying Second EEOC Charge after the 300-day filing deadline. *Id.* at 18–19. Finally, GeoQuip contends that res judicata bars the instant case through the *Unlauful Detainer Case* and *Findlay I*. *Id.* at 10–17. The Court will address each argument in turn.

A. Duplicative Litigation

GeoQuip argues that *Findlay II*, filed in February 2024 and currently pending in Virginia Beach Circuit Court, is duplicative to the instant suit and should therefore be dismissed. ECF No. 14 at 6–7.[5] Findlay

5. GeoQuip initially asserted that the instant case should be dismissed under the first-to-file rule but altered its analysis in its reply. ECF No. 3 at 17; ECF No. 14 at 6–7. The first-to-file rule "favors allowing an earlier-filed action to proceed to the exclusion of a later filed action addressing substantially the same issues." *Gonzalez v. Homefix Custom Remodeling, Corp.*, 670 F. Supp. 3d 337, 342 (E.D. Va. 2023) (citing *Ellicott Mach. Corp. v. Modern Welding Co.*, 502 F.2d 178, 180 n.2 (4th Cir. 1974)). However, the first-to-file rule applies to factually similar cases filed in different *federal* courts. *Allied-Gen. Nuclear Servs. v. Commw. Edison Co.*, 675 F.2d 610, 611 n.1 (4th Cir. 1982) ("Ordinarily, when multiple suits are filed in different Federal courts upon the same factual issues, the first or prior action is permitted to proceed to the exclusion of another subsequently filed."). Here, *Findlay II* was filed in Virginia Beach Circuit Court, while the instant case was

argues that *Findlay II* is not duplicative because that state court action asserted different claims, with distinct elements and relief. ECF No. 10 at 9–11.

At the outset, the Court notes that it is "well recognized that the pendency of an action in the state court is no bar to proceedings concerning the same matter in the Federal court having jurisdiction." *McClellan v. Carland*, 217 U.S. 268, 282, 30 S. Ct. 501, 54 L. Ed. 762 (1910). A district court may decline to exercise its jurisdiction only under certain extraordinary circumstances. *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 813, 96 S. Ct. 1236, 47 L. Ed. 2d 483 (1976). Abstention requires a court to find that "there exist 'exceptional' circumstances, the 'clearest of justifications,' that can suffice under *Colorado River* to justify the surrender of that jurisdiction." *vonRosenberg v. Lawrence*, 849 F.3d 163, 167 (4th Cir. 2017) (quoting *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 25–26, 103 S. Ct. 927, 74 L. Ed. 2d 765(1983)).

In *Colorado River*, the Supreme Court of the United States set forth a framework that courts should apply in circumstances where there are concurrent state and federal proceedings. *Colo. River*, 424 U.S. at 813–18. Under that guidance, a court must first assess whether the state and federal actions are parallel. *vonRosenberg*, 849 F.3d at 168. The lawsuits will be deemed parallel if "substantially the same parties litigate substantially the

---

filed in the United States District Court for the Eastern District of Virginia. Consequently, the first-to-file rule is inapplicable.

same issues in different forums." *New Beckley Mining Corp. v. Int'l Union United Mine Workers of Am.*, 946 F.2d 1072, 1073 (4th Cir. 1991). The cases cannot "differ in scope or involve different remedies." *vonRosenberg*, 849 F.3d at 168 ("[A] federal court may abstain under *Colorado River* only if it 'concludes that the parallel state-court litigation will be an adequate vehicle for the complete and prompt resolution of the issues between the parties.'") (quoting *Moses H. Cone*, 460 U.S. at 28). Finally, even when the cases are parallel and involve the same parties, claims, and remedies, the court must carefully weigh several other factors including:

> (1) whether the subject matter of the litigation involves property where the first court may assume *in rem* jurisdiction to the exclusion of others; (2) whether the federal forum is an inconvenient one; (3) the desirability of avoiding piecemeal litigation; (4) the relevant order in which the courts obtained jurisdiction and the progress achieved in each action; (5) whether state law or federal law provides the rule of decision on the merits; and (6) the adequacy of the state proceeding to protect the parties' rights.

Id. (quoting *Chase Brexton Health Servs., Inc. v. Maryland*, 411 F.3d 457, 463–64 (4th Cir. 2005)).

The instant case is not parallel to *Findlay II*. *Findlay II* implicates claims substantially different from the claims before this Court. *Compare* ECF No. 1 (claiming

retaliation in violation of Title VII), *with* ECF No. 21, attach. 1 (claiming tortious interference with contract, tortious interference with business relationships, common law business conspiracy, and statutory business conspiracy). In *Findlay II*, Findlay brought claims under state law that were based upon Howell's phone calls to Stihl employees. ECF No. 21, attach. 1 at 4–8. Here, Findlay brought a claim under federal law based on GeoQuip's alleged retaliatory litigation and interference with Findlay's professional relationship with Stihl. ECF No. 1 at 5–6. The cases also seek different remedies. *Findlay II* seeks compensatory, treble, and punitive damages for losses related to deprivation of economic opportunities, ECF No. 21, attach. 1 at 11, while the instant case seeks back pay, front pay, and compensatory damages, punitive damages, and attorneys' fees for losses associated with retaliation, ECF No. 1 at 6. Accordingly, this lawsuit does not fall into the narrow category of cases where it is appropriate for a federal court to abstain from exercising jurisdiction because, while the two suits share some common underlying facts, they do not implicate the same legal issues, nor do they seek the same remedies. As such, the Court declines to dismiss this suit on the ground that it is duplicative of, or parallel to, *Findlay II*.

B. Timeliness

GeoQuip also argues that Findlay's retaliation claim is barred because he failed to timely file an EEOC charge containing the instant allegations. ECF No. 3 at 18–19. Findlay disagrees, arguing that not only are his claims timely standing on their own, but also that GeoQuip's

actions constitute continuing violations, thus expanding the relevant time frame. ECF No. 10 at 11.

Under Title VII, an individual concerned about unlawful employment practices is required to submit a charge with the EEOC before filing a civil lawsuit. 42 U.S.C. § 2000e-5(e)(1). As Virginia is a "deferral state," a plaintiff has a 300-day statutory window from the date of the alleged wrongful employment practice to file the charge. *See id.*; *Edwards v. Murphy-Brown, L.L.C.*, 760 F. Supp. 2d 607, 618–19 (E.D. Va. 2011) (citing *Edelman v. Lynchburg Coll*, 300 F.3d 400, 404 (4th Cir. 2002)). "[E]ach retaliatory adverse employment decision constitutes a separate actionable 'unlawful employment practice.' [Plaintiff] can only file a charge to cover discrete acts that 'occurred' within the appropriate time period." *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 114, 122 S. Ct. 2061, 153 L. Ed. 2d 106 (2002).

The 300-day window begins to run "when the alleged wrongful conduct occurs." *Vorel v. Merritt Hosp., LLC*, No. CV WMN-07-0689, 2007 U.S. Dist. LEXIS 106922, 2007 WL 9780621, at *3 (D. Md. Aug. 7, 2007) (citing *Hamilton v. 1st Source Bank*, 928 F.2d 86, 88 (4th Cir. 1990) (en banc) (evaluating timeliness under the ADEA but relying on Title VII decisions in its analysis)). Importantly, "[t]o the extent that notice enters the analysis, it is notice of the employer's actions, *not* the notice of a discriminatory effect or motivation, that establishes the commencement of the pertinent filing period." *Hamilton*, 928 F.2d at 88–89; *Cuddy v. Wal-Mart Super Ctr., Inc.*, 993 F. Supp. 962, 965 (W.D. Va. 1998) ("[I]t is equally settled that the

filing period only starts when the charging party learns of the employer's action, even though the employer's discriminatory motivation may not yet be known."); *Oldham v. Univ. of N. Carolina*, No. 1:22cv513, 2023 U.S. Dist. LEXIS 103018, 2023 WL 3984031, at *6 (M.D.N.C. June 13, 2023) (explaining that it is notice of the employer's actions that begins the statutory period). If the employee misses the statutory window, their claim is time barred.

1. Retaliation Through "Legal Warfare"

GeoQuip first argues that the allegations of "legal warfare" contained in Findlay's Second EEOC Charge predate the 300-day statutory window. ECF No. 3 at 18. Findlay disagrees, arguing that his claims are timely because the date of his First EEOC Charge's fact-finding conference is the date the statutory period began to run. ECF No. 10 at 11. Findlay also argues that the continuing violation theory applies here, and that every allegation is timely pursuant to that doctrine. *Id.*

Findlay's reliance on the continuing violation theory is misplaced, as that theory is inapplicable to claims of retaliation. The continuing violation theory allows a court to consider instances of discrimination beyond the standard 300-day statutory period when "at least a portion of the hostile work environment occurred within the relevant limitations period." *White v. BFI Waste Servs., LLC*, 375 F.3d 288, 292–93 (4th Cir. 2004). The continuing violation theory is only applicable in hostile work environment claims – not retaliation claims or discrimination claims. *Perkins v. Int'l Paper Co.*, 936 F.3d

196, 209 n.5 (4th Cir. 2019) ("Unlike claims for disparate treatment and retaliation, the continuing violation doctrine applies to a hostile work environment claim."); *Evans v. Maryland-Nat'l Cap. Parks & Plan. Comm'n*, No. CV MJM-19-2651, 2023 U.S. Dist. LEXIS 81038, 2023 WL 3328002, at *19 (D. Md. Mar. 31, 2023), *aff'd*, No. 23-1475, 2023 U.S. App. LEXIS 30960, 2023 WL 8064797 (4th Cir. Nov. 21, 2023) (applying the continuing violation theory to plaintiff's hostile work environment claim but not to plaintiff's retaliation claim); *Favi v. Va. State Univ.*, No. 3:19-CV-517, 2020 U.S. Dist. LEXIS 62876, 2020 WL 1698750, at *4 (E.D. Va. Apr. 8, 2020) ("Further, the continuing violation doctrine does not apply to [plaintiff's] disparate treatment, failure to promote, or retaliation claims."); *Fowler v. S.C. Dep't of Corr.*, 2012 U.S. Dist. LEXIS 186742, 2012 WL 7678131, at *5 (D.S.C. Sept. 25, 2012), *report and recommendation adopted*, 2012 U.S. Dist. LEXIS 186742, 2013 WL 876407 (D.S.C. Mar. 8, 2013) ("The United States Supreme Court has made clear that acts of retaliation are discrete acts while hostile work environment claims are continuing violations."); *Okanes v. Soc'y For Worldwide Interbank Fin. Telecomm. SC*, No. 1:21-CV-0285, 2021 U.S. Dist. LEXIS 262082, 2021 WL 9598562, at *2 (E.D. Va. June 7, 2021) (collecting cases).

Findlay does not allege a claim for hostile work environment. The acts of retaliation that Findlay raises are discrete acts. For example, on February 14, 2022, GeoQuip mailed Findlay a cease-and-desist letter to notify him of claims they planned to bring against him, including state law claims of breach of fiduciary duty, misappropriation of trade secrets, unauthorized access to

GeoQuip's computer systems, and tortious interference in GeoQuip's contracts and business expectancies. ECF No. 4, attach. 11 at 12–14. In the instant Complaint, it appears to the Court that Findlay characterizes this as part of his "legal warfare" claim. *See* ECF No. 1 at 5. Second, Martin Terwilliger's attorneys emailed Findlay on March 29 and demanded that he cease making defamatory remarks regarding Martin's involvement in the sexual harassment case. ECF No. 6, attach. 1. Next, GeoQuip did elect to file the *CCC Case* in September of 2022. ECF No. 4, attach. 6. That lawsuit alleged the same claims covered in the cease-and-desist letter, including breach of fiduciary duty, misappropriation of trade secrets, unauthorized access to GeoQuip's computer systems, and tortious interference in GeoQuip's contracts and business expectancies. *Id.* Separately, the *Unlauful Detainer Case* was filed March 23, 2022, alleging the state law claim of unlawful detainer. EFC No. 4, attach. 1. That lawsuit was premised on Findlay leaving his personal belongings in GeoQuip's leased hangar beyond the date specified in GeoQuip's notice to vacate. *Id.* at 1–7.[6] Accordingly, Findlay's argument that his claims of retaliation are timely because they constitute continuing violations, fails. The Court will analyze the timeliness of each discrete act in turn.

---

6. Findlay also cites to the *Fraudulent Conveyance Case* as further evidence of GeoQuip's retaliatory behavior. ECF No. 10 at 7. However, as noted above, the *Fraudulent Conveyance Case* was filed after the instant Complaint and well beyond the Second EEOC Charge. ECF No. 4, attach. 11. He did not elect to amend the Complaint. Accordingly, the *Fraudulent Conveyance Case* is beyond the scope of this litigation and the Court will disregard any argument raised with respect to it.

Appendix B

The *Unlauful Detainer Case* was filed on March 23, 2022. ECF No. 4, attach. 1. The statute of limitations to file an EEOC charge begins to run "when the alleged wrongful conduct occurs." *Vorel*, 2007 U.S. Dist. LEXIS 106922, 2007 WL 9780621, at *3. And "it is notice of the employer's actions . . . that establishes the commencement of the pertinent filing period." *Hamilton*, 928 F.2d at 89. The alleged wrongful conduct in this instance is GeoQuip's retaliation through filing the *Unlauful Detainer Case* against Findlay—not Findlay's participation in the EEOC process, as he argues. *See* ECF No. 10 at 11 ("Findlay filed his Second EEOC Charge on February 22, 2023, 184 days after his August 22, 2022 participation in the EEOC fact finding conference. So Plaintiff's claims are timely.") (internal citations omitted). Findlay had notice of GeoQuip's action when the *Unlauful Detainer Case's* complaint and summons were mailed to him on March 23, 2022, ECF No. 4, attach. 1 at 2, and he was required to file his EEOC charge within 300 days. February 22, 2023, is more than 300 days after Findlay was apprised of the suit. Accordingly, any allegation that GeoQuip unlawfully retaliated against Findlay by filing the *Unlauful Detainer Case* is untimely.

Findlay appears to make similar allegations regarding the February 14 cease-and-desist letter. *See* ECF No. 1 at 5. On February 14, 2022, GeoQuip emailed Findlay notice of the claims they planned to bring against him in the *CCC Case*, including state law claims of breach of fiduciary duty and misappropriation of trade secrets. ECF No. 4, attach. 11 at 5. Once he received the letter, Findlay was on notice of the threatened "legal warfare" and as such,

was required to file the EEOC Charge within 300 days. He did not do so. February 22, 2023, is more than 300 days after Findlay received the cease-and-desist letter via email. Any retaliation claim based on the cease-and-desist letter is subsequently time barred.

The same holds true when analyzing the *CCC Case* as a distinct act of retaliation. If "it is notice of the employer's actions . . . that establishes the commencement of the pertinent filing period," *Hamilton*, 928 F.2d at 89, then Findlay was on notice of the *CCC Case* in February of 2022, after receiving the cease-and-desist letter. February 22, 2023, is more than 300 days after Findlay was apprised of the potential for the suit. He did not take any action within 300 days therefrom. As such, any allegation of unlawful retaliation based on the *CCC Case* is time barred.

Finally, the same timelines analysis prohibits Findlay from claiming retaliation due to Martin Terwilliger's March 29 cease-and-desist letter. That letter was transmitted via email on March 29, 2022. ECF No. 6, attach. 1 at 1. February 22, 2023, is more than 300 days after the email was transmitted between counsel. As with the other allegations regarding retaliation through "legal warfare," Findlay is time barred here, too.

2. Retaliation Through Interference with Stihl

Findlay also alleges that GeoQuip unlawfully retaliated against him by interfering in his business relationship with Stihl. ECF No. 1 at 5. In his Complaint,

Findlay contends that Howell called Stihl on several occasions in February of 2022, intimating that Findlay was the subject of a sexual harassment investigation and was fired as a result. *Id.* at 4–5. GeoQuip disputes that Howell made any such suggestion during the phone calls and argues that regardless, this allegation is untimely because it stems from conduct beyond the 300-day statutory window. ECF No. 3 at 18–19. Findlay disagrees, arguing that his claims are timely, again using the fact-finding conference as the date the statutory window began to run. ECF No. 10 at 11. Findlay also argues that the continuing violation theory applies here, and that all his allegations are timely. *Id.*

As noted above, Findlay's reliance on the continuing violation theory is misplaced, as that theory is inapplicable to claims of retaliation. *See Perkins*, 936 F.3d at 209 n.5 ("Unlike claims for disparate treatment and retaliation, the continuing violation doctrine applies to a hostile work environment claim."). Here, any allegation of retaliation through GeoQuip's counsel calling Stihl is a discrete act and will be analyzed accordingly.

The statute of limitations to file an EEOC charge begins to run "when the alleged wrongful conduct occurs" and "it is *notice of the employer's actions* . . . that establishes the commencement of the pertinent filing period." *Hamilton*, 928 F.2d at 89 (emphasis added). Here, viewing the evidence in the light most favorable to the non-moving party, there is a question of fact regarding when Findlay had notice of Howell's phone calls to Stihl employees. Findlay seems to imply that his knowledge of

the calls came at the fact-finding conference during his First EEOC Charge in August of 2022. *See* ECF No. 10 at 11 ("Here, Plaintiff's EEOC charge alleges that he suffered a pattern of harassment and retaliation by Defendant following his participation in the EEOC process. Findlay filed his second EEOC charge on February 22, 2023, 184 days after his August 22, 2022 participation in the EEOC fact finding conference. So Plaintiff's claims are timely.") (internal citations omitted). GeoQuip does not indicate its understanding of when or how Findlay found out about Howell's phone calls, but instead relies upon the date of the phone calls for its timeliness analysis. However, Findlay's knowledge of the phone calls and when he was on notice of them is the key issue with respect to whether his claim is time barred. *See Hamilton*, 928 F.2d at 89. Because there is a genuine dispute of material fact regarding when Findlay knew about Howell's phone calls to Stihl employees, the Court cannot determine at this point that his EEOC charge was not timely filed.

C. Res Judicata

Additionally, GeoQuip contends that the instant suit is barred by res judicata because of the *Unlauful Detainer Case*[7] and *Findlay I*. ECF No. 3 at 10–17. In opposition, Findlay argues that res judicata fails because those cases implicate different claims than the one present here. ECF No. 10 at 4–8. The Court has already determined, *supra*,

7. Although GeoQuip is the plaintiff in the *Unlauful Detainer Case*, it argues that because Findlay raised affirmative defenses and counterclaims in the *Unlauful Detainer Case*, he is barred from asserting those same claims here. *See* ECF No. 3 at 16–17.

that Findlay's allegations regarding "legal warfare" are untimely. The Court will therefore limit its analysis of res judicata to *Findlay I* and whether the claims brought here regarding GeoQuip's alleged interference with Stihl could have been brought in that case. As that claim existed at the time of *Findlay I*, it is barred by res judicata here.

Because Findlay brought *Findlay I* in federal court, the federal rules of res judicata apply. *Andrews v. Daw*, 201 F.3d 521, 524 (4th Cir. 2000). To establish res judicata as a defense, a party must show that (1) there is "a final judgment on the merits in a prior suit"; (2) with an "identity of parties or their privies in the two suits"; and (3) "an identity of the cause of action in both the earlier and the later suit." *Jones v. SEC*, 115 F.3d 1173, 1178 (4th Cir. 1997) (quoting *Meekins v. United Transp. Union*, 946 F.2d 1054, 1057 (4th Cir. 1991)), *cert. denied*, 523 U.S. 1072 (1998). The claims in *Findlay I* arose out of Findlay's termination from GeoQuip following his participation in a sexual harassment investigation. ECF No. 4, attach. 7. *Findlay I* was ultimately dismissed with prejudice pursuant to a stipulation by the parties in September of 2023. *Id.*, attach. 9.

1. Judgment on the Merits

To satisfy the first element of res judicata, *Findlay I* must have resulted in a final judgment on the merits. GeoQuip argues that the stipulation filed in *Findlay I* qualifies as such a final judgment.[8] ECF No. 3 at 11.

8. Within the Fourth Circuit, "the traditional res-judicata inquiry is modified in cases where the earlier action was dismissed

Findlay does not contest that. *See* ECF No. 10. Dismissal of an action with prejudice is considered a "complete adjudication of the issues presented by the pleadings and is a bar to a further action." *See Harrison v. Edison Bros. Apparel Stores, Inc.*, 924 F.2d 530, 534 (4th Cir. 1991) (quoting *Schwarz v. Folloder*, 767 F.2d 125, 129 (5th Cir. 1985)). This Court has also previously held that a voluntary dismissal with prejudice constitutes a final judgment on the merits. *Saunders v. McAuliffe*, No. 3:15cv402, 2016 U.S. Dist. LEXIS 35023, 2016 WL 1071015, at *5 (E.D. Va. Mar. 17, 2016) ("The voluntary dismissal with prejudice in [the prior action] created a final judgment on the merits."); *Harnett v. Billman*, 800 F.2d 1308, 1312 (4th Cir. 1986) ("The agreed dismissal [in the prior action] binds the parties to that litigation."); *see also* 18A Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, Federal Practice and Procedure § 4435 (3d ed. 2024) ("Under Rule 41(a), a plaintiff may dismiss by notice before service of an answer or motion for summary judgment, or by a stipulation signed by all parties . . . [a] stipulated dismissal with prejudice operates as an adjudication on the merits

---

in accordance with a release or other settlement agreement." *United States ex rel. Soodavar v. Unisys Corp.*, 178 F. Supp. 3d 358, 375 (E.D. Va. 2016) (quoting *United States v. Purdue Pharma L.P.*, 737 F.3d 908, 913 (4th Cir. 2013). "[G]iven the contractual nature of . . . settlement agreements, the preclusive effect of a judgment based on such an agreement can be no greater than the preclusive effect of the agreement itself." *Id.* Therefore, a judgment based on a settlement agreement is interpreted through ordinary principles of contract law, as opposed to the traditional res judicata inquiry. *See id.* Here, there is nothing in the record that reflects that *Findlay I* was dismissed pursuant to a settlement agreement. As such, the Court will apply the traditional res judicata analysis.

for claim-preclusion purposes. . . ." Consequently, the dismissal of *Findlay I* with prejudice, pursuant to a joint stipulation, constitutes a final judgment on the merits.

2. Identity of Parties

Next, the Court must consider whether the judgment in *Findlay I* resolved claims by the same parties or their privies. *See Pueschel v. United States*, 369 F.3d 345, 354 (4th Cir. 2004). There is no dispute that the parties in the instant case, Andrew Findlay and GeoQuip, Inc., litigated *Findlay I*. ECF No. 1 at 1; ECF No. 4, attach. 7 at 1. Therefore, the second element of res judicata is satisfied.

3. Identity of Cause of Action

Lastly, the Court must consider whether there is an identity of cause of action between the two suits. As the Court understands Findlay's claims, he seeks to recover damages based on several grounds of alleged retaliation. First, that GeoQuip retaliated against Findlay by "legal warfare" by filing the *Unlauful Detainer Case* and the *CCC Case*.[9] ECF No. 1 at 5. Second, that GeoQuip retaliated against Findlay through "legal warfare" by threatening litigation in Howell's February 14, 2022, cease-and-desist letter. *Id.* Third, that Martin Terwilliger retaliated against Findlay through "legal warfare" by threatening litigation in the March 29 email. *Id.* Fourth, that GeoQuip interfered with Findlay's professional

9. As noted previously, the Court will not consider the *Fraudulent Conveyance Case* in its analysis.

relationship with Stihl by filing the *Unlauful Detainer Case* to prevent Findlay from accessing his airplane and personal property. *Id.* Finally, that GeoQuip interfered in Findlay's professional relationship with Stihl when Howell insinuated that Findlay was fired for sexual harassment. *Id* Grounds one through four, based on Howell's February 14 cease-and-desist letter, the *CCC Case*, the *Unlauful Detainer Case*, and Martin Terwilliger's March 29 email, are time barred as they were not brought to the EEOC within 300 days. Therefore, the Court must determine whether there is an identity of cause of action between *Findlay I* and Findlay's last alleged ground of retaliation based on interference in his relationship with Stihl.

At the outset, the Court must examine "whether the suits and the claims asserted therein 'arise out of the same transaction or series of transactions or the same core of operative facts.'" *Pueschel* 369 F.3d at 355 (quoting *In re Varat Enters., Inc.*, 81 F.3d 1310, 1316 (4th Cir. 1996)). The United States Court of Appeals for the Fourth Circuit has cited with approval the Restatement (Second) of Judgments' pragmatic approach to res judicata. *See, e.g., Harnett*, 800 F.2d at 1313–15 (citing several provisions from the Restatement). As a result, courts in the Fourth Circuit consider the Restatement's five primary factors when deciding whether facts of a current and prior claim constitute a "natural grouping or common nucleus of operative facts." Restatement (Second) of Judgments § 24 cmt. B (Am. L. Inst. 2024); *Pittston Co. v. United States*, 199 F.3d 694, 704 (4th Cir. 1999) (citing the five factors); *Burrs v. United Techs. Corp.*, No. 1:18-CV-491, 2018 U.S. Dist. LEXIS 187929, 2018 WL 5779054, at *3 (M.D.N.C.

Nov. 2, 2018) (same), *aff'd*, 770 F. App'x 97 (4th Cir. 2019). Those five factors are: (1) time; (2) space; (3) origin; (4) motivation; and (5) whether, taken together, facts from the current and prior claim form a convenient unit for trial purposes. *Pittson Co.*, 199 F.3d at 704.

Res judicata "not only bars claims that were actually litigated in a prior proceeding, but also claims that could have been litigated." *Pueschel*, 369 F.3d at 355–56; *Meekins*, 946 F.2d at 1057 (noting res judicata "prevents litigation of all grounds for, or defenses to, recovery that were previously available to the parties, regardless of whether they were asserted or determined in the prior proceeding"). Applying an objective standard, a court must evaluate if the claim existed during the prior suit. *Id.* ("The standard is objective, and "it is the existence of the present claim, not party awareness of it, that controls"); *Serna v. Holder*, 559 F. App'x 234, 238 (4th Cir. 2014) ("[L]ack of knowledge of a potential claim does not determine the claim-preclusion inquiry; what matters is that the claim itself existed at the time of the first lawsuit."); *Harnett*, 800 F.2d at 1313 (4th Cir. 1986) (holding that claims which could have been asserted in a prior suit are barred from being raised in a later suit); *Keith v. Aldridge*, 900 F.2d 736, 740 n. 5 (4th Cir. 1990) ("For [claim preclusion] purposes, . . . it is the existence of the claim, not awareness of it, that controls.").

After considering these factors, the Court must conclude that Findlay's remaining ground – GeoQuip's alleged interference with his relationship with Stihl – is barred by res judicata. In reaching this conclusion and

as discussed above, the Court first determined that the facts underlying the claim of retaliation by business interference arose out of the same transaction or series of transactions as his claims of retaliation in *Findlay I*, and the instant claims existed at the time *Findlay I was* filed, such that Plaintiff could have brought his current claim in that case. First, the facts underlying Findlay's instant claim of retaliation occurred within just a few months of the facts underlying Findlay's claims in *Findlay I*. Here, Findlay claims retaliation based on Howell's calls with Stihl in February of 2022, where she allegedly insinuated that Findlay was the target of the sexual harassment investigation. ECF No. 1 at 4–5. In *Findlay I*, Findlay claimed retaliation based on GeoQuip's decision to terminate his employment in November of 2021. ECF No. 4, attach. 7 at 12–13. Thus, the two sets of facts occurred within approximately three months of each other. Such temporal proximity supports a finding that the current and prior claims arise from the same transaction or series of transactions. *See Pittson Co.*, 199 F.3d at 704. Moreover, the claims in the instant case and the prior case originate from the same underlying facts and question the same motive. *Findlay I* and this case both stem from Findlay's participation in a sexual harassment investigation[10]

10. In *Findlay I*, Findlay alleges that the protected activity giving rise to his retaliation claim was the original sexual harassment investigation. ECF No. 4, attach. 7. In *Findlay III*, the instant Complaint, he alleges that the protected activity was his "stated intentions of and eventual filing of an EEOC charge of discrimination, in addition to participating in the [subsequent] EEOC investigation." ECF No. 1 at 6. However, Findlay did not dispute GeoQuip's claimed undisputed fact in its summary

which allegedly resulted in multiple forms of alleged retaliation, each within a few months of one another. *See* ECF No. 1 at 2; ECF No. 4, attach. 7. The series of alleged retaliation included (1) termination; (2) legal warfare; and (3) interference with Findlay's professional relationship with Stihl. Each of these claims challenge the same alleged motive of the GeoQuip – retaliation against Findlay for participating in EEOC processes, either in the initial sexual harassment investigation or when filing the First EEOC Charge. Moreover, combining these claims would have formed a convenient trial unit – the claims involve the same witnesses, the same sequence of facts, and the same claim of retaliation. Consequently, the Court finds that *Findlay I* and the instant case arise out of the same series of transactions and the same core operative facts.

Further, the claim of retaliation by interference with his professional relationship with Stihl existed at the time he filed *Findlay I*. For such a claim for relief to accrue under Title VII, three elements were required: (1) the employee engaged in a protected activity; (2) the employer

---

judgment motion that Findlay's allegations included "that GeoQuip retaliated against him for his participation in the sexual harassment investigation." ECF No. 10 at 3. Findlay only chose to dispute what the retaliation consisted of, *i.e.*, his termination as opposed to "legal warfare." *See id.* Additionally, his Second EEOC Charge references the sexual harassment investigation and complaint against Martin Terwilliger. ECF No. 1, attach. 1. Consequently, the Court interprets Findlay's retaliation claim to be based on the protected activity of being a witness in the sexual harassment investigation and his stated intentions of and eventual filing of an EEOC charge of discrimination.

took a materially adverse action against him; and (3) but for the protected activity, the asserted adverse action would not have occurred. *See Foster v. Univ. of Md.-E. Shore*, 787 F.3d 243, 250 (4th Cir. 2015).

With respect to the first element, there is no dispute that Findlay engaged in a protected activity in October of 2021 when he participated in the sexual harassment investigation. *See* ECF No. 3. Moreover, there is no dispute that filing an EEOC charge and participating in that process constitutes a protected activity. *See id.* Title VII makes it unlawful for "an employer to discriminate against any of [its] employees . . . because he has opposed any practice made an unlawful practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter." 42 U.S.C. § 2000e-3(a). "Protected activity of an employee, therefore, can take the form of either opposing a practice prohibited under Title VII (pursuant to the opposition clause) or making a charge, testifying, assisting, or participating in an investigation, proceeding, or hearing under Title VII (pursuant to the participation clause)." *Pitter v. Cmty. Imaging Partners, Inc.*, 735 F. Supp. 2d 379, 395 (D. Md. 2010). Because Findlay engaged in activities pursuant to the participation clause, his actions would likely qualify for Title VII protection.

The second element requires that GeoQuip took a materially adverse employment action against Findlay. Here, the relevant materially adverse actions were Howell's conversations with Stihl employees on February

18, 2022, February 24, 2022, and February 25, 2022, during which Howell allegedly implicated Findlay in the sexual harassment investigation. ECF No. 1 at 4–5. In the context of a retaliation claim, a materially adverse action is an action that "'might have dissuaded a reasonable worker' from engaging in protected activity." *Strothers v. City of Laurel*, 895 F.3d 317, 327 (4th Cir. 2018) (quoting *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68, 126 S. Ct. 2405, 165 L. Ed. 2d 345 (2006)). Further, the United States Supreme Court has stated that the "anti-retaliation provision [of Title VII] does not confine the actions and harms it forbids to those that are related to employment or occur at the workplace." *White*, 548 U.S. at 57. The action must amount to more than "petty slights or minor annoyances that often take place at work and that all employees experience." *Id.* at 68. Here, it may very well be that Howell's phone calls to Stihl employees constituted materially adverse employment actions. Interference with a former employee's external professional relationships could plausibly constitute more than mere trivial harm. *See id.*

The element of causal connection could also plausibly have been satisfied at the time of *Findlay I*. In the instant Complaint, Findlay alleges that his lawyer informed GeoQuip in February of 2022 that he planned to file an EEOC charge.[11] ECF No. 1 at 2. Further, in his opposition, Findlay argues that "[a]ny seasoned employment lawyer such as Howell knows that alleged violations of federal law regarding issues of sexual harassment and retaliation

11. That letter does not identify specific claims, but merely notes that evidence relevant to Findlay's potential claims or damages should not be destroyed. ECF No. 7, attach. 7.

must first be filed with the EEOC. Howell was fully aware of GeoQuip's sexual harassment issues from the time of her first interview with Findlay."[12] ECF No. 10 at 8. Findlay also points out the temporal proximity between the filing of the *CCC Case* and the fact-finding conference in August of 2023. ECF No. 10 at 8. However, that temporal proximity is not relevant to the phone calls with Stihl, which occurred several months prior.

To establish causation, the Fourth Circuit and its courts look for one of the following factors: (1) temporal proximity of the protected activity and the adverse action; (2) intervening antagonism or retaliatory animus; (3) inconsistent explanations for the adverse action by the employer; or (4) differential treatment between employees. *See Mohammed v. Cent. Driving Mini Storage, Inc.*, 128 F. Supp. 3d 932, 945 (E.D. Va. 2015). In *Findlay I*, Findlay could have plausibly alleged causation between his participation in the sexual harassment investigation and February 16 preservation letter to GeoQuip, and GeoQuip's alleged interference with his professional relationship with Stihl. There was plausible temporal proximity between Findlay's participation in the protected activities of serving as a witness in the sexual harassment investigation, in October of 2021, ECF No. 1 at 2, sending the preservation letter on February 16, 2022, ECF No. 7, attach. 7, and the alleged adverse action, the phone calls to Stihl, on February 18, February 24, and February

12. Findlay appears to have abandoned his argument that GeoQuip had notice through the letter his attorney sent to Howell on February 16, 2022, because he failed to include reference to it in his opposition. *See* ECF No. 10.

25, ECF No. 1 at 4. Findlay also could have pointed to retaliatory animus or intervening acts of retaliation in order to support the element of causation.

In sum, Findlay's claim regarding GeoQuip's alleged interference with his professional relationship with Stihl existed at the time the First EEOC Charge was submitted.[13] Such a claim accrued in February of 2022 when the phone calls between Howell and Stihl occurred. As discussed above, even if Findlay did not become aware of the phone calls between Stihl and Howell until August of 2022 when he participated in the fact-finding conference for his First EEOC Charge, he could have amended his Second EEOC Charge at that point. The right-to-sue letter was not issued until October of 2022, and *Findlay I* was not filed until January 23, 2023. *See* ECF No. 4, attach. 7. Thus, there is evidence to show that Findlay knew of GeoQuip's alleged interference with his professional relationship with Stihl by, at the very latest, August of 2022, giving him time to amend his First EEOC Charge and to bring such a claim in *Findlay I*. He did not do so. As a result, each of the criteria by which res judicata must be applied have been met, and therefore this claim is barred by res judicata.

---

13. Findlay's arguments with respect to the *CCC Case* and its proximity to the fact-finding hearing in August of 2023 are time barred and so the Court does not address them here.

VI. CONCLUSION

For the reasons set forth above, Defendant's Motion for Summary Judgment, ECF No. 2, is **GRANTED**. The Complaint, ECF No. 1 is **DISMISSED** with **PREJUDICE**. The Clerk is **DIRECTED** to forwards a copy of this Order to all counsel of record.

It is so **ORDERED**.

/s/ Lawrence R. Leonard
Lawrence R. Leonard
United States Magistrate Judge

Norfolk, Virginia
August 16, 2024