

USDC Case No. 2:24-CV-00068
No. 25-40018

United States Supreme Court
For The United States Court of Appeals Fifth Circuit

Joe Holbert
Plaintiff

v.

Thompson Industrial Services LLC, Et. Al.
Defendants

Appeal from the United States District Court for the Southern District of Texas
USCD No: 2:24-CV- 0068

Motion for a Sixty (60) Day Extension of Time and a Motion for Reconsideration

Equal Employment Opportunity Commission

Holbert presents arguments for each legal issue of the case:

Before the United States Equal Employment Opportunity Commission (EEOC) process, the Plaintiff believes the Agency failed to conduct a proper investigation. Further they denied him access to the EEOC process, because it was a mixed cases involving both discrimination and personal action which were not handled correctly. Holbert argues that a compensatory damages investigation is warranted, because the Agency failed to comply with prior orders, including orders awarding damages or requiring the provision of reasonable accommodation.

Holbert Argues the Right to Refile.

In *Prichard v Long Island University*, the court ruled that if a right-to-sue letter (RTS) is found invalid—such as when it is issued before the 180-day waiting period—the proper remedy is dismissal without prejudice, allowing the plaintiff to refile after the administrative period concludes. Holbert argues that the court's dismissal with prejudice denied him this standard procedural reset. Citing *Prichard*, Holbert contends that the District Court failed to allow the EEOC to fulfill its congressional mandate to thoroughly investigate the plaintiff's claims before judicial intervention.

Post-Loper Bright Standard

Holbert argues that the courts should not have deferred to a narrow interpretation of his pleading, just as the *Prichard* case applied the Post-Loper Bright Standards to reject deference to the EEOC's early Right to Sue (RTS) regulations. Holbert also argues that the EEOC's practice

of issuing early RTS letters violates Title VII statutory requirements. Under 42 U.S.C., the EEOC is required to investigate for 180 days. Holbert argues that his RTS notice was issued before this period expired, as was challenged in *Prichard*. Holbert argues that the EEOC failed to perform its mandatory investigation; therefore, the court's Dismissal with Prejudice was legally incorrect. Holbert requests that the case be remanded to the EEOC for the agency to complete the investigation mandated by the United States Congress.

The Plaintiff asserts that the EEOC's "check the box" approach deprived him of the administrative record necessary to survive a Motion to Dismiss. Holbert argues that the District Court dismissed his case because the Plaintiff provided insufficient evidence to state a claim. Holbert argues that the primary purpose of the EEOC investigation is to gather this very evidence. The EEOC sometimes issues a RTS Letter while administrative remedies are still pending. Such practices should not be used as a procedural trap, particularly for self-represented litigants. Holbert contends that the case was dismissed pursuant to 2025 policy directives, rather than being adjudicated on the substantive merits of his charge.

Procedural Barriers

Holbert argues that the court's refusal to consider late filed EEOC documents in facilitating discovery constitutes an abuse of the administrative process. Holbert argues that the changes with the EEOC and the broader legal landscape in 2025 incorporate revisions that address procedural barriers and pleading standards that otherwise may have led to the dismissal of Holbert's case. Holbert argues that his claims, which alleged racial slurs and sexual harassment, were subject to inconsistently applied plausibility standards that have since been rejected. Holbert argues *Ames v. Ohio Department of Youth Services* mandates a lower barrier for entry for all Title VII plaintiffs regardless of the proceedings stage or the court's perception of the claim's strength.

Due Process and Discovery Assistance

Holbert argues that due to the EEOC's inadequate investigation, he was forced to request discovery from the District Court, but his request was denied. Holbert argues that had the EEOC properly fulfilled its role as an impartial investigator, this evidence would have been preserved and documented in the administrative files.

Additionally, the District Court's subsequent refusal to assist him constitutes a violation of Holbert's rights to a fair legal process. Based on the 2025 legal landscape, including *Holbert v. Thompson Industrial Services*, the EEOC's practice of issuing early RTS letters violates the statutory requirements of Title VII. Holbert argues that the RTS letter is legally invalid. He argues that the agency exceeded its authority, and he contends the notice was invalid, because he never exhausted his administrative remedies, making the dismissal with prejudice improper. The case should be remanded to the EEOC to perform the investigation mandated by Title VII for violation of the mandatory 180-day investigation period. The EEOC failed its statutory duty under 42 U.S.C. § 5F1 by failing to perform a legal investigation.

If the court determines that the EEOC issued the RTS letter prematurely, meaning without conducting a bona fide investigation, the court may vacate the letter, stay the lawsuit, and order the EEOC to complete its investigation under 42 U.S.C. §§ 2000(e)-5(f)(1), including any necessary updates to the administrative file. Holbert argues again subpoenaing key witnesses or video evidence which he previously highlighted as a miss in his appellate brief. The EEOC should have gathered relevant facts to determine reasonable cause, including contacting the respondents, Thompson Industrial and/or Clean Harbors.

A Lack of *de Novo* review of Agency Action

The court erred by deferring to the EEOC's administrative outcome instead of conducting a *de Novo* review.

District Court

Holbert argues that during the initial hearing Judge Libby refused to allow one of Holbert's colleagues to assist him at the podium. Holbert argues that the individual assisting him during the initial hearing was Ms. Carla Pruitt, who had all necessary documents to amend the Complaint, as well as the relevant EEOC materials.

Holbert argues that Judge Libby committed an ethical violation by refusing to allow them to explain the matter once again. He further contends that the federal government should conduct a thorough investigation into alleged courthouse misconduct, abusive treatment toward litigants, and improper judicial demeanor. Holbert believes that the court abused its discretion by dismissing the case with prejudice. Moreover, he claims that dismissal with prejudice was an excessively severe sanction and that a lesser sanction, such as dismissal without prejudice, would have been appropriate, particularly where the litigant was not afforded a meaningful opportunity to amend the complaint given his *pro se* status. Holbert also contends that the District Court's refusal to assist with subpoenas constituted an abuse of discretion, particularly given his status as a *pro se* litigant. Because of all of this, Holbert requests reconsideration, citing newly discovered evidence due to the court's misapplication of procedural rules which led to the final dismissal.

Also, Holbert argues that subpoenas for courthouse cameras and witnesses should have been issued at the outset of the case. He contends that the failure of both the EEOC and the courts to assist with subpoenas created an information asymmetry in which the employer had exclusive

access to witnesses and records, making it impossible for Holbert to meet even a basic pleading standard without court-ordered discovery. Holbert argues that the court improperly considered evidence or facts outside the four corners of the complaint when deciding the motion to dismiss. Generally, when a court considers materials outside the complaint, it must convert Rule (12)(b)(6) into a summary judgment motion, which would have afforded Holbert a different procedural standard and an opportunity for discovery.

Inapplicability of Heightened Pleading to Discovery Pursuant to *Ames v Ohio*

Department of Youth

Holbert believes if Title VII pleading standards cannot be heightened, then access to discovery, likewise, should not be restricted by requiring a plaintiff to produce evidence that can only be obtained through discovery. Holbert argues that the U.S. Supreme Court should remand the case to the EEOC so the investigation can be completed thus ensuring that being a *pro se* litigant is not a jurisdictional bar as was the outcome due to the District Court's dismissal with prejudice for purportedly incomplete or insufficiently submitted documents all of which created an abuse of discretion by the District Court. Holbert argues for equitable tolling, asserting that any failure to produce certain documents earlier should be excused because he possessed them prior to the filing, demonstrating a good-faith effort to comply with Title VII requirements.

Fifth Circuit Court of Appeals

The Plaintiff specifically references the Supreme Court's June 5, 2025, decision in *Ames v. Ohio Department of Youth Services* to challenge the heightened pleading standards applied by the lower courts, emphasizing that uniform standards must be used for all plaintiffs. The *Ames* decision resolved a circuit split by holding that courts cannot impose a heightened evidentiary

burden on plaintiffs based on their group identity. Holbert argues that applying rigid standards to a *pro se* complainant contradicts the unanimous *Ames* ruling, which confirmed Title VII protections extend to all individuals.

McDonnell Douglas Flexibility

Holbert argues that the Fifth Circuit Court of Appeals failed to follow the Supreme Court's 2025 instructions regarding the *McDonnell Douglas* which indicated the framework must remain flexible and context-dependent rather than rigid or ritualistic. Holbert argues that denying his discovery and dismissing his case under 28 U.S.C. §§ 1915 and 2 without allowing access to video evidence or witness subpoenas was *Ames v. Ohio Department of Youth Services v. Ohio*. Holbert argues that the Fifth Circuit's November 24, 2025, decision in *Holbert v. Thompson Industrial Services* (25-40018) directly contradicts the Supreme Court's unanimous June 5, 2025, ruling in *Ames v. Ohio Department of Youth Services*. Holbert argues that the Fifth Circuit ignored the instruction provided by *Ames* which established that a *prima facie* initial burden of proof was not erroneous. By affirming a dismissal with prejudice, the court did so while Holbert was still producing key evidence, including his EEOC letter and other relevant documents. Holbert argues that the courts imposed a more demanding burden of proof than the even-handed standard by *Ames*, creating procedural barriers through judge made doctrines.

As stated by Justice Jackson emphasized in the *Ames* case, Title VII should not permit special requirements or judicially created hurdles beyond what the statute provides. In direct application to *pro se* litigants, Holbert relies on the *Ames* decision that all employee groups are entitled to consistent and fair treatment. Holbert argues that the District Court and the Court of Appeals decisions to dismiss his case with prejudice were unfairly influenced by a major circuit split regarding the effect of a RTS letter from the EEOC before the 180-day period has elapsed.

Holbert further cites post-*Loper Bright* arguments, such as those recognized in New York to underscore the importance of procedural fairness in investigations. The Plaintiff argues that the Fifth Circuit Court of Appeals erred by dismissing his case based on alleged deficiencies that a full, mandatory 180-day EEOC investigation might have cured or clarified.

Violation of Statutory Duties

Holbert argues that the 2025 policy, which closed prolonged investigations and issued RTS letters on April 23, 2025, without a full review, violated the agency's statutory obligation under Title VII to investigate all charges. Holbert argues that the policy change deprived him of the administrative process which Congress intended, effectively pushing him into court without a complete factual record. Holbert highlights that the circuit split as of August 2025 allows the EEOC to continue their investigation even after a private lawsuit has been filed, yet Fifth Circuit Court of Appeals does not. Holbert argues that the inconsistency creates unequal justice based solely on geography.

Holbert's argument is centered on the conflict between administrative mandates and judicial screening under 28 U.S.C. § 1915(e)(2) which is concerned with conflicts between judicial screenings and the EEOC statutory duties. Holbert argues that the Court of Appeals interpretation of 28 U.S.C. § 1915(e)(2) which allows dismissal at any time for failure to state a claim, contradicts the EEOC statutory mandate to investigate allegations. Holbert argues, citing *Cecilia Prichard v. Long Island University*, that the EEOC is required to conduct a thorough investigation. The decision directly conflicts with the U.S. Appeal Court's decision. Holbert argues that the EEOC issued a RTS letter too quickly without performing a full investigation as mandated by Title VII. Further he notes that because federal agencies do not explicitly prioritize individual harassment claims such as the plaintiff's, the courts are less inclined to dismiss such cases prematurely under

28 U.S.C. § 1915(e)(2). Holbert argues the Appeal Courts' dismissal undermines current federal enforcement priorities designed to protect individual workers from direct workplace hostility. Holbert contends that repeated racial slurs and unwanted physical contact, including buttocks slapping, contributed to a pervasive and discriminatory hostile work environment. Holbert contends that his claim falls squarely within the protected entitlement to seek legal remedies. Holbert argues that applying a strict Rule (12)(b)(6) dismissal to a *pro se* plaintiff—particularly after a landmark ruling intended to simplify the pathway for plaintiffs—violates the spirit of the *Ames* decision. Holbert argues that early RTS letters are invalid after *Loper Bright* which makes the RTS letter he received from the EEOC, which was premature in nature, legally invalid under *Prichard v. Long Island University*. Following the Supreme Court's 2024 decision in *Loper Bright Enterprises v. Raimondo*, which overruled *Chevron* deference, courts now apply textualist statutory interpretation rather than deferring to the EEOC's administrative practices. Holbert contends that the EEOC lacked statutory authority to issue the RTS letter prematurely as Title VII authorizes RTS notices only after the charge is dismissed or after the 180-day investigation period has elapsed.

Holbert argues that the lower courts committed reversible errors by dismissing his case with prejudice. In contrast, *Prichard v. Long Island University*, the case was dismissed without prejudice and remanded to the EEOC for further proceedings. Holbert argues that the rapid shift from *Chevron* deference to *Loper Bright* creates unfair hurdles for *pro se* litigants. He contends that his failure to timely provide the RTS letter should not have resulted in dismissal, particularly where the governing legal standards changed abruptly and without clear guidance for unrepresented plaintiffs.

Additionally, Holbert argues that David Wiggins' breach of contract serves as critical evidence that the company's stated reasons for his termination were a pretext for discrimination. Under current legal standards confirmed by the Fifth Circuit and prevailing employment law, Holbert identified multiple violations in his lawsuit through specific, articulated arguments.

Evidence of Pretext for Discrimination.

Holbert argues that David Wiggins violated the company's internal employment contract—including its handbook's progressive discipline policy—to mask a discriminatory motive.

Deviation from Policy

Where a company maintains a progressive discipline policy and a decision is made to bypass that policy and terminate an employee immediately thus constituting a procedural irregularity that can be recognized as probative evidence of pretext. Holbert contends the actions of David Wiggins falls under the aforementioned. Under prevailing employment law, such a departure can support an inference that the employer stated reason for termination—which alleged safety violations—was not the true motive. Holbert argues that Wiggins enforced the company's disciplinary policy against him but not against other employees who committed similar infractions. Because of this, Holbert argues independent claims under 42 U.S.C. § 1981, a federal law that prohibits racial discrimination in the making and enforcement of contracts. Holbert argues that 42 U.S.C. § 1981 protects his right to enjoy all benefits, privileges, terms, and conditions of the contractual relationship, including employment, and that the breach of contract interfered with those protected rights. Holbert argues that David Wiggins is personally liable under 42 U.S.C. § 1981, because Wiggins intentionally used his authority to breach Holbert's contractual rights based on the plaintiff's race. Holbert argues that David Wiggins breached the covenant of good faith and

fair dealing inherent in his employment agreement. Holbert argues that Wiggins breached his duty to act honestly by ignoring Holbert's reports concerning racial discrimination.

Moreover, failure to preserve evidence can violate a contractual duty. Holbert alleges that David Wiggins and Thompspon Industrial Services failed to preserve critical video evidence and witness statements that would have exonerated him of the safety violations used as the reason for his termination. The plaintiff framed this failure as a breach of the implied contractual duty to conduct a fair and thorough investigation. Holbert now contends that by destroying or failing to preserve the evidence, Wiggins and Thompson Industrial Services violated the procedural fairness owed the plaintiff.

Fifth Circuit Court of Appeals

Holbert argues that the lower court's refusal to allow him to amend his Complaint was a manifest injustice.

Impeachment of a Key Witness

Holbert argues that David Wiggins was both a decision maker and a witness in his termination for alleged harassment, and that Wiggin's legal disputes with the company may reveal a bias or conflict of interest. Holbert argues that Wiggins' testimony or previous statements on behalf of the company are unreliable, because the company is now actively litigating against David Wiggins.

Pattern of Corporate Misconduct

Holbert argues that this supports his claim against the company. Holbert contends that *Cheetham v. Clean Harbors* ignores legal and professional standards, including those related to Title VII protections. Holbert states that breach-of-contract lawsuits often involve the discovery of confidential information, including internal emails, memos, and personnel files. Holbert argues that facts reveal in *Thompson Industrial Services v. Wiggins*—such as internal company culture and specific directives given to managers—support his claims.

Managerial Creditability

Holbert argues that the company's decision to sue its former operations manager suggests instability and a lack of integrity within the management chain that oversaw his employment. Holbert requests a *subpoena duces tecum* as part of his ongoing litigation. Holbert is asking the court to issue a subpoena for the records of *Thompson v. Wiggins*, case number 3:2024-cv-02809.

United States Supreme Courts Final Appeal

Holbert requests a 60-day extension under U.S. Supreme Court Rule 13.5, citing good cause, *pro se* status, and the complexity of the case. Holbert argues that as a *pro se* litigant, he requires additional time to ensure a well prepared and orderly presentation of complex Title VII issues.

District Court Issues Courts of Appeals Issues for the Court Review

Holbert asserts that the need for extensive legal research—particularly due to the landmark ruling in *Ames v. Ohio Department of Youth Services* (June 2025) and emerging circuit splits in

2025 regarding the EEOC RTS letters making it impossible to complete adequate research with the 90-day window.

Holbert cites Interest of Justice

Holbert argues that an extension will allow him to carefully frame his petition in a manner that is more helpful to the Court, particularly regarding the conflict between the Fifth Circuit dismissal standards and *Ames v. Ohio Department of Youth Services*. This application is also addressed by the Fifth Circuit Justice, Samuel Alito. Holbert argues he faced administrative delays because of the EEOC, the District Court in Corpus Christi, and the Fifth Circuit Court of Appeals, and personal hardship with family.

United States Supreme Courts Final Appeal a Motion for Reconsideration

As of 2026, Holbert argues that David Wiggins is being sued by Thompson Industrial, which brings the credibility of the plaintiff's primary supervisor and the integrity of the company's internal investigations into question. Holbert argues that the lawsuit against Wiggins serves as new discovery evidence that directly impacts his discrimination case. Holbert argues that the company's own records now characterize its key witness as untrustworthy or as having violated corporate policy.

Hostile Work Environment Evidence

Holbert argues lawsuits between a company and its manager often involve the disclosure of internal emails and instant messages.

Deuces Tecum Tangible Evidence Mandatory Production

Holbert argues that Thompson Industrial is legally obligated to search for and produce the requested items, including emails, text messages, phone records, employment files, and digital data.

Specifically, the plaintiff requests the following discovery from January 5, 2023, to August 16, 2023:

1. Company phone logs which were used for discrimination.
2. Corporate records from Thompson Industrial/Clean Harbors including memos, emails, or documents regarding the dispute involving Wiggins.
3. Access to Third Party Evidence from Steel Dynamics because some of the incidence happened on their properties.
4. The Letter of Termination, Notice of Breach of Contract and employee files regarding David Wiggins.

Holbert argues the lawsuit against Wiggins is relevant to the plaintiff's discrimination case, because Wiggins is a biased witness with zero credibility due to Wiggins selective enforcement of rules and racial bias.

Holbert requests a motion for relief from judgement under Federal Rule 60B which allows a case to be reopened based on newly discovered evidence of misconduct by an opposing party. The Plaintiff requests the court vacate the dismissal of his case to allow for the amendment of his Complaint based on new facts which meet the plausibility standards he previously failed to reach. Holbert argues for fraud or misrepresentation of Federal Rule 60(B)(3). Holbert argues that these documents may contain evidence of the racial slurs and inappropriate conduct he alleged which

the company previous claimed did not exist inconsistent statements. Any affidavits or testimony Wiggins give in his breach of contract case that contradicts the statement he or the company made during Holbert's *EEOC* investigation can be used to prove the company provided shifting explanations for its action.

Holbert requested Federal Rule 60(B) Relief. The lawsuit against David Wiggins could not have be found earlier newly discovered evidence. Holbert argues for the motion of relief from judgment under Federal Rule of Civil Procedure 60(B) in the District Court.

Holbert argues that identifying the specific legal basis for the termination—including violations of non-compliance and non-solicitation provisions, misuse of proprietary information, and failure to perform contractual duties—is essential. Holbert argues both defendants, David Wiggins and Thompson Industrial, claim breached of contract. Holbert argues in *Davis v. Alaska* (1974) the U.S. Supreme Court ruled that a defendant has the right to confront witness via cross examination which is paramount even when it conflicts with other state interests. Holbert argues that he should have the right to explore potential bias of a crucial witness such as David Wiggins, especially when Wiggins' own legal conflict with Thompson Industrial Confrontation Clause protection. The Sixth Amendment protects a defendant's ability to cross-examine witness to expose possible bias.

Holbert Argues Impeachment Over Privacy.

Holbert argues witness bias, asserting that Wiggins as a former manager who is now being sued by the company, may have had a notice to testify in a particular manner to protect his own position or contractual interests at the time of the initial proceedings. At the time of the initial investigation, Holbert argued that Wiggins statements were a crucial link in the company's defense,

making cross-examination vital to enduring a fair trial. Exposing motivation, Holbert argues that the breach of contract lawsuit reveals a fundamental conflict that the jury or the courts should have been allowed to consider when weighing Wiggins' credibility.

Application

Holbert argues that the Supreme Court should grant review because the lower courts dismissed the plaintiff's case based on management narratives provided by a supervisor, Wiggins, whom the company now officially labels as untrustworthy in a separate litigation.

Holbert argues against pleading standards under *Ames v. Ohio Department of Youth Services*, which by a unanimous 2025 Supreme Court's ruling finding the evidentiary burden required at the early stages of a case were onerous. Holbert argues that the existence of a lawsuit against his own manager for policy violations makes his claim of harassment more plausible, meeting the standard to survive a motion to dismiss. Holbert argues that Thompson Industrial Services' failure to disclose internal conflicts with Wiggins during the discovery phase constituted a misrepresentation, justifying the vacating of the prior dismissal. Holbert argues for a cover-up of discrimination.

District Courts Common Scenario and Examples

District Court may dismiss a case if the Plaintiff fails to meet the burden of producing some evidence, yet appellate courts normally reverse these rulings, thus allowing the Plaintiff to amend complaints using Seventh Circuit cases. Holbert argues improper exclusion as evidence. Holbert argues the district court and later the appeal courts' rulings to be overly strict and fails to consider or produce key evidence missing evidence rule. Holbert also argues procedural misstep thus requesting an amended/new trial. Further, Holbert argues to appeal the primary remedy. Holbert

argues Nocc Pro Tone insufficient evidence. Holbert argues improper exclusion of evidence leading to reversal. Holbert argues *Healy v. Milliman*. Holbert argues failure to amend. Holbert argues improper procedure Authentication. Holbert argue key legal principles involved burden of proof. Holbert argues Federal Rules of Procedure 37 and 103. Holbert argues waiver of rights. Holbert argues remand for a new trial. Holbert argues insufficient evidence for verdict consequences and remedies abuse of discretion. Holbert argues unauthenticated or unreliable evidence.

Key Scenario of Evidence

Failure Holbert argues forms of an offer. Summary of Requirements Arguments for Abuse of Discretion Federal Rule of Evidence Rule 403. Preponderance of the Evidence. Argument of Reversible Error. Substantial rights without the evidence the judge or jury received a skewed version of the facts. Timely offer of proof Holbert argues one last chance to correct the error citing Rule 60(B) newly discovered evidence, and/or mistake for a Motion for Reconsideration relevant to Failure to Present Evidence photographic or video is power for Holbert. Argues pre-suit optimal.

Discovery and Summary Judgment

The courts have reinforced the need for sufficient discovery allowing plaintiffs to seek evidence like video that might create genuine factual disputes which impact the summary judgment decision. Holbert cites Civil Rights attorney, Gay Gilson, filed the original Complaint advising Thompson Industrial Services investors of the lawsuit and the video evidence to hold for litigation.

Holbert requests for the IFP to continue his complaint pursuant to 28 U.S.C. § 1915 for a motion to leave to proceed in *forma pauperis* before February 26, 2026. Holbert requesting 60-day extension to file a Petition of Certiorari.

Holbert requests the United States Courts to email a copy to Thompson Industrial Services' attorney, Jeffery Shannon Mays.

Sincerely,

February 16, 2026

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Holbertjoe08@gmail.com

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United States Equal Employment Opportunity Commission
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Appeals of Federal Operations
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Washington, DC 20013

U.S. District Courts and U.S. Court of Appeals
One Columbus Circle, NE
Washington, DC 20544

U.S. Supreme Court
First Street NE
Washington, DC 20543

per Haller

2-16-2026

February 16, 2026

To: Texas Workforce Commission

Plaintiff, Joe Holbert, would like the Texas Workforce Commission (TWC) to consider the following regarding reopening his case.

Identification of New and Substantial Evidence.

Holbert states clearly the breach of contract constitutes new evidence that was not available or fully understood during the initial investigation. The TWC's prior determination was previously based on incomplete facts regarding the critical context of the true nature of Holbert's separation from employment. Holbert argues that David Wiggins violated Holbert's employment contract pursuant to the Texas Unemployment Compensation Act. Because of this, Holbert believes he has provided a good reason for reopening his case. Further, Holbert requests the subpoenaing of his personnel files and the original hearing officer, and his work contract from Thompson Industrial Services. These documents are essential for the employee handbook disciplinary policy. Holbert argues OSHA workplace violence hazard.

Kindest Regards,

Joe Holbert

2-16-2026

U.S. District Court for the Southern District of Texas

UNITED STATES DISTRICT COURT

for the

Southern District of Texas

JOE HOLBERT

Plaintiff

THOMPSON INDUSTRIAL SERVICE
CLEAN HARBOR ENVIRONMENTAL SERVICE
GO CT CORPORATION SYSTEMS

Defendant

Civil Action No. 2-24-CV68

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To:

STEEL DYNAMIC SERVICE
THOMPSON INDUSTRIAL SERVICE
CLEAN HARBOR ENVIRONMENTAL SYSTEMS
At any place within the county and state to be

Production YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material.

Place: SINTON TEXAS

Date and Time:

06/07/2023 12.00 am

☒ **Inspection of Premises** YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place: SERVICE TRUCK

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached - Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 07/19/2024

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)*
JOE HOLBERT(662)231-4142

, who issues or requests this subpoena, are:

Notice to the person who issues or requests this subpoena

This subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before is served on the person to whom it is directed, Fed. R. Civ. P. 45(a)(4).

Federal Rule of Civil Procedure 45 (e), (d), (c), and (g) (Effective 12/1/13)

(d) Duties in Responding to a Subpoena.

- (1) **Producing Documents or Electronically Stored Information.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:
- (i) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
 - (ii) within the state where the person resides, is employed, or regularly transacts business in person, if the person:
 - (A) is a party's officer, or
 - (B) is commanded to attend a trial and would be more substantially benefited.

- (2) **Other Discovery.** A subpoena may command:
- (i) production of documents, electronically stored information, or tangible things in a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
 - (ii) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena: Enforcement.

- (1) **Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required may enforce this duty and impose an appropriate sanction, which may include lost earnings and reasonable attorney's fees, on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

- (A) **Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

- (B) **Objections.** A person commanded to produce documents or tangible things, or to permit inspection, may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

- (A) **When Required.** On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

- (B) **When Permitted.** To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an untested expert's opinion or information that (A) does not describe specific necessities to dispute and resolve from the expert's study that was not requested by a party.

- (C) **Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be obtained by other means without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

- (1) **Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

- (A) **Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

- (B) **Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

- (C) **Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

- (D) **Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

- (A) **Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

- (B) **Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has, must not use or disclose the information until the claim is resolved, must take reasonable steps to retrieve the information if the party disclosed it before being notified, and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

- The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

Subpoena should not be filed with the court unless required by Fed. R. Civ. P. 45.)

PROOF OF SERVICE

Printed name and title of individual and date, if any

☒ I served the subpoena by delivering a copy to the named person as follows:

on (date)

: or

☐ I returned the subpoena unexecuted because:

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of

\$

My fees are \$

for travel and \$

for services, for a total of \$

0.00

I declare under penalty of perjury that this information is true.

Date:

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Texas Workforce Commission Civil Rights Division and EEOC
State or local Agency, if any

Name (indicate Mr., Ms., Mrs.) Home Phone (incl. Area Code) Date of Birth
Joe Halbert (also sometimes spelled Holbert) (662) 231-4142 08/09/1968

Street Address City, State and ZIP Code
719 Lantana Street, Lot 49 Corpus Christi, Texas 78408

Named Is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name No. Employees, Members Phone No. (Include Area Code)
Thompson Industrial Services, LLC 500+ (281) 229-0203

Street Address City, State and ZIP Code
1502 W F Street La Porte, TX 77571

Name No. Employees, Members Phone No. (Include Area Code)
Clean Harbors; Clean Harbors, Inc.; Clean Harbors Industrial Services, Inc.; Corpus Christi Industrial Services * 500+ (361) 356-1339

Street Address City, State and ZIP Code
1704 Hunter Rd Corpus Christi, TX 78409 (main office identified below)**

DISCRIMINATION BASED ON (Check appropriate box(es).)
☒ RACE ☒ COLOR ☒ SEX ☐ RELIGION ☒ NATIONAL ORIGIN
☒ RETALIATION ☐ AGE ☐ DISABILITY ☐ GENETIC INFORMATION
☐ OTHER (Specify)
DATE(S) DISCRIMINATION TOOK PLACE
Earliest Latest
01/05/2023 08/21/2023
☒ CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):
I was hired by Thompson Industrial Services, LLC (Thompson) to work as a technician in Sinton, Texas. While I was employed, there was a transaction where Thompson was sold to Clean Harbors. *Clean Harbors has several names under which it does business which I identified above. Some records also show that the business uses other names and I am attaching this list to my EEOC Charge and incorporating it by reference. I will refer to these entities as "Clean Harbors" – which is the name that was on my letter of termination. Thompson was on my unemployment records. The Clean Harbors entities are all at the address of 42 Longwater Dr., Norwell, MA 02061 (**main office), phone (781-792-5000). The local office for Clean Harbors is located at the address above. The Thompson and Clean Harbors entities were my employers, joint employers and/or acted as an integrated enterprise.
During my employment, I was subjected to unwanted and highly offensive verbal and physical harassment because of my race, Black, national origin, African American, color, Black, gender/sex, male. I was the only Black male working. Some examples of this continuing and highly offensive hostile work environment are below.
On January 5, 2023, I started work and Ernest Mungia (Hispanic), harassed me and slapped my behind in a demeaning manner that made me very uncomfortable. He did this in front of George, Matthew, Efrain (each Hispanic), Jordan (Hispanic/White) and Chris (White).

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.
I declare under penalty of perjury that the above is true and correct.
11-1-2023 Joe Halbert
Date Charging Party Signature
NOTARY – When necessary for State and Local Agency Requirements
I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.
SIGNATURE OF COMPLAINANT
SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: Agency(ies) Charge No(s):

☐ FEPA
☒ EEOC

Texas Workforce Commission Civil Rights Division

and EEOC

State or local Agency, if any

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

He did not do this to non-Black employees. I was shocked, embarrassed, and ashamed. I have never had another man touch me in that way. When he touched me, I turned to him and gave him a clear look that he should not touch me like that. His touching of me was sexual and it was also motivated by my race and national origin.

Management made it clear that Ernest "was the team leader" and we had to follow his directions.

From my first day of employment, and continuing, on an approximate weekly basis, Ernest harassed me in a sexual and racial manner. He made sexual comments suggesting that he wanted to see my penis because of the stereotype that Black men have large penises. I have never had anyone ask or inquire about such things especially at work and this made me very uncomfortable. Others heard Ernest make these comments in the workplace and no one said anything or told him to stop. This further scared me because he was basically given permission to do what he wanted. Other comments and actions that Ernest did toward me were saying things like I "have a nice ass," "you are fine," and he frequently leered at my body eyeing it from top to bottom and focusing on my groin and behind. As Ernest did these things to me, I made it clear that his actions were not welcome.

At the beginning, I did not know that the Operational Manager, James Cabler (White), is Ernest's brother-in-law. Ernest frequently told James untrue things about me after I rejected his sexual and racial conduct toward me. I told James this was not true, but he just sided with his brother-in-law and I knew that I would not get anywhere reporting Ernest's unlawful conduct and I needed my job.

When I told Ernest that I did not like his talking about, in his words, "dicks," he told me that mine was not big enough meaning that I was not a real Black man.

Ernest also frequently made jokes about my race/color/national origin such as: smile, I can't see you; why are you so Black? and similar statements on a frequent basis.

On or about March 15, 2023, Michael Pena (Hispanic), my direct supervisor, said, "fuck you nigger, meet me in the parking lot" when we were discussing how to do a job. Matthew and Efrain were also present when this happened. Michael threatened to beat my ass in the parking lot after work. I made it clear that this was not welcome, but I was scared that he may physically harm me. I kept working like I didn't hear him because I was afraid the situation would escalate.

On or about June 7, 2023, I was in a truck with Ernest Mungia and Montana Wiggins (White). I was in the backseat and I was smoking a cigarette. I asked Ernest if he could put a window down in order that I could finish smoking. He told me "fuck you" and other words. I was taken to the office and admonished, but Ernest was not.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

NOTARY - When necessary for State and Local Agency Requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)

11-1-2023

Date

Joe Wallert
Charging Party Signature

CHARGE OF DISCRIMINATION 4 of 8

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: Agency(ies) Charge No(s):

☐ FEPA
☒ EEOC

Texas Workforce Commission Civil Rights Division

and EEOC

State or local Agency, if any

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

On or about June 2023, a crew came from LaPorte, Texas came to work with us to help with a shutdown. A few young Black males and two black women. Ernest said those "Black nigger girls don't do nothing," "they are lazy," "they just want to sit down." The next day, when their job was over, Ernest told them they could go back to LaPorte. After they left, Ernest told me that those niggers didn't want to work. Ernest frequently used the word nigger with me and he also used it with these other employees. I felt very uncomfortable and this only showed his bias and discrimination toward Black people.

On August 16, 2023, while riding in a truck driven by Ernest. Garcia was also riding in the truck and he told Mungia to watch out for a vehicle. Mungia responded, "fuck that car and that nigger" while he looked at me in the rearview mirror. I was shocked. Again, Ernest used a racial slur to me. I have knowledge that the trucks are video monitored by management/safety. Based upon my knowledge of the operations of my employers, that comment was on a video maintained by my employers. At the end of the day, I received a message from the Supervisor, Michael Pena, saying there was no work for tomorrow and that he would call me if something came up.

After work on August 16, 2023, I texted Kenny (Manager in LaPorte, Texas) to see if I could take a few days off to see my mom and uncle who is very ill with cancer since Pena told me that there was no work for me the next day. I asked Kenny to look in my file and see how many days I could take to travel to Mississippi. He never responded.

About 2 hours later, Louis Garcia texted me and asked if I was working tomorrow and I responded "are you working?" and he said yes. I told him they told me there wasn't any work and no, I am not working. (Louis and I carpooled to work usually). I was the only person that was told that there was no work.

Also on August 16, 2023, I contacted both Kenny and David Wiggins (Plant Manager – highest ranking person on the job site) and reported that Ernest called me nigger earlier in the day.

The next day, August 17, 2023, I applied for unemployment because my employers did not give me work even though it was available. No other employee was treated like I was. My employers told unemployment that I was terminated for not being able to perform the work tasks. This is an untrue statement. I was always able to perform my work tasks. Texas Workforce Commission found in my favor and awarded me unemployment. My employers retaliated against me for reporting and opposing unlawful discrimination.

I was subjected to a hostile work environment and discrimination based upon my race, Black, national origin, African American, skin color, Black, sex/gender, male, and I was retaliated against for reporting and opposing unlawful discrimination in violation of Title VII of the Civil Rights Act of 1964, as amended, and Chapter 21 of the Texas Labor Code.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

Date

Charging Party Signature

NOTARY – When necessary for State and Local Agency Requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)

CHARGE OF DISCRIMINATION 5 of 8

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form

Charge Presented To: Agency(ies) Charge No(s):

☐ FEPA

☒ EEOC

Texas Workforce Commission Civil Rights Division

and EEOC

State or local Agency, if any

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

My name is Joe Halbert (also known as Holbert), my date of birth is 8/9/1968 and my address is 719 Lantana St, Lot 49, Corpus Christi, Texas 78408. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Nueces County, State of Texas, on the 1st day of November.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

11-1-2023
Date

Joe Halbert
Charging Party Signature

NOTARY -- When necessary for State and Local Agency Requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.
SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)

320442561000187010



DETERMINATION ON PAYMENT OF UNEMPLOYMENT BENEFITS
Date Mailed: September 14, 2023

JOE L HOLBERT
719 LANTANA ST TRLR 49
CORPUS CHRISTI TX 78408-2247

Social Security Number: XXX-XX-9421
Employer: THOMPSON INDUSTRIAL
As:
Employer Account No: 10-832069-9
All dates are shown in
month-day-year order.

Decision

Issue: Separation From Work

Decision: We can pay you benefits, if you meet all other weekly requirements such as being able, available and actively searching for work.

Reason for Decision: Our investigation found your employer fired you because you were unable to perform your assigned work to their satisfaction. This is not considered misconduct connected with the work.

Law Reference: Section 207.044 of the Texas Unemployment Compensation Act.

Understanding your Decision

Understanding your decision
If you receive a decision that says, "we cannot pay you benefits," it means there is a problem with your claim EVEN IF you have received other decisions for the same period that say, "we can pay you benefits." If even one decision for the same period says we cannot pay, you will not receive an unemployment payment for that period.

To resolve issues on decisions you receive:

- To resolve issues on decisions you receive:**
1. Follow instructions on the notice(s); call the Tele-Center at 800-939-6631 if you have questions;
 2. If the instructions tell you to "Report," call the Tele-Center at once;
 3. If you disagree with a decision, file an appeal. Appeal each decision separately by the appeal deadline. If you fax your appeal, keep a confirmation sheet.

appeal deadline. If you fax your appeal, keep a confirmation sheet. Your employer can appeal TWC's decision to pay benefits. TWC will notify you of any appeal hearing. If you do not participate, you may lose your benefits and have to repay benefits you received.

Determination of Potential Chargeback for the Employer

If You Disagree with this Decision

If you disagree with this decision, you may appeal. Submit your appeal by mail, fax, online, or in person at any Texas Workforce Solutions office, on or before 09-28-23 .

TWC will use the postmark date, or the date we receive the fax or online form, to determine whether you submitted your appeal on time. If you appeal by fax, you should keep your fax confirmation as proof you sent it. Please include a copy of this determination notice with your appeals correspondence.

If you receive multiple determination notices, you must appeal each determination separately.

Mail the appeal to:

You may appeal by submitting
TWC's online appeal form. Go to
www.texasworkforce.org/niappeal

Appeal Tribunal
Texas Workforce Commission
101 E. 15th Street
Austin, TX 78778-0002
Or fax to (512) 475-1135

Case No.: 25
Claim ID.: 08-13-23
Claim Date: 08-13-23
HEARING IMPAIRED CLIENTS
CALL 711 for RELAY TEXAS

Please See Reverse For How To File An Appeal.

**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

San Antonio Field Office
5410 Fredericksburg Road, Suite 200
San Antonio, TX 78229
(210) 640-7530
Website: www.eeoc.gov

DISMISSAL AND NOTICE OF RIGHTS
(This Notice replaces EEOC FORMS 161, 161-A & 161-B)

Issued On: 12/29/2023

To: Joe Halbert
719 Lantana Street, Lot 49
Corpus Christi, TX 78408

Charge No: 451-2024-00505

EEOC Representative and email: SEQUOIA WELCH
Investigator
sequoia.welch@eeoc.gov

DISMISSAL OF CHARGE

The EEOC has granted your request that the agency issue a Notice of Right to Sue, where it is unlikely that EEOC will be able to complete its investigation within 180 days from the date the charge was filed.

The EEOC is terminating its processing of this charge.

NOTICE OF YOUR RIGHT TO SUE

This is official notice from the EEOC of the dismissal of your charge and of your right to sue. If you choose to file a lawsuit against the respondent(s) on this charge under federal law in federal or state court, **your lawsuit must be filed WITHIN 90 DAYS of your receipt of this notice.** Receipt generally occurs on the date that you (or your representative) view this document. You should keep a record of the date you received this notice. Your right to sue based on this charge will be lost if you do not file a lawsuit in court within 90 days. (The time limit for filing a lawsuit based on a claim under state law may be different.)

If you file a lawsuit based on this charge, please sign in to the EEOC Public Portal and upload the court complaint to charge 451-2024-00505.

On behalf of the Commission,

A handwritten signature in black ink, appearing to read "Norma J. Guzman".

For

Norma J. Guzman
Field Director

Cc:
Stacey Sigal
Clean Harbors
42 Longwater Drive
Norwell, MA 02061

Please retain this notice for your records.

Appendix A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
DIVISION

Joe Holbert

versus

Thompson Industrial Service LLC
Clean Harbors Company

§
§
§
§
§
§
§

CIVIL ACTION NO. _____

EMPLOYMENT DISCRIMINATION COMPLAINT

1. This action is brought under Title VII of the Civil Rights Act of 1964 for employment discrimination. Jurisdiction is conferred by Title 42 United States Code, Section § 2000e-5.

2. The Plaintiff is:

Joe Holbert

Address:

719 Lantana St. Lot 49
Corpus Christi TX 78408

County of Residence:

Nueces

3. The defendant is:

Thompson Industrial Service LLC

Address:

8534 Highway 89
Sinton TX 78389

☒ Check here if there are additional defendants. List them on a separate sheet of paper with their complete addresses.

4. The plaintiff has attached to this complaint a copy of the charges filed on _____ with the Equal Opportunity Commission.

5. On the date of 12/29/2023 the plaintiff received a Notice of Right to Sue letter issued by the Equal Employment Opportunity Commission; a copy is attached.

6. Because of the plaintiff's:

- (a) ☒ race
- (b) ☒ color
- (c) ☒ Sex
- (d) ☐ Religion
- (e) ☐ national origin,

the defendant has:

- (a) ☐ failed to employ the plaintiff
- (b) ☒ terminated the plaintiff's employment
- (c) ☐ failed to promote the plaintiff
- (d) ☒ other: _____

7. When and how the defendant has discriminated against the plaintiff:

The discrimination began Jan 5, 2023. There were
no other African-American males employed at this time. The
verbal began by calling me nigger, and when they thought I was not
hearing they referred to me as "the nigger" some where speak
8. The plaintiff requests that the defendant be ordered: on English and Spanish, sexual
assault.

- (a) ☐ to stop discriminating against the plaintiff
- (b) ☐ to employ the plaintiff
- (c) ☐ to re-employ the plaintiff
- (d) ☐ to promote the plaintiff
- (e) ☒ to compensate lost wages and punitive damage

I was wrongful accused, Caused me hardship
against my Daily living means and that;

- (f) ☒ the Court grant other relief, including injunctions, damages, costs and attorney's fees.

Joe Louis Holbert

(Signature of Plaintiff)

Address:

719 Lantana Lot # 49
Corpus Christi, TX 78408

Telephone:

662-231-4142

April 3, 2024

Joe Holbert

Case# 2-24CV68

✓

Thompson Industrial Service

Clean Harbors Environmental

Steel Dynamic Inc, Sinton Division

Louis Garcia, Michael Pena, James Cabler, Moll Tana Wiggins

Ernest Mungia, George Gomez, David Wiggins, Michael

United States Courts
Southern District of Texas

Added Amendment

APR 26 2024

Nathan Ochsner, Clerk of Court

We all know that racism today is still as sensitive topic now as forty years ago.

But I will do my best to explain it as it pertains to me.

When I looked up "racism" just to see how it would describe.

Racism - refers to the belief that certain races or ethnicities are inherently superior or inferior to others.

It often involves someone prejudice attitude, discrimination and unjust treat towards people based solely on their race or ethnicity.

THIS IS THE DISCRIMINATORY BEHAVIOR FROM EMPLOYERS OF THOMPSON INDUSTRIAL SERVICE. I ~~RE~~ EXPERIENCED while being employed.

Q2

At sometime or other people have or will experience racism, rather it be stereotyping, harassment or even violence, as some have witness over the news or heard, even in the last year!

When I was called "a nigger" by Michael Pena, and Ernest Mungia. It was address in a offensive demeaning abusive way, in front of other employees, who heard and witness this.

The demeaning way I was slapped on my butt, in front of all male employee!

This is 2024, Although I am not young, I'm still a man, a father grand-father. I don't know what these men family status is, do they have families, children, or grandchildren, But Prejudice starts with you! Your beliefs, how you value people, cultures, around you. I never once called or refered these individuals out of name or character and for The superior Foremans never NOT once address this.

This behavior in the work place, people have lost their lives over situation such as this.

Now here I am over 50 experincing this horrific behavior and the lost of my livelihood because of Ignorance. By employee ~~Feen~~ who work for a major company, Corporation, such as Thompson Industrial Service Clean Harbors.

These are companies That operate through out the United States

Canada, Mexico. Clean Harbor website states I quote, "They are a well diverse Customer based company!

Their website further states

"Clean Harbors is proud to exhibit the power of diversity and inclusion every day.

"Clean Harbors has initiated a Diversity and Inclusion Steering Committee with a vision to "leverage a diverse and inclusive workforce to achieve superior business results.

There mission statement: "Fosters a company culture that attracts the best diverse talent, value diversity, and encourages

Inclusion based on our Core Values."

This however was not the type of work environment I experienced.

There were no other African American workers, Black male or female workers there, at the time of my employment with Thompson Industrial.

Even if they say this is ~~an isolate~~ ³⁴ ~~circumstance~~ or consider an isolate

circumstance. The foreman, supervisor, never tried once to address or talk to me or the other employees about what was going on. They

still work for and represent Clean Harbors. This was as hostile as it gets.

I was looking to be with this organization for a few more years. The knowledge I obtain and could have ³⁴ obtain was cut off by ignorance.

P. 8
7 wrong Answer. I told him you got me
Fucked up I work with you Anche got
got pissed and starting wanting to
fight me in the yard of S.D.T. why we
were working Matthew and Efrin heard
everything started calling me Niggers and
he will kick my ass and meet him in
the parking lot and so on. I never
responded to it so he finally did what
he was supposed to do in the beginning
he called David Wiggins and James Cabler
and minutes later I were still in that
same spot working when MR. Wiggins and
MR. Cabler drove up and asked me what
was going and I said Michael Pena
told me that I work for him and
they both said at the same time, Ya Bo.
And I said no I do not, I work with
him so things after that with Michael Pena
got different Earnest Mungia 4-20-2023
We were working At ODem waist water
and before the Job started MR Cabler said to
me the he knows that Earnest and I do
not get a long with each other yet he
needs me on this job and I said
I will work with anybody its Earnest
has the problem working with me

P.29 MR. CABLER explained to that this job at
DDrm WA:Stc Water is only from 9:00^{am} to
5:00^{P.m} no overtime 40 hours a week so
we both accepted the job well after about
a week later it 4-25-2023 it's 4:50^{P.m.}
we are emptying the last for today
and I said to Earnest it's 10 minute til
5 and he ~~sed~~ started going off saying
things like he's the boss we leave
when he say leave and I said no
the job is from 9 til 5 and said well
I am going to get one more ~~last~~
load and I said well you can get it
I am only working til 5 like MR CABLER
said, and 5:00^{P.m.} I left work on the
ride home I get a call from MR CABLER
asking me why did I leave and I got the
around 5:30, and I said I left at 5:00
like you said, and he said JOE you
ARE not ~~run~~ running the job Earnest
is well MR. CABLER you are the one
said 9 til 5 now you upset at me
and that's when I found out MR. JAMES
CABLER is married to Earnest Mungia
sister. Weeks later we are back on the
S.D.I. yard about to hook up a
trailer Earnest Mungia is driving 5-5-2023

P.9 I was sitting in the back seat and anybody driving company truck when in reverse needs a spotter so I get out to spot and the company truck has a reverse beeper on it and ~~heard~~ its loud so once I spotted him and lined the trailer up he still has the truck in reverse I said to him OKAY Earnest you take the truck out of reverse and he goes off on me again I'm driving this truck you just do the fucking work so I say some words back and it get to Wiggins and Cabler, so ~~I~~ end up in the office about what I did wrong so I explain and things dies, and George Gomez were there when that happened 5-5-2023.

Q.

6-7-2023

6:30 A.M.

Earnest Mungia is driving MONTANA Wiggins is on the front passenger and I was smoking a cigarette and all of the windows were up and I asked Earnest to take windows off lock so I could let the window down and said fuck you I am not ~~do~~ doing shit for you so we had some words and Wiggins and Cabler

270 And I am in the office again and
PIO Everything Cabler and Wiggins say yeah we
talked and Earnest said this and that
and I'm like why Earnest and I are
not in this office at the same time

6-8-2023

I texted MR. Wiggins that was putting
in a two week notice that was not doing
anymore, I'm going through with Penna
Earnest I have asked numerous of people
for an evaluation and a TAISC nobody
is answering no messages MR MACK LEE
Kenny when it comes to doing what
you supposed to do. MR Wiggins responded
10-4 to the two week notice. I worked
the two weeks I could not find a job
in those two weeks So I told them I
was gonna stay 6-22-2023.

7-10-2023

S.D.I. Shut down All operation
for most of the month. We were
to clean (Thompson) whatever needed to
be cleaned it's myself Earnest Mungia
and Louis Garcia working together
that day it's hot and dusty

Q11 At 3:00 P.M. I let the team leader know that I was about to take a break and he got mad so I still went on break and a hour and a half later we were getting ready to get off work for the day and Cabler and Wiggins walked up and as they started talking I was going outside and MR. Cabler called to me and said hold up I need to talk to you. Once we got outside the plant MR. Cabler said to me (You can not just be walking off without telling anyone I said what do you mean he said Ernest called Wiggins and said that you walked off without telling anyone I said to MR. Cabler I told Ernest that I was going on break and he said JOE EARNEST is running things A few days my girlfriend J-15-2023 was driving from Dallas to Corpus Christi and her car broke down in Centerville TX and she called me around 11:00 AM to let me know that she ~~were~~ were on side the highway stranded and I was working at the S.D. I yard and once I found out her car broke down.

P. 10 I went to Ernest Mungia around 11:30 A.M. and explained to him that she was broke down and if she can't get the proper help I may have to leave. As time went on I continued to work and do all I could to answer her every call. Around 2:30 she called and were ~~so~~ crying so I said I am about to go to the team leader and let him know that I have to leave, and he took me to the parking lot and drop me off at my car, and later that day ~~Ernest~~ Ernest called Mr. Wiggins and told him that I said that I called Wiggins and Wiggins said that I could go. 7-16-2023 the next day Mr. Cabler come to me and said you can't just be leaving like that I said sir it was an emergency. 7-23-2023 Mr. Cabler said to me to be ready tomorrow because we have a job at Howard Energy we will be over there for about two weeks. I'm at Howard Energy working and around 8-4-2023 Mr. Cabler drives up the jobsite.

Q9 He came to me and said this is
Q13 my last day with Thompson and Clean
harbor I said what's going on you asked
me to come here and work and months
later you are moving on he says well
Clean Harbor doesn't want no more outside
work we are to only work with
S.D.I. no more other plants and mind
you that these badges that I went
to class for we don't need them
at S.D.I. only for refinery, and
MR Cabler have these badges so he
Q14 ~~got~~ moved on. So that leaves me
with the guy ~~who~~ that got me on
is gone so ~~we~~ we finished the job
up at Howard Energy on 8-8-2023
8-9-2023 I report to S.D.I.
And around 9:30 AM. I talked to MR.
Wiggings about Cabler leaving and
I needed few days off, and he said
fill out the paper work and take
some days off. 12:00 P.m. After lunch
we stopped by the office trailer
I filled the paper out I was to be
off Aug 10th 11th 12th 13th 14th 15th return
Aug 16th

Later that ^{DAY} a coworker said to me
P14 that I really put Thompson in a Jam
because it was shut down Aug 10 and
we really needed everyone there with it
true. I got home that evening and
I texted MR. Wiggings and said Sir
I did not know that tomorrow
was shut down and I am willing to
take that day off the table to
be there for the team, and he said
that we will be OKAY. Aug 14-2023
I texted ~~Kenny~~ Kenny asking him how
could I get moved from Thompson
to Clean Harbors and he explained to me
how I could. Aug 16-2023 / MR. Louis
Garcia picked me up at my house
because I was going to work with
him that day. 6:15 AM Louis and
I got to the jobsite parking lot
I got out of his car and got in
the company truck started it up
roll windows down and I was sitting
in the driver seat around 6:25 AM
Earnest Mungia drive up in his truck and
once he walked up to the Thompson
truck he saw that I ^{were} ~~was~~ there.

And I quote, AWW FUCK YOU back
P15 We thought you were taking a drug
screen for another company. And kept
on saying the same thing, well 5 minutes
later we are driving to the office trailer
and as he's driving through security gate
it was a small car on the passenger side
of the truck and MR Garcia said to
Earnest be careful there's a car on this
side. And Earnest said Fuck that
car and that Nigger and looked in
the rearview mirror right at me. I
didn't know how to respond to it.
We had safety meeting that morning
after the meeting I was told that I
would be working in the non-billable
which is 8 hours, no problem. I did
the work that was needed and came
home after 8 hours. At 3:50 P.M. the
same day I get a message from MR
Pena saying that we have no work
for tomorrow and that he would
call me if something comes up and I
said yes sir. Two hours later Louise
Garcia Garcia texted me and said did
they text you about work and I
said to him of you working tomorrow

pg 12

He text me back and said yes and I said they told me that they didn't have work, so no sir you do not have to pick me up. The same exact day I explain to Louis Garcia that I was reporting Earnest for what he said that morning of 8-16-2023 and I let Louis Garcia know what I was doing and explain to him that I was involving him because he were in the truck. 8-17-2023 I text Kenny and on the day of the day of 8-16-2023 and let him know that MR Pena text me and ask me to stay home because there was not any work and he MR. Kenny did not respond to me at all 8-16-2023 I did not hear from him until 8-17-2023 I called Unemployment, and explain to them what happened. I text Kenny and David Wiggins that I was resigning for racial slurs and when you say we don't have any work to me that means all of us. What I got out of that was I was not part of that team. Since that happened I've lost weight can't sleep been to the doctor twice complaining that I can't sleep, stressing on how

Concerned for my well being, that job
 was my lively hood. I had to go to
 the Human Services to stand in a line
 for food stamps applied for unemployment
 which is a big difference. ~~I have~~ I
 been looking for work in and out of
 the unemployment office using ~~the~~ T.W.C
 computers. I was wrongfully done.
 I resigned for racial reasons and sexual
 harassment. I received a letter
 from CLEAN Harbors Accepting my Resignation
 and weeks later I get a letter
 from T.W.C. saying that I could
 not perform the job task, which is
 false

True/False

P18 To Whom this may concern. My
 name is Mr. JOE Louis HARBER T. I
 am to inform you all that I have
 filed an EEOC Complaint against
 my former Employer Thompson Industrial
 Services A Clean Harbor Company -
 These incidents happened in
 Sinton Texas 8534-89 - 78387
 San Patricio County - Phone
 361-424-6200 SW. Sinton
 Division Steel Dynamics Inc
 for more information please
 contact MS. Stacey. ~~I am~~ I'm going
 to speak a little on this situation
 I was wrongfully dealt while
 working with Thompson Industrial
 Services the whole entire time
 I was there Start date 1-5-2023
 End 8-16-2023 After my End date
 I called and inform the HR
 department ~~that I was~~
 Steel Dynamics HR Department
 I was told ~~that~~ You all could not
 speak with me due to
 the fact that its a process
 Joe Louis Harber

P15 These Videos are A Key piece of
Evidence in ~~Federal Court~~ Litigation

Audio Forensic Evidence

XAMJTC

quality history evidence

MANIPULATED

Camera does L.F.

digital forensic

Logout:

100

per letter

4-20-2024

ENTERED

August 27, 2024

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

JOE HOLBERT,

Plaintiff,

VS.

THOMPSON INDUSTRIAL SERVICE
LLC, *et al.*,

Defendants.

§
§
§
§
§
§
§
§
§

CIVIL ACTION NO. 2:24-CV-00068

MEMORANDUM AND RECOMMENDATION

Plaintiff Joe Holbert is appearing *pro se* and *in forma pauperis* in this employment discrimination action. This case is subject to screening pursuant to the *in forma pauperis* statute. 8 U.S.C. §§ 1915(e)(2).¹

The undersigned recommends for purposes of screening that all of Plaintiff's claims be **DISMISSED with prejudice** pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii) because Plaintiff fails to state a claim on which relief may be granted. Additionally, the undersigned

¹Mr. Holbert is a civilian who is not in custody. Nevertheless Section 1915(e)(2)(B) screening applies equally to prisoner as well as non-prisoner *in forma pauperis* cases. See *Newsome v. Equal Emp't Opportunity Comm'n*, 301 F.3d 227, 231–33 (5th Cir. 2002) (affirming dismissal of non-prisoner claims for frivolity and failure to state a claim under § 1915(e)(2)(B)(i) and (ii)); *Cieszkowska v. Gray Line New York*, 295 F.3d 204, 205–206 (2nd Cir. 2002) (affirming dismissal of *in forma pauperis* non-prisoner case for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)); See also *Benson v. O'Brian*, 179 F.3d 1014, (6th Cir. 1999) (complaints in actions not pursued *in forma pauperis* are not subject to “screening” under § 1915(e)(2)); *Bazrowx v. Scott*, 136 F.3d 1053, 1054 (5th Cir. 1998) (same).

recommends the Court **GRANT** Defendant Clean Harbors Environmental's ("Clean Harbors") Rule 12(b)(6) Motion to Dismiss. (D.E. 21).

I. JURISDICTION

The Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331. This case has been referred to the undersigned magistrate judge for case management and making recommendations on dispositive motions pursuant to 28 U.S.C. § 636.

II. PROCEDURAL BACKGROUND

On March 13, 2024, Mr. Holbert filed his complaint *pro se* with an application to proceed *in forma pauperis* (IFP). (D.E. 1, 2:24-mc-00045). United States Magistrate Judge Mitchel Neurock granted the IFP application on March 14, 2024. (D.E. 2, 2:24-mc-00045). This case was then given the above captioned civil action number and was assigned to United States District Judge Nelva Gonzalez Ramos. Judge Ramos referred the case to the undersigned for case management and all pretrial purposes in accordance with 28 U.S.C. § 636. (D.E. 3). On April 3, 2024, a status conference was held at which the undersigned cautioned Plaintiff about deficiencies in his complaint. Plaintiff was ordered to file an amended complaint on or before May 3, 2024, and was further ordered to submit summonses to the Clerk of Court for service. (D.E. 6). The Court received Plaintiff's Amended Complaint on April 26, 2024. (D.E. 7).

On May 28, 2024, Clean Harbors filed its motion to dismiss for improper service and under Rules 12(B)(5) and 12(B)(6). Plaintiff was ordered to file a response to the motion to dismiss on or before June 28, 2024. (D.E. 22). On June 10, 2024, Plaintiff filed

a response to the Clean Harbor's motion to dismiss. (D.E. 27). Clean Harbors has filed a reply. (D.E. 29).

On June 10, 2024, a status conference was held at which the undersigned admonished Plaintiff that Defendant Thompson Industrial Service LLC ("Thompson Industrial") had not been served. The undersigned granted Plaintiff an extension and ordered Plaintiff to complete another summons form with the proper address for service for Thompson Industrial and to deliver it to the Clerk of Court for service on or before June 24, 2024. The undersigned further cautioned Plaintiff that unserved defendants were subject to being dismissed for lack of service. (D.E. 28). Further, Plaintiff was also cautioned that his complaint was still factually deficient and, therefore, he was ordered to file a more definite statement on or before June 28, 2024. (D.E. 28). Additionally, to better understand Plaintiff's claims, he was also ordered to file documentation that he timely filed a charge of discrimination with the Equal Employment Commission. (D.E. 28, p. 2).

After requesting and being granted several extensions (D.E. 30, 31, 32, 33, 34, & 35), Plaintiff filed a second "Added Amendment" (D.E. 36) which the undersigned construes as Plaintiff's more definite statement. Plaintiff's "Added Amendment" (D.E. 36) does not comply with the undersigned's order for a more definite statement. (D.E. 28). Plaintiff was ordered to list each defendant, explain what each defendant did to violate Plaintiff's rights and explain why this Court has jurisdiction. (D.E. 28). Instead, Plaintiff filed photocopies of a legal resource which includes case summaries and general propositions of law. Additionally, Plaintiff did not file his right to sue letter from the EEOC

or any other documents as ordered. Clean Harbors filed a response to Plaintiff's "Added Amendment" noting that Plaintiff's pleading is almost illegible, does not comply with the Court's order and is devoid of any facts. (D.E. 37).

III. Plaintiff's Claims

Plaintiff's claims are difficult to summarize because his pleadings are unorganized and are not set forth clearly. However, to ensure justice and access to the courts, courts interpret pleadings of *pro se* litigants liberally. See *United States v. Robinson*, 78 F.3d 172, 174 (5th Cir. 1996) (citing *United States v. Santora*, 711 F.2d 41, 42 (5th Cir. 1983)). *Pro se* actions will not be dismissed based on technical pleading defects and should be construed to ensure such claims are given fair and meaningful consideration despite the unrepresented litigant's unfamiliarity with the law. See *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); See also *Estelle v. Gamble*, 429 U.S. 97, 106 (1976) (*Pro se* parties are normally accorded more leniency in the construction of their pleadings).

The undersigned has attempted to articulate and analyze Plaintiff's claims in an impartial manner consistent with providing appropriate leniency to *pro se* litigants while at the same time requiring compliance with applicable pleading and screening standards. To the extent Plaintiff is attempting to raise a claim not specifically addressed by the undersigned in this Memorandum and Recommendation, Plaintiff has failed to state such claim with sufficient factual detail or clarity to allow the claim to be identified, understood or analyzed by the Court.

Plaintiff is a black male. He brings this action under Title VII of the Civil Rights Act of 1964 for employment discrimination in connection with his race, color and sex. He alleges he was wrongfully terminated from his employment. In his original complaint, he alleges jurisdiction is conferred by Title 42 United States Code, Section 2000e-5. (D.E. 1). Plaintiff names Thompson Industrial Service LLC as the defendant in his original complaint. However, in his “Added Amendment” he also names the business entities Clean Harbors Environmental and Steel Dynamic Inc. as Defendants. (D.E. 7). Plaintiff does not clearly allege which of these entities was his employer, what the relationship is between these entities or which entity controlled his work. Plaintiff also names several individuals as defendants. (D.E. 7).

Plaintiff alleges the discrimination began on January 5, 2023,² when Plaintiff and Ernest Mungia had a verbal altercation. The altercation involved Mr. Mungia slapping Plaintiff on the butt. (D.E. 7, pp. 5-6). On March 15, 2023, Plaintiff and Mr. Mungia were involved in another verbal altercation regarding a job assignment. This altercation escalated when Mr. Mungia and Michael Pena, presumably employees of Thompson Industrial, used racial slurs against Plaintiff, including the “N” word. (D.E. 7, p. 2 & p. 7). Over the course of the next several weeks Plaintiff and Mr. Mungia continued to have verbal altercations, although Plaintiff does not allege these altercations involved additional racial slurs. On August 16, 2023, Mr. Mungia used the “N” word in front of Plaintiff referencing a person other than Plaintiff. (D.E. 7, p. 15). Plaintiff reported Mr. Mungia’s

²Plaintiff was a new employee and January 5, 2023, was his first day on the job.

use of the racial slur to a supervisor on the same day. Plaintiff was later told not to report to work the next day because there was no work. (D.E. 7, p. 16). The next day, on August 17, 2023, Plaintiff resigned from his employment with Thompson Industrial because of racial slurs being used in the workplace. (D.E. 7, p. 16). Plaintiff further alleges Thompson Industrial took no action against the offending employees which is not appropriate even if Thompson Industrial considers this an isolated incident. (D.E. 7, p. 4).

IV. ANALYSIS

A. Screening Under 28 U.S.C. §§ 1915(e)(2)(B)

When a party seeks to proceed *in forma pauperis* the Court shall evaluate the complaint and dismiss it without service of process if the Court finds the complaint frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A. See 28 U.S.C. § 1915(e)(2)(B) (providing that a court shall review an *in forma pauperis* complaint as soon as practicable and dismiss it if it is frivolous or malicious, fails to state a claim upon which relief may be granted or seeks monetary relief from an immune defendant). “In analyzing the complaint, [the Court] will accept all well-pleaded facts as true, viewing them in the light most favorable to the plaintiff.” *Jones v. Greninger*, 188 F.3d 322, 324 (5th Cir. 1999). “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Plaintiff must allege sufficient facts in support of its legal conclusions that give rise to a reasonable inference that Defendants are liable. *Id.*; *Bell Atlantic Corp. v.*

Twombly, 550 U.S. 544, 556 (2007). The factual allegations must raise Plaintiff's claim for relief above the level of mere speculation. *Twombly*, 550 U.S. at 555. As long as the complaint, taken as a whole, gives rise to a plausible inference of actionable conduct, Plaintiff's claim should not be dismissed. *Id.*

B. Wrongful Termination

Title VII of the Civil Rights Act of 1964 prohibits discrimination by employers "against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a). To establish a prima facie case of discrimination under Title VII, the plaintiff must show: (1) he belongs to a protected class; (2) he was qualified for his position; (3) he suffered an adverse employment action; and (4) he was replaced by someone outside the protected class, or that other similarly situated persons were treated more favorably. *See Alvarado v. Texas Rangers*, 492 F.3d 605, 611 (5th Cir. 2007).

In the instant case, Plaintiff has alleged he is a member of a protected class based on his race, color and sex. While Plaintiff has alleged nothing about his qualifications, reading Plaintiff's complaint liberally, the undersigned construes Plaintiff's pleading to be that he was qualified for his position. Whether Plaintiff suffered an adverse employment action is more difficult because Plaintiff resigned. A resignation can only constitute an adverse employment action where that resignation amounts to a constructive discharge. *Brown v. Kinney Shoe Corp.*, 237 F.3d 556, 566 (5th Cir. 2001). "To prove a constructive discharge, a plaintiff must establish that working conditions were so intolerable that a

reasonable employee would feel compelled to resign.” *Id.* (internal quotation marks omitted) (quoting *Faruki v. Parsons*, 123 F.3d 315, 319 (5th Cir. 1997)). “Discrimination alone, without aggravating factors, is insufficient for a claim of constructive discharge.” *Id.* In evaluating whether a reasonable employee would feel compelled to resign, a court must consider whether the plaintiff experienced any demotions; reductions in salary or job responsibilities; job reassignments to menial or degrading work, or to a younger supervisor; badgering, harassment, or humiliation calculated to encourage resignation; offers of early retirement; or continued employment on terms less favorable than the employee’s former status. *Id.* (quoting *Brown v. Bunge Corp.*, 207 F.3d 776, 782 (5th Cir. 2000)). Plaintiff’s allegations are disturbing. However, Plaintiff has not alleged sufficient facts to state a plausible theory of constructive discharge. Plaintiff reported the racial slurs and then resigned the next day. Plaintiff has not alleged he previously reported the abusive conduct to management or that he gave management the opportunity to address the abusive language of his co-workers. Plaintiff has not alleged sufficient facts to state a claim for constructive discharge. Further, Plaintiff has not alleged he was replaced by someone outside the protected class or that other similarly situated persons were treated more favorably. The undersigned respectfully recommends Plaintiff’s wrongful termination claim be dismissed.

C. Hostile Work Environment

While Plaintiff has not used the words “hostile work environment” in his pleadings and it is unclear whether he raised such a claim before the EEOC, his complaint could be

construed as an attempt to raise such a claim. To establish a racially hostile work environment claim under Title VII, the plaintiff must prove that: (1) he belongs to a protected group; (2) he was subjected to unwelcome harassment; (3) the harassment was based on race; (4) the harassment affected a term, condition, or privilege of employment; and (5) the employer knew or should have known of the harassment in question and failed to take prompt remedial action. *Williams–Boldware v. Denton Cty.*, 741 F.3d 635, 640 (5th Cir. 2014). Plaintiff has not alleged any facts to suggest his employer knew or should have known of the harassment in question. Therefore, to the extent Plaintiff is seeking to raise a hostile work environment claim, such claim should be dismissed.

D. Sexual Harassment

In Plaintiff's Original Complaint, he checks a box that he was discriminated against based on sex. (D.E. 1, p. 2). Under Title VII, employers may not discharge or discriminate against an individual based on the individual's sex. 42 U.S.C. § 2000e-2(a)(1). The inquiry is "whether the defendant intentionally discriminated against the plaintiff." *U.S. Postal Serv. Bd. of Governors v. Aikens*, 460 U.S. 711, 715 (1983). To establish a sexual harassment claim based on hostile work environment, the employee must show: (1) that he belongs to a protected class; (2) that he was subject to unwelcome sexual harassment; (3) that the harassment was based on sex; (4) that the harassment affected a "term, condition, or privilege" of employment; and (5) that the employer knew or should have known of the harassment and failed to take prompt remedial action. *Harvill v. Westward Comm., L.L.C.*, 433 F.3d 428, 434 (5th Cir. 2005). A term, condition, or privilege of employment is

affected if the harassment is “sufficiently severe or pervasive to alter the conditions of employment and create an abusive working environment.” *Aryain v. Wal-Mart Stores Tex. LP*, 534 F.3d 473, 479 (5th Cir. 2008).

Plaintiff fails to provide a factual basis in any of his pleadings that would support a claim of discrimination based on sex. The only fact alleged by Plaintiff relevant to a claim of sexual harassment is that Mr. Mungia slapped Plaintiff on the butt at the end of a verbal altercation. (D.E. 7, p. 5). While this single incident of unwelcome conduct is clearly inappropriate in the workplace, Plaintiff has not alleged any facts that this conduct was based on sex. Additionally, Plaintiff has not alleged facts to indicate this single incident affected a “term, condition, or privilege” of employment. A single incident of this nature does not amount to a hostile work environment. Finally, Plaintiff fails to allege his employer knew, or should of known, of the harassment and failed to take corrective action. Plaintiff has failed to allege a claim of discrimination based on sex, therefore, the undersigned recommends this claim be dismissed.

E. Defendant Clean Harbors’ Motion to Dismiss

As set forth above, the undersigned recommends Plaintiff’s entire case be dismissed on screening pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii). However, the Court may also wish to address Defendant Clean Harbors’ motion to dismiss (D.E. 21), Plaintiff’s response (D.E. 27), and Clean Harbor’s reply (D.E. 29). Clean Harbors, in its well-briefed motion to dismiss, argues Plaintiff’s claims should be dismissed for failure to state a claim under

Rule 12(b)(6) of the Federal Rules of Civil Procedure.³ A dismissal made pursuant to § 1915(e)(2)(B)(ii) for failure to state a claim is reviewed under the same standard employed for a Rule 12(b)(6) motion to dismiss. *See Newsome*, 301 F.3d at 231; *See DeMoss v. Crain*, 636 F.3d 145, 152 (5th Cir. 2011). Clean Harbors' motion to dismiss raises the same, and additional, reasons for dismissal as articulated by the undersigned in the analysis above. Plaintiff's response to the motion fails to address any of the grounds for dismissal raised by Clean Harbors. Additionally, Plaintiff has been given an opportunity to amend his complaint and was ordered to file a more definite statement. Plaintiff was also cautioned that his complaint was deficient for factual insufficiency and was granted several extensions to comply with the undersigned's order. Finally, Defendant Clean Harbors' motion to dismiss was filed on May 28, 2024 (D.E.21) and Plaintiff had over two months to consider the reasons for dismissal set forth in the motion before Plaintiff filed his "Added Amendment." Plaintiff has pleaded his best case. While acknowledging the use of racial slurs is unacceptable and should not be tolerated by any employer, the facts alleged by Plaintiff do not amount to a plausible claim under Title VII. Therefore, the undersigned recommends the Court grant Defendant Clean Harbors' Motion to Dismiss for failure to state a claim in accordance with Rule 12(b)(6).

F. Co-worker Defendants

In Plaintiff's "Added Amendment" he lists the following persons: Louis Garcia, Michael Pena, James Cabler, Ernest Mungia, George Gomez, David Wiggians, Montana

³Clean Harbors also moves to dismiss pursuant to Rule 12(b)(5) for lack of service. (D.E. 21, p. 6). However, it appears Clean Harbors has been served. (D.E. 25).

Wiggians, and Matthew (LNU). (D.E. 7). The undersigned ordered Plaintiff to file a More Definite Statement in which he lists each defendant, explains what the defendant did to violate Plaintiff's rights and explain why this Court has jurisdiction. (D.E. 28, p. 2). Plaintiff has not identified clearly who these persons are or why is suing them. It is clear to the undersigned that Mr. Mungia is a co-worker who Plaintiff alleges used racial slurs against Plaintiff. It is probable that the other persons are also co-workers of Plaintiff or supervisors who worked with Plaintiff. However, Plaintiff has not complied with the Court's Order to explain who they are or why Plaintiff is attempting to sue them. Additionally, the undersigned cautioned Plaintiff that his claims against his co-workers were flawed and are subject to dismissal.

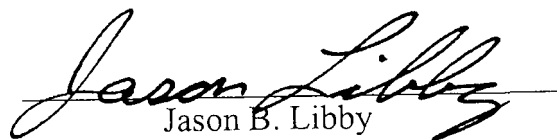
Plaintiff has listed multiple individuals, along with several businesses, in his Amended Complaint. It is unclear as to whether Plaintiff is suing the individual Defendants in their individual and/or official capacities. "According to the Fifth Circuit, only employers, not individuals acting in their individual capacity who do not otherwise meet the definition of employers, can be liable under Title VII." *White v. Royal American Mgmt.*, No. 4:23-cv-792-P, 2024 WL 2805926, at *3 (N.D. Tex. May 15, 2024) (Dismissing individual defendants as there is no individual liability under Title VII and Plaintiff cannot not sue both her employer and individual defendants in their official capacities) (citations omitted).

(D.E. 28, p. 2). Plaintiff has not alleged any facts to raise a plausible claim that any of the individual defendants are liable to him under Title VII. Therefore, the undersigned recommends Plaintiff's claims against Louis Garcia, Michael Pena, James Cabler, Ernest Mungia, George Gomez, David Wiggians, Montana Wiggians and Matthew (LNU) be dismissed.

V. RECOMMENDTION

The undersigned recommends for purposes of screening that all of Plaintiff's claims be **DISMISSED with prejudice** pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii) because Plaintiff fails to state a claim on which relief may be granted. Additionally, the undersigned recommends the Court **GRANT** Defendant Clean Harbors' Rule 12(b)(6) Motion to Dismiss. (D.E. 21).

ORDERED on August 27, 2024.


Jason B. Libby
United States Magistrate Judge

NOTICE TO PARTIES

The Clerk will file this Memorandum and Recommendation and transmit a copy to each party or counsel. Within **FOURTEEN (14) DAYS** after being served with a copy of the Memorandum and Recommendation, a party may file with the Clerk and serve on the United States Magistrate Judge and all parties, written objections, pursuant to 28 U.S.C. § 636(b)(1)(c); Rule 72(b) of the Federal Rules of Civil Procedure; and Article IV, General Order No. 2002-13, United States District Court for the Southern District of Texas.

A party's failure to file written objections to the proposed findings, conclusions, and recommendations 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. *Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415 (5th Cir. 1996) (en banc).

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

November 24, 2025

Lyle W. Cayce
Clerk

No. 25-40018

JOE HOLBERT,

Plaintiff—Appellant,

versus

THOMPSON INDUSTRIAL SERVICE, L.L.C.; CLEAN HARBORS
ENVIRONMENTAL; STEEL DYNAMICS, INCORPORATED, *Sinton*
Division; LOUIS GARCIA; MICHAEL PENNA; JAMES CABLER;
ERNEST MUNGIA; GEORGE GOMEZ; DAVID WIGGIANS;
MONTANA WIGGIANS; MATTHEW,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 2:24-CV-68

Before JONES, DUNCAN, and DOUGLAS, *Circuit Judges.*

PER CURIAM:*

Appellant Joe Holbert, proceeding pro se, appeals the dismissal of his employment discrimination and hostile work environment claims under Title

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

No. 25-40018

VII.¹ The district court dismissed Appellant's claims for failure to state a claim under 28 U.S.C. § 1915 and Rule 12(b)(6). We AFFIRM.

Appellee argues that Appellant did not present any issue on appeal contesting the merits of the dismissal, and has therefore waived review. Our court liberally construes briefs of pro se litigants, but pro se parties must still brief the issues and reasonably comply with Federal Rule of Appellate Procedure 28. *Hodge v. E. Baton Rouge Par. Sheriff's Off.*, 394 F. App'x 124 (5th Cir. 2010). However, we have declined to dismiss an appeal on waiver alone when the plaintiff's brief contains some assertion of trial court error. *Abdul-Alim Amin v. Universal Life Ins. Co. of Memphis, Tenn.*, 706 F.2d 638, 640 n.1 (5th Cir. 1983); *see also Grant v. Cuellar*, 59 F.3d 523, 525 (5th Cir. 1995) (noting we have "considered a *pro se* appellant's brief despite its technical non-compliance with the Rules of Civil Procedure when it at least argued *some* error on the part of the district court").

Nevertheless, dismissal of the Appellant's claims was still proper. We review the dismissal of a claim under 28 U.S.C. § 1915(e)(2)(B) de novo, applying the same standards used for a Rule 12(b)(6) dismissal. *Legate v. Livingston*, 822 F.3d 207 (5th Cir. 2016). Complaints that contain "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face'" must survive a motion to dismiss. *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) (quoting *Bell Atl. Corp. v. Twombly* 550 U.S. 544 (2007)). In order for a claim to have facial plausibility, the plaintiff must plead factual content that allows the court to draw the reasonable inference that the defendant is liable for the alleged misconduct. *Id.*

¹ Appellant uses "Halbert" throughout the briefing and notes that "Holbert" is an alternative spelling.

No. 25-40018

Here, Appellant raises factual allegations for the first time on appeal despite being offered multiple opportunities to support his claim through an amended complaint and more definite statement or in response to the motion to dismiss. Holbert's "added amendment" filed before the district court failed to allege key elements of each of his claims. Accordingly, dismissal for failure to state a claim was proper.

Appellant also raises two discovery issues on appeal. Holbert argues that the district court erred by not assisting him in preserving and subpoenaing video evidence. Holbert also argues that the district court erred by not assisting him with the subpoenaing of certain witnesses. However, Holbert's argument that the district court erred by dismissing his claims without assisting him in discovery is unavailing because 28 U.S.C. § 1915(e)(2) permits a district court to dismiss the case "at any time" if it fails to state a claim.

Accordingly, the judgment of the district court is **AFFIRMED**.

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

December 15, 2025

Mr. Joe Holbert
3662 Sturgis West Point Road
Sturgis, MS 39769

No. 25-40018 Holbert v. Thompson Industrial Svc
USDC No. 2:24-CV-68

Dear Mr. Holbert,

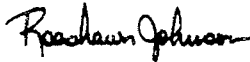
We received your motion for a 30 day extension to file a rehearing and a petition for certiorari. Your case is closed.

The time for filing a petition for rehearing under Fed. R. App. P. 40 has expired.

You have 90 days to file a petition for certiorari with the U.S. Supreme Court from the date of this court's decision or the denial of a petition for rehearing.

Sincerely,

LYLE W. CAYCE, Clerk



By:

Roeshawn Johnson, Deputy Clerk
504-310-7998

cc: Mr. Jeffrey Shannon Mayes

Legal Counsel:

- Jeffery Shannon Mays, Lead Defense Attorney, from the prominent national labor and employment law firm Ogletree, Deakins, Nash, Smoak, and Stewart, representing Clean Harbors Environmental and Thompson Industrial.

Judicial Officers: The case was overseen and reviewed by a succession of federal magistrates, district judges, and appellant panels.

- Judge Nelva Gonzales Ramos, the United States District Judge for the Southern District of Texas, who signed the initial dismissal,
- Magistrate Judge Jason B. Libby, the federal United States Magistrate Judge, who originally handles the early motion hearing and preliminary scheduling,
- The Fifth Circuit Panel composed of three federal appellate judges who issued the final November 2025 opinion noted by dockets as Judges: EHJ, SKD, and DMD.
- Justice Samuel Alito, the Associate Justice of the U.S. Supreme Court responsible for the Fifth Circuit territory who reviewed Holbert's administration extension motion.