

NEUNER PATE
ATTORNEYS AT LAW

One Petroleum Center
1001 West Pinhook Road, Suite 200
Lafayette, Louisiana 70503

P: 337 237 7000
F: 337 233 9450

FRANK X. NEUNER, JR.*
JAMES L. PATE
BEN L. MAYEAUX
ROBERT E. TORIAN
JAMES D. HOLLIER
KEVIN P. MERCHANT
JENNIE P. PELLEGRIN
BRANDON W. LETULIER
JASON T. REED
JEREMY N. MORROW
JED M. MESTAYER
PHILIP H. BOUDREAUX, JR.
CLIFF A. LaCOUR
JEFFREY K. COREIL
NICHOLAS G. JONES
JENNIFER M. ARDOIN
PHILLIP M. SMITH
DEAN A. COLE
KENNETH W. JONES, JR.
SARAH F. BROWN
TAYLOR C. GRANGER
KATELYN E. BAYHI
SARAH S. SONNIER
ANI H. BOUDREAUX
GREGORY W. BEASLEY
CORY C. HEBERT

NEW ORLEANS OFFICE

P: 504 309 6090

*ALSO ADMITTED IN TEXAS

NeunerPate.com

July 26, 2023
VIA FACSIMILE: (225) 389-3392
& REGULAR U.S. MAIL

The Honorable Doug Welborn
Clerk of Court
East Baton Rouge Parish
300 North Blvd., Ste. 3301
Baton Rouge, LA 70801

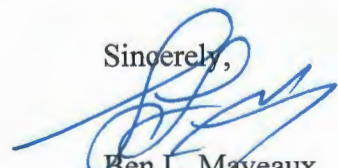
RE: Carl Cavalier v. Louisiana State Police Commission
19th Judicial District Court; East Baton Rouge Parish, Louisiana
Docket No. C-732938 Sec. 24
Our File No. 22507

Dear Sir/Madam:

Enclosed is an Emergency Motion for Protective Order, and for Expedited Consideration, Memorandum in Support, and Rule to Show Cause which we are fax filing on behalf of Colonel Lamar Davis, and counsel, Ben Mayeaux and Jennie Pellegrin in the above matter. The original, one copy, and our firm check to cover the associated filing fees will follow via regular U.S. Mail.

Please file the original into the court record, submit to the appropriate Judge for consideration, have the pleadings served on counsel as indicated therein, and return a copy of the documents stamped with the date and time of filing along with the signed Rule to Show Cause to our office in the enclosed self-addressed and stamped envelope.

Sincerely,



Ben L. Mayeaux
Jennie P. Pellegrin

BLM/ch
Enclosures

cc: The Honorable Donald Johnson (via electronic transmission w/encls)
Ms. M. Lenore Feeney (via electronic transmission w/encls)
Mr. Carl Cavalier (via electronic transmission & Regular U.S. Mail w/encls)

* * * Communication Result Report (Jul. 26. 2023 10:35AM) * * *

1)
2)

Date/Time: Jul. 26. 2023 10:07AM

File No.	Mode	Destination	Pg (s)	Result	Page Not Sent
0879	Memory TX	12253893392	P. 80	OK	

Reason for error
 E. 1) Hang up or line fail
 E. 2) Busy
 E. 3) No answer
 E. 4) No facsimile connection
 E. 5) Exceeded max. E-mail size
 E. 6) Destination does not support IP-Fax

NEUNER PATE
ATTORNEYS AT LAW

ONE PRINCETON CENTER
 SUITE 300
 1011 W. PINEHURST ROAD
 P.O. BOX 5288 (14852) 5288
 LAFAYETTE, LOUISIANA 70503
 Telephone: (337) 287-3300
 Facsimile: (337) 287-5160
 www.LP4Law.com

TRANSMITTAL COVER SHEET

DATE: July 26, 2023
 TO: 19th Judicial District Court / East Baton Rouge Parish Clerk of Court / Civil Department
 TELECOPIER NO.: (225) 389-3392
 FROM: Ben L. Maveaux
 RE: Carl Cavalier v. Louisiana State Police Commission Docket No. C-732938 Sec. 24
 NO. OF PAGES: 80
 (including this cover)
 OUR FILE NO.: 22507

PLEASE CALL CRYSTAL AT (337) 237-7000 Ext. 393. IF YOU HAVE PROBLEMS RECEIVING OR IF ANY PAGES ARE MISSING.

SPECIAL INSTRUCTIONS: PLEASE DELIVER IMMEDIATELY. THANK YOU.

CONFIDENTIALITY NOTICE:

THE INFORMATION TRANSMITTED IN THIS FACSIMILE CONTAINS CONFIDENTIAL INFORMATION BELONGING TO THE SENDER, WHICH IS LEGALLY PRIVILEGED. THE INFORMATION IS INTENDED ONLY FOR THE USE OF THE ADDRESSEE(S) NAMED ABOVE. IN THE EVENT YOU ARE NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISCLOSURE, COPYING OR DISTRIBUTION OR THE TAKING OF ANY ACTION IN RELIANCE ON THE CONTENTS OF THIS TRANSMISSION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS FACSIMILE IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE TO ARRANGE FOR THE RETURN OF THE ORIGINAL FACSIMILE TO US AT THE ABOVE ADDRESS. THANK YOU.

CARL CAVALIER

NUMBER C-732938/SECTION: 24

V.

19TH JUDICIAL DISTRICT COURT

LOUISIANA STATE POLICE
COMMISSION

PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

**MOTION FOR PROTECTIVE ORDER
AND FOR EXPEDITED CONSIDERATION**

Colonel Lamar Davis, and counsel, Ben Mayeaux and Jennie Pellegrin (collectively, “Respondents”) move, pursuant to La.Code Civ.P. art. 1426, for a protective order quashing the subpoenas served on Respondents seeking the production of certain documents and compelling attendance at the hearing of this matter on August 7, 2023. As more specifically addressed in the accompanying Memorandum in Support, the subpoenas are procedurally and substantively defective and should be quashed.

Pursuant to District Court Rule 9.8, Respondents state that this matter is set for trial August 7, 2023 and testimony may be offered at the hearing of this Motion for Protective Order.

Wherefore, Respondents pray that this Motion be set for expedited consideration and that after due proceedings, the subpoenas issued to Respondents be quashed.

Respectfully submitted,

JEFF LANDRY
Attorney General

BY:



JENNIE P. PELLEGRIN – LA. BAR ROLL NO. 25207
jpellegrin@neunerpate.com

BEN L. MAYEAUX – LA. BAR ROLL NO. 19042

bmayeaux@neunerpate.com

NEUNERPATE

One Petroleum Center, Suite 200

1001 West Pinhook Road (zip 70503)

Post Office Box 52828

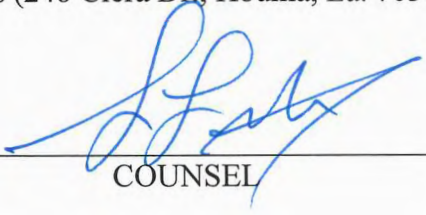
Lafayette, LA 70505-2828

TELEPHONE: (337) 237-7000 FAX: (337) 233-9450

*Special Assistants Attorneys General and Counsel
for the Louisiana Department of Public Safety &
Corrections (Office of State Police) and Colonel
Lamar Davis*

CERTIFICATE OF SERVICE

I hereby certify that on July 26, 2023, a copy of above and foregoing was served on all known counsel record by electronic transmission, and forwarded: (1) electronically to *pro se* Plaintiff, Carl Cavalier, at KarlCavalier@yahoo.com, and (2) by mail to *pro se* Plaintiff, Carl Cavalier, at his last known address (248 Ciera Dr., Houma, La. 70364).



COUNSEL

CARL CAVALIER

NUMBER C-732938/SECTION: 24

V.

19TH JUDICIAL DISTRICT COURT

LOUISIANA STATE POLICE
COMMISSION

PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

**MEMORANDUM IN SUPPORT OF
MOTION FOR PROTECTIVE ORDER
AND FOR EXPEDITED CONSIDERATION**

Colonel Lamar Davis, counsel Ben Mayeaux and Jennie Pellegrin (collectively, “Respondents”), submit this memorandum in support of the Motion for Protective Order and for Expedited Consideration.

Pursuant to District Court Rule 10.1, the undersigned conferred by telephone with counsel for the State Police Commission regarding this dispute on July 20, 2023.

I. Background

A. The Federal Litigation

Col. Lamar Davis serves as the Superintendent of the Louisiana State Police. Col. Davis was sued in the lawsuit captioned “Carl Cavalier v. State of Louisiana Department of Public Safety & Corrections, *et al*” No. 3:21-CV-00656, pending in the United States District Court for the Middle District of Louisiana (the “Federal Lawsuit”). Jennie Pellegrin and Ben Mayeaux were appointed as Special Assistants Attorney General to represent and defend Col. Davis and the State Police in that action.

In the Federal Lawsuit, Cavalier, a former State Police Trooper, complains he was wrongfully placed on forced administrative leave, wrongfully suspended for 200 hours for allegedly violating State Police Secondary Employment and Conduct Unbecoming Policy, and later wrongfully terminated for the same Policy violations.¹ These disciplinary actions are the subject of the three administrative appeals filed by Cavalier and pending before the Louisiana State Police Commission (the “Commission”).²

In the Federal Lawsuit the parties were ordered to attend a settlement conference before the Magistrate Judge. That Order provided: “[t]he contents of the **statements and all communications made in connection with the settlement conference are confidential and**

¹ Ex. “A” – Cavalier’s Second Supplemental, Amending and Restated Complaint, paras. 8, 14, 16.
² Appeals Nos. 21-256-D, 21-257-S, and 21-261-T.

will not be disclosed to anyone without the express permission of the communicating party or order of a court of competent jurisdiction.”³ On October 6, 2022, the parties participated in a settlement conference before the Magistrate Judge and reached a settlement of all claims asserted by Cavalier in the Federal Lawsuit.⁴ On October 7, 2022, the Court entered an Order of Dismissal.⁵

On November 30, 2022, citing dissatisfaction with the terms of the settlement, Cavalier moved to reopen the Federal Lawsuit and rescind the settlement agreement.⁶ In response, the State Police moved to enforce the settlement agreement and prayed that “Cavalier be ordered to comply with the terms of the settlement, execute the Release Agreement, and any other documents necessary to dismiss the EEOC Charge and the administrative appeals pending before the Louisiana State Police Commission.”⁷ In connection with the Motion to Enforce Settlement Agreement, and in compliance with the Settlement Conference Order confidentiality provision, the State Police also submitted a motion to file Exhibits “A” and “C” to the Motion under seal,⁸ which Motion was granted.⁹ Exhibit “A” is an e-mail exchange between Cavalier and State Police counsel which occurred immediately following the conclusion of the Settlement Conference. These e-mails describe and confirm the specific terms of the settlement as recited during the Conference. Exhibit “C” is a subsequent transmittal e-mail and attached Release Agreement memorializing the terms of the settlement reached during the Conference.

On February 24, 2023, the Magistrate Judge issued a Report and Recommendation granting the Motion to Enforce Settlement Agreement and ordering the parties to comply with the terms of the agreement.¹⁰ Cavalier objected to the Report and Recommendation. On May 22, 2023 the District Judge adopted the Magistrate’s recommendation and issued a Ruling and Order granting the Motion to Enforce Settlement Agreement and ordering the parties to comply with the settlement terms.¹¹

Cavalier moved for rehearing of the Ruling and Order which motion remains pending.¹²

B. The Mandamus Proceeding

³ Ex. “B” – Settlement Conference Order, p. 3.

⁴ Ex. “C” – Order of Settlement.

⁵ Ex. “D” – Order of Dismissal.

⁶ Ex. “E” – Cavalier’s Motion to Reopen the Cause and Rescind the Proposed Settlement.

⁷ Ex. “F” – Memorandum in Support of Motion to Enforce Settlement Agreement, p. 9.

⁸ Ex. “G” – State Police Motion for Leave to File Exhibits Under Seal.

⁹ Ex. “H” – Order Sealing Exhibits “A” and “C” to the Motion to Enforce Settlement Agreement.

¹⁰ Ex. “I” – Magistrate Judge Report and Recommendation.

¹¹ Ex. “J” – Ruling and Order.

¹² Ex. “K” – Cavalier’s Motion for Rehearing.

Although the May 22, 2023 Federal Ruling and Order remains in effect, on June 6, 2023 Cavalier filed a Petition for Writ of Mandamus seeking this Court to order the Commission to move forward with hearing Cavalier's administrative appeals of the disciplinary actions taken against him by the State Police. In connection with that matter, the Commission issued subpoenas to Col. Davis and his counsel, Pellegrin and Mayeaux, to appear for hearing on August 7, 2023 to testify and issued a subpoena duces tecum to Pellegrin to produce:

Records Requested:

1. Copies of all emails between Jennie Pellegrin and Jill Craft that contain memorializations of the terms of the settlement agreement between Carl Cavalier and the Department of Public Safety & Corrections (Office of State Police), following the settlement conference before Magistrate Judge Richard Bourgeois, Jr. on October 6, 2022, in connection with the lawsuit entitled, "Carl Cavalier versus State of Louisiana; Dept of Public Safety & Corrections: Public Safety Services; Office of State Police," bearing Docket No. 21-656, in the United States District Court for the Middle District of Louisiana.
2. Copy of the document that was the formal release agreement prepared in connection with the settlement of the lawsuit entitled, "Carl Cavalier versus State of Louisiana: Dept of Public Safety & Corrections: Public Safety Services; Office of State Police," bearing Docket No. 21-656, in the United States District Court for the Middle District of Louisiana, and that was the document referenced in the Motion to Enforce Settlement Agreement filed in that same proceeding.¹³

In other words, the subpoena duces tecum seeks production of Exhibits "A" and "C" – those documents filed under seal in the Federal Lawsuit.

II. LSA-R.S. 13:3667

Col. Davis was appointed by the Governor as the Department Head and Superintendent of the Louisiana State Police. His counsel, Pellegrin and Mayeaux, are appointed Special Assistants Attorney General and appear as surrogates for Attorney General Jeff Landry, a statewide elected official. Consequently, the Commission is required to comply with LSA-R.S. 13:3667(A)(1) before issuing a subpoena to compel Respondents' attendance at trial. This statute provides:

A party litigant in a civil case or in a criminal misdemeanor case seeking to compel the attendance of a statewide elected official, or the head of any department of the state of Louisiana appointed to the position by the governor, as a witness in a suit that arises out of, or in connection with, the person's exercise of his duties as an official of the state, shall file a written motion with the proper court requesting a hearing on the matter. The motion shall set forth the facts sought to be proved by the person's testimony, the

¹³ Ex. "L" – Subpoenas issued to Col. Davis, Mayeaux and Pellegrin.

relevance of those facts to the case, and the basis for the mover's belief that such person has knowledge of those facts.

The Commission failed to move for the requisite pre-subpoena hearing. Therefore, the subpoenas compelling production of records and attendance at the August 7, 2023 trial are unlawful and should be quashed.

III. La. C. Evid. art. 508

With respect to the subpoenas issued to counsel, Pellegrin and Mayeaux, the Commission failed to comply with the strict requirements of La.C. Evid. art. 508. This Article prohibits the issuance of subpoenas to attorneys to testify in a civil case absent a pre-issuance contradictory hearing.¹⁴ And, the Article specifically applies to attorneys acting as assistants attorney general (La.C. Evid. Art. 508(E)). The Commission did not request a hearing and, on this procedural ground alone, the subpoenas for counsel's testimony should be quashed.

La.C. Evid. art. 508 further requires that the Commission prove the following substantive factors: (1) the testimony sought is not privileged; (2) the information sought is essential to Commission's cause; (3) the purpose is not to harass or embarrass counsel; (4) the subpoena is reasonably limited in time and subject matter and states areas of inquiry with particularity; and (5) there is no other practicable means of obtaining the information.

Assuming a contradictory hearing were held, the Commission's subpoenas fail to establish the necessary substantive elements to compel counsel's testimony. Specifically, the subpoenas fail to state parameters of the testimony sought and do not indicate the purpose or extent of the Commission's examination. In fact, the subpoenas are completely silent as to the areas of the Commission's inquiry. Therefore, it is impossible to determine whether any privileged information will be at issue, whether the information sought is essential to the Commission's cause, or whether other practicable means of obtaining the information are

¹⁴ La.C. Evid. art. 508 provides:

A. General rule. Neither a subpoena nor a court order shall be issued to a lawyer or his representative to appear or testify in any civil or juvenile proceeding, including pretrial discovery, or in an administrative investigation or hearing, where the purpose of the subpoena or order is to ask the lawyer or his representative to reveal information about a client or former client obtained in the course of representing the client unless, after a contradictory hearing, it has been determined that the information sought is not protected from disclosure by any applicable privilege or work product rule; and all of the following:

- (1) The information sought is essential to the successful completion of an ongoing investigation, is essential to the case of the party seeking the information, and is not merely peripheral, cumulative, or speculative.
- (2) The purpose of seeking the information is not to harass the attorney or his client.
- (3) With respect to a subpoena, the subpoena lists the information sought with particularity, is reasonably limited as to subject matter and period of time, and gives timely notice.
- (4) There is no practicable alternative means of obtaining the information.

available. The Commission's subpoenas to counsel are substantively defective and should be quashed.

IV. Respondents Must Comply with the Federal Court Order

Col. Davis and his counsel, Pellegrin and Mayeaux, were ordered by the federal judge to hold as confidential "statements and all communications made in connection with the settlement conference." The documents sought through the subpoena duces tecum (Exhibits "A" and "C" to the Motion to Enforce Settlement) were specifically intended to record and memorialize statements and communications made during the settlement conference – those statements being the agreed terms of the settlement – and are therefore directly covered under the confidentiality order and should not be ordered disclosed. And, because the Federal Lawsuit remains pending, Exhibits "A" and "C" are not "public records."¹⁵ Additionally, to the extent Respondents are asked to testify regarding statements or communications made during the settlement conference, that too would place Respondents in jeopardy of violation of the federal court order. Consequently, any testimony (should Respondents be ordered to appear) should be limited to topics outside of matters discussed during the settlement conference.

V. The Action is Premature

Finally, this Mandamus action is premature and should be stayed. At present, all of Cavalier's claims asserted in the Federal Lawsuit have been dismissed.¹⁶ Should Cavalier's Motion for Rehearing be denied and the Ruling and Order of dismissal become final, this Mandamus proceeding would be rendered moot. Consequently, this Mandamus action (and the subpoenas issued to Respondents) should be stayed pending a final resolution of the Federal Lawsuit.

¹⁵ See, LSA-R.S. 44:4: The Public records act shall not apply:

(15) To any pending claims or pending claim files in the custody or control of the office of risk management, division of administration, or similar records in the custody of any municipality or parish; to any information concerning pending legal claims in the files of any attorney representing the state or any municipality in connection with the office of risk management, division of administration . . .

¹⁶ Ex. "J" – Ruling and Order granting Motion to Enforce Settlement Agreement.

VI. Conclusion

For the reasons set forth above, the Commission's subpoenas to Col. Davis, and counsel, Pellegrin and Mayeaux, should be quashed.

Respectfully submitted,

JEFF LANDRY
Attorney General

BY:



JENNIE P. PELLEGRIN – LA. BAR ROLL NO. 25207

jpellegrin@neunerpate.com

BEN L. MAYEAUX – LA. BAR ROLL NO. 19042

bmayeaux@neunerpate.com

NEUNERPATE

One Petroleum Center, Suite 200

1001 West Pinhook Road (zip 70503)

Post Office Box 52828

Lafayette, LA 70505-2828

TELEPHONE: (337) 237-7000 FAX: (337) 233-9450

Special Assistants Attorneys General and Counsel

for the Louisiana Department of Public Safety &

Corrections (Office of State Police) and Colonel

Lamar Davis

CERTIFICATE OF SERVICE

I hereby certify that on July 26, 2023, a copy of above and foregoing was served on all known counsel record by electronic transmission, and forwarded: (1) electronically to *pro se* Plaintiff, Carl Cavalier, at KarlCavalier@yahoo.com, and (2) by mail to *pro se* Plaintiff, Carl Cavalier, at his last known address (248 Ciera Dr., Houma, La. 70364).



COUNSEL

CARL CAVALIER

NUMBER C-732938/SECTION: 24

V.

19TH JUDICIAL DISTRICT COURT

LOUISIANA STATE POLICE
COMMISSION

PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

RULE TO SHOW CAUSE

CONSIDERING THE FOREGOING:

IT IS ORDERED that this matter is set for expedited consideration and counsel for the Louisiana State Police Commission show cause on the ____ day of _____, 2023 at _____ o'clock __.m. why the Motion for Protective Order filed on behalf of Colonel Lamar Davis, and counsel, Ben Mayeaux and Jennie Pellegrin, should not be sustained.

JUDGE

PLEASE SERVE:

Louisiana State Police Commission
through counsel of record
M. Lenore Feeney
TAYLOR, PORTER, BROOKS & PHILLIPS, L.L.P.
450 Laurel Street, Suite 800
Baton Rouge, LA 70801

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

CARL CAVALIER

CIVIL ACTION NO: 3:21-cv-00656

VERSUS

JUDGE: JOHN W. deGRAVELLES

STATE OF LOUISIANA:
DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONS: PUBLIC SAFETY
SERVICES; OFFICE OF STATE POLICE;

MAGISTRATE JUDGE: RICHARD L.
BOURGEOIS, JR.

SECOND SUPPLEMENTAL, AMENDING, AND RESTATED COMPLAINT

The Complaint of Carl Cavalier, a resident of the full age of majority of East Baton Rouge Parish, Louisiana, respectfully represents, **as supplemented, amended, and restated**, in bold print:

1.

Venue is proper within this judicial district as the majority of the acts alleged herein occurred within this judicial district. Jurisdiction is founded herein pursuant to 28 U.S.C. §1331, Federal Question, and 28 U.S.C. §1367, affording supplemental jurisdiction over Complainant’s claim arising under Louisiana law.

2.

The defendants enumerated below are justly and truly indebted unto Complainant for all sums as are reasonable under the premises, attorney fees, punitive damages as to defendant Davis, all costs of these proceedings, litigation expenses, legal interest thereon from the date of demand until paid, and all such other relief to which Complainant is entitled at law or in equity:

- 1. State of Louisiana, through the Department of Public Safety and Corrections, Office of State Police, a state agency domiciled in East Baton Rouge Parish, Louisiana; and**



2. Colonel Lamar A. Davis, individually and in his official capacity as Superintendent of the Office of State Police, a resident of the full age of majority who, upon information and belief, is domiciled in East Baton Rouge Parish, Louisiana.

3.

At all times pertinent hereto, Complainant was an “employee” of defendant DPSC within the meaning and intent of federal and Louisiana law. At all times pertinent hereto, defendant DPSC was Complainant’s “employer” within the meaning and intent of federal and Louisiana law and employed greater than one hundred (100) employees, including Complainant.

3a.

At all times pertinent hereto, defendant Davis was an agent and employee of defendant DPSC and was Complainant’s supervisor with immediate and successfully higher authority over his employment.

4.

Complainant began his employment with DPSC on November 30, 2014, as a Trooper for LSP.

5.

Throughout Complainant’s employment with defendant DPSC, he repeatedly protested, opposed, reported, and complained about actual violation of law committed by defendant DPSC. Beginning in 2020 and continuing thereafter through present, Complainant reported to defendants and third parties, including Louisiana State Legislature Representative(s) and the Governor, race-based discrimination, harassment, and retaliation

against black LSP employee(s) consisting of numerous occasions on which black officers were disciplined far more harshly and even terminated as compared to white officers under virtually identical circumstances, excessive force, assault, battery, false imprisonment, and violations of Constitutional Rights by LSP employee(s) against a civilian(s), including Ronald Greene which resulted in Mr. Greene's death, and malfeasance in office and/or abuse of office by LSP employee(s) and supervisors resulting from attempts to and an actual cover up of the events leading to and causing the death of Mr. Greene. Complainant also reported defendants' actual violations of law to the news media, including on June 28, 2021, to WBRZ, on July 22, 2021 to WBOK, on July 25, 2021, to the NAACP, on July 28, 2021, to Instagram Live, and on August 18, 2021, to WWL.

6.

In response to Complainant's protected activity, defendants threatened Complainant and his job. On February 5, 2021, Complainant met with defendants, through defendant Davis, regarding Complainant's protected activity and defendants' violations of law, including ongoing racial discrimination at LSP and for which Complainant gave specific examples of instances in which black LSP officers was discriminated against because of their race. Although defendant Davis advised he would investigate the actual violations of law, he did not do so. Instead, defendant Davis threatened Complainant and dissuaded him from pursuing his complaints any further by directing him to read "Chop Wood Carry Water: How to Fall in Love with the Process of Becoming Great", a book about discipline and following orders. Also, in 2021, Complainant's supervisor, Lieutenant Draper Crain, texted Complainant threatening that Complainant needed to "stay away" from LSP, that he "brought that sht upon" himself, referencing defendants' retaliation/reprisal, and that he**

should have “kept his mouth shut”. Lieutenant Draper Crain then **threatened Complainant** that LSP personnel **was directed by defendants** to avoid any and all communication with **Complainant**.

7.

As a result of Complainant’s protected activities, defendants took retaliation/reprisal against him, including but not limited to, retaliatory harassment, threatening his job, placing him on forced annual leave although Complainant was fit for duty and able to work, falsely accusing him of violating policy, stripping his significant and material job duties, transferring him to an undesirable position and department, reducing his ability to earn overtime pay, restricting his ability to accrue annual leave, suspending him for two hundred (200) hours, and ultimately, firing him for false reason(s).

8.

On or about June 7, 2021, Complainant was placed on forced annual leave by defendants for **seventy-two (72) days**. While on forced leave, Complainant was deprived of **accruing eighty (80) hours of annual leave at an hourly rate of \$28.39, totaling two thousand, two hundred and seventy-one dollars and twenty cents (\$2,271.20)**. Defendants did not give Complainant **any legal** reason for the forced annual leave **and, in violation of State Police Commission Rule 11.9, was not “in the best interest” of LSP**. Complainant was also required to surrender all LSP issued equipment, including but not limited to, firearms, vehicle, uniforms, commission cards, undercover materials, badges, building access cards, and keys to LSP properties. Complainant endured the humiliation of being escorted out of the building and off LSP Headquarters premises.

9.

On or about June 9, 2021, **Complainant** met with Byron Sam, EEO Coordinator. Following this meeting, **Complainant** was instructed to go to a meeting in Human Resources. At this meeting, **Complainant** was advised that he qualified for an ADA accommodation for any stress related issues arising in the course and scope of his employment. On June 23, 2021, **defendants**, through Lieutenant Colonel Kenny Van Buren, advised **Complainant** to consider taking FMLA. **In other words, Complainant contends defendants actively attempted to force him from his job by pressuring him to take FMLA and/or seek an ADA accommodation of not having to work, which Complainant refused but he was nonetheless ordered off on forced leave.**

10.

On or about June 11, 2021, **after meeting with Mr. Sam and immediately prior to his June 23, 2021, meeting set forth above, Complainant** received a phone call from **defendants**, through Sergeant Dave Floss, regarding a secondary employment application. **In that conversation, Floss questioned Complainant about a book he had written, the contents of which were highly critical of defendant DPSC. Defendant, through Floss, then accused Petitioner of violating ‘policy’ by writing the book and, particularly, the content of the book. Although Floss requested a copy of the book from Complainant, defendants were already in possession of same.**

11.

On or about June 28, 2021, **Complainant** returned to active duty **from his retaliatory forced leave. Defendants** immediately advised **Complainant** that he was now on (“FMLA”) and sent back to his residence indefinitely.

12.

On or about July 20, 2021, **Complainant** was interviewed by **defendants, through LSP Internal Affairs**, regarding a complaint he filed against a **DPSC attorney in which Complainant alleged the DPSC attorney had attempted to hide and/or otherwise conceal public records from view and also seemingly instructed LSP personnel to inaccurately represent information specifically relating to the death of Mr. Greene**. At the conclusion of the interview, Lieutenant Colonel Van Buren **threatened** Complainant by giving him a hard copy of LSP Procedure Order 901 Code of Ethics, Subsection 42 – “Public Statements” regarding media contact, specifically regarding a television interview **Complainant participated in and publicly spoke about defendants’ actual violations of law and matters of public concern** with WBRZ Investigative Reporter Chris Nakamoto on June 28, 2021. **Complainant did not violate this policy.**

13.

Upon Complainant’s return to active duty at LSP on or about August 2, 2021, he was involuntarily transferred **by defendants** from **the Narcotics Department** to the **Gaming Division, an undesirable reassignment**. **Not only did defendants remove Complainant from performing his significant and material job duties as a detective in the Narcotics Department for which he was highly trained and which was objectively considered as a more prestigious position, but Complainant was transferred to the Gaming Division in which he had no training or experience with gaming or casino regulations and had significantly less opportunity to advance and also to earn overtime pay**. Additionally, he was also given correspondence advising him that he was now on administrative leave pending investigation and again sent to his residence indefinitely.

14.

On August 27, 2021, **Complainant** received a letter **from defendants** informing him that he **was** suspended without pay for forty (40) hours for violation of the LSP Policy on “Secondary Employment” and one hundred and sixty (160) hours for violation of the LSP Policy on “Conduct Unbecoming an Officer”, totaling **two hundred** 200 hours and **resulting** in a loss of income in the amount of five thousand, six hundred and seventy-eight dollars (\$5,678.00). **Defendants accused Complainant of allegedly violating “Secondary Employment” because Complainant wrote and published a book, on his own time, critical of defendants, including identifying systemic racism and use of excessive force. Defendants suspended Complainant for “Secondary Employment” alleged violations without affording him prior notice of the suspension, a description of the reasons and/or evidence supporting the suspension, a reasonable opportunity to respond, or the mandatory notice requirements as set forth by State Police Commission Rules 12.7 and 12.8, and the Peace Officer Bill of Rights. Complainant contends defendants’ failure to suspend him in accordance with State Police Commission Rules was further retaliation/reprisal for his protected activities. Most recently, defendants notified Complainant’s counsel that an additional termination letter based falsely on a “Secondary Employment” violation is forthcoming.**

15.

On or about September 28, 2021, **Complainant suffered personal, tangible effects as** was denied a loan for the purchase of a home. The lender denied the loan specifically because **defendants reduced Complainant’s income through multiple tangible employment action(s) and discipline(s).**

16.

On November 23, 2021, Complainant received a document from defendants, dated November 18, 2021, stating that defendants, through defendant Davis, “ordered” the “termination” of Complainant. Defendants admitted in the November 18, 2021, document that they were firing Complainant because Complainant exercised his Constitutional Right(s) by speaking publicly about defendants’ violations of law and matters of public concern on June 9, 2021, June 22, 2021, July 25, 2021, July 28, 2021, and August 26, 2021. Complainant did not violate policy as he was falsely accused of doing by defendants. Defendants also fired Complainant in violation of State Police Commission Rules 12.7 and 12.8 and the Peace Officer Bill of Rights by failing to afford Complainant prior notice of the termination, a description of the reasons and/or evidence supporting the suspension, a reasonable opportunity to respond, and the mandatory notice requirements.

17.

Complainant shows that defendant DPSC failed to have in full force and effect an effective policy regarding retaliation and reprisal in the workplace. Defendant DPSC failed and/or refused to take any action to remedy the situation in Complainant’s work environment, failed and/or refused to take any action to prevent the retaliation/reprisal from occurring, and deliberately failed to address Complainant’s complaints.

18.

As a result of the situation sued upon herein, **Complainant** sustained damages which include but are not limited to, severe and extreme emotional distress, mental anguish, humiliation and embarrassment, past and future medical expenses, loss of earning capacity, loss of promotional opportunities, **past and future lost wages and benefits**, and all such other damages as will be more fully shown at trial of this matter and all for which **Complainant** specifically sues for herein.

19.

At all times pertinent hereto, **defendant Davis was as person acting under color of authority within the meaning and intent of 42 U.S.C. §1983, as Complainant’s “Appointing Authority” and as Superintendent of LSP. Complainant shows at all times pertinent hereto, he enjoyed the clearly established rights to write his book, to speak, and to express as contained in his book, to speak to the press and express his opinions, to protest and oppose unlawful race-based discrimination, harassment, and retaliation in the workplace, racism, assault, battery, false imprisonment, and excessive force pursuant to the 1st Amendment to the United States Constitution. Complainant shows that he was subjected to retaliation/reprisal for exercising his 1st Amendment Rights. Complainant shows that defendant Davis violated his clearly established rights as set forth herein and is liable unto him pursuant to 42 U.S.C. §1983, for which he sues for herein.**

20.

Complainant contends that the actions/inactions of defendant DPSC which Complainant protested, spoke about, reported, and opposed as set forth herein, violated state and federal law, including discriminating, harassing, and/or retaliating against employee(s) because of his/her race in violation of La. R.S. 23:301, *et seq.*, and Title VII, committing assault, battery, false imprisonment, and excessive force against civilian(s) in violation of La. R.S. 14:35, La. R.S. 14:36, La. R.S. 14:46, La. Civ.C. Article 2315, and La. C.Cr.P. Article 220, violating the Constitutional Rights under the 1st and 14th Amendments to the United States Constitutions of civilian(s), and violations of La. R.S. 14:134 and La. R.S. 14:134.3. Defendant DPSC’s reprisal against Complainant, including retaliatory harassment, threats to his job, forcing him out on leave although Complainant was fit for duty and able to work,

falsely accusing him of violating policy, stripping his significant and material job duties, transferring him to an undesirable position and department, reducing his ability to earn overtime pay, restricting his ability to accrue annual leave, suspending him for two hundred (200) hours, and firing him for false reason(s), were in violation of La. R.S. 23:967, for which Complainant sues defendant DPSC for herein.

21.

Complainant filed Charge(s) of Discrimination with the EEOC and LCHR alleging Title VII retaliation, but has not yet received his Notice of Right to Sue. Complainant reserves his right to supplement and amend his Complaint and add his claim(s) under federal law upon receipt of his Notice of Right to Sue.

22.

Complainant contends defendant Davis is liable unto him for attorney fees pursuant to 42 U.S.C. §1988. Complainant also contends defendant DPSC is liable unto him for attorney fees pursuant to La. R.S. 23:967.

23.

Complainant contends the actions and/or inactions of defendant Davis were deliberate and in reckless disregard for his clearly established rights and therefor, defendant Davis is liable unto Complainant for punitive damages under 42 U.S.C. §1983.

24.

Complainant seeks and is entitled to all such other relief afforded to him at law or in equity, including an award of litigation expenses and all costs of these proceedings.

25.

Complainant is entitled to and desires trial by jury.

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

CARL CAVALIER

CIVIL ACTION

VERSUS

NO. 21-656-JWD-RLB

**THE LOUISIANA DEPARTMENT OF
PUBLIC SAFETY & CORRECTIONS, ET AL.**

SETTLEMENT CONFERENCE ORDER

IT IS ORDERED that a settlement conference is hereby set for **October 6, 2022 at 1:30 p.m.** by video.

Participant instructions will be sent by separate e-mail from the Courtroom Deputy.

The settlement conference will begin with a statement by Judge Bourgeois.¹

The following is provided to ensure that the necessary parties are present for the conference, to assist the Court in an objective appraisal and evaluation of the lawsuit, and to facilitate settlement of this matter in the most efficient manner.

A. PERSONS ATTENDING THE CONFERENCE

In addition to counsel who will try the case, a person with full settlement authority must be present for each party at the conference. This requires the presence of your client or, if a corporate entity, an authorized representative of your client, who has full and final settlement authority. The purpose of this requirement is to have representatives present who can settle the case during the course of the conference without consulting a superior. Upon proper application to the Court and under extenuating circumstances, a governmental entity, insurance company or corporate entity may be granted permission to proceed with a representative with limited authority, provided he/she has direct communication with a representative with full authority

¹ Judge Bourgeois does not generally permit opening statements by the parties during the joint session.



throughout the conference, even if the settlement conference lasts through lunch or after working hours. Any other persons deemed necessary to negotiate a settlement may also attend. Counsel of record will be responsible for timely advising any involved non-party (i.e., insurance company), of the requirements of this order.

B. CONFIDENTIAL STATEMENTS

The parties shall submit confidential settlement position papers by **noon on October 4, 2022** to the judge's chambers either via facsimile transmission to (225) 389-3603 or hand delivery. The statement shall not exceed five pages and shall contain the following:

- (a) Persons Attending: The name and title, if applicable, of the client or authorized representative who will be attending the conference with trial counsel.
- (b) Statement of your Case: The position paper should set forth a brief statement of your claim or defense. It should also contain a statement of the liability issues present, including a description of the strongest and weakest points of your case, both legal and factual.
- (c) Quantum: A brief statement of your position on quantum, including any injuries sustained. When applicable, describe any surgeries, current medical status, and any other relevant legal or factual issues.

A concluding section should contain suggestions for a satisfactory resolution of the claim. Please do not be bound by monetary solutions, but rather consider all possible alternatives to reaching a satisfactory resolution. Also, please keep in mind that these submissions are confidential, will not be exchanged, are not binding, and that posturing is inappropriate and only serves to handicap the process. The Magistrate Judge serves as a neutral

facilitator in this process; thus it serves no purpose for either party to attempt to convince the Magistrate Judge of his position.

C. ATTACHMENTS

Additional documents may be attached to the confidential settlement position paper if they exist and counsel deems them relevant and of benefit to the Court in evaluating the case.

D. CONFIDENTIALITY

The contents of the statements and all communications made in connection with the settlement conference are confidential and will not be disclosed to anyone without the express permission of the communicating party or order of a court of competent jurisdiction. The statements and any other documents submitted for the settlement conference will be maintained in chambers and will be destroyed after the conference.

Failure to timely comply with all requirements of this Order may result in cancellation of the settlement conference and/or sanctions at the Court's discretion.

Signed in Baton Rouge, Louisiana, on September 30, 2022.



RICHARD L. BOURGEOIS, JR.
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

CARL CAVALIER

CIVIL ACTION

VERSUS

NO. 21-656-JWD-RLB

**THE LOUISIANA DEPARTMENT OF
PUBLIC SAFETY & CORRECTIONS, ET AL.**

ORDER

A settlement conference was held on October 6, 2022. After a period of negotiations, the parties were able to reach a settlement, subject to certain necessary non-party approval. The court will enter a 60-day dismissal order in this matter.

Signed in Baton Rouge, Louisiana, on October 6, 2022.



RICHARD L. BOURGEOIS, JR.
UNITED STATES MAGISTRATE JUDGE



Ben Mayeaux

From: enoticing@lamd.uscourts.gov
Sent: Friday, October 7, 2022 10:37 AM
To: Courtmail@lamd.uscourts.gov
Subject: Activity in Case 3:21-cv-00656-JWD-RLB Cavalier v. The Louisiana Department of Public Safety & Corrections (Office of State Police) 60 Day Order of Dismissal

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

This is an automatic e-mail message generated by the CM/ECF system. Please **DO NOT RESPOND** to this e-mail because the mail box is unattended.

*****NOTE TO PUBLIC ACCESS USERS***** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

U.S. District Court

Middle District of Louisiana

Notice of Electronic Filing

The following transaction was entered on 10/7/2022 at 10:37 AM CDT and filed on 10/7/2022

Case Name: Cavalier v. The Louisiana Department of Public Safety & Corrections (Office of State Police)

Case Number: 3:21-cv-00656-JWD-RLB

Filer:

WARNING: CASE CLOSED on 10/07/2022

Document Number: 41(No document attached)

Docket Text:

ORDER OF DISMISSAL: This action is hereby DISMISSED without prejudice to the right, upon good cause shown within sixty (60) days, to reopen the action if the settlement is not consummated. Signed by Judge John W. deGravelles on 10/07/2022. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.)(KDC)

3:21-cv-00656-JWD-RLB Notice has been electronically mailed to:

Ben Louis Mayeaux bmayeaux@neunerpate.com, tmobley@neunerpate.com

Jennie Porche Pellegrin jpellegrin@neunerpate.com, cverret@neunerpate.com, ddugas@neunerpate.com

Jill L Craft jcraft@craftlaw.net, bconrad@craftlaw.net, dtaylor@craftlaw.net

Kaitlin Aubrey Wall kwall@erlingsonbanks.com



William Brett Conrad , Jr bconrad@craftlaw.net, dtaylor@craftlaw.net

3:21-cv-00656-JWD-RLB Notice has been delivered by other means to:

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

CARL CAVALIER

CIVIL ACTION NO.: 3:21-cv-000656

VERSUS

JUDGE: JOHN W. DEGRAVELLES

THE LOUISIANA DEPARTMENT OF
PUBLIC SAFETY & CORRECTIONS,
ET AL.

MAGISTRATE JUDGE: RICHARD L.
BOURGEOIS, JR.

.....
MOTION TO REOPEN THE CAUSE
AND RESCIND THE PROPOSED SETTLEMENT

Plaintiff, Carl Cavalier, hereby moves of this Court to Reopen the instant cause and to Rescind the proposed Oral Settlement Agreement (hereinafter “Settlement”) allegedly reached during a Settlement Conference before Magistrate Judge Richard Bourgeois on October 6, 2022. The instant matter was dismissed, without prejudice, subject to a sixty (60) day reopen period if the Settlement was not consummated. The alleged Settlement was oral and was never consummated nor reduced to writing. Further, the Oral Settlement was never offered in open court. There is no transcript of any agreement to a settlement.

In addition, Plaintiff’s objections to the terms of the proposed Oral Settlement were never included in the settlement discussions. Plaintiff’s attorney, at the time of the purported Oral Settlement discussions, refused to follow her client’s demands to ask for reinstatement to his job with the Louisiana State Police as part of any settlement. Counsel for Plaintiff coerced Plaintiff into apparently agreeing to the Oral Settlement. Since there was no actual meeting of the minds, the purported agreement to settle was forced onto Plaintiff under duress. Therefore, even if the Oral Settlement is considered enforceable, which is denied, because the Settlement was negotiated



under duress, the Oral Settlement should be rescinded, the dismissal is null and void, and the cause should be reopened.

A supporting Memorandum accompanies this Motion.

WHEREFORE, considering the foregoing Motion and accompanying Memorandum in Support, Plaintiff Carl Cavalier requests that the Captioned Matter be reopened and the proposed Settlement be rescinded.

Respectfully Submitted:

s/ James C. Carver

James C. Carver, Ph.D., J.D.
LA Bar #19514 –T.A.
THE CARVER LAW FIRM, LLC
201 St. Charles Street
Baton Rouge, LA 70802
Phone: (225) 636-2642
Fax: (225) 387-3198
Email: jim@thecarverlawfirm.com

and

s/ Clifton J. Ivey

Clifton J. Ivey, J.D.
LA Bar #28094
THE IVEY LAW FIRM, LLC
8748 Quarters Lake Road, 2nd Floor
Baton Rouge, LA 70809
Phone: (225) 922-9111
Fax: (225) 922-9121
Email: cliftonivey@att.net

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of November, 2022, a copy of the foregoing pleading was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to counsel for Defendant, by operation of the Court's electronic filing system.

s/ James C. Carver _____
James C. Carver, Ph.D., J.D.
LA Bar #19514 –T.A.
THE CARVER LAW FIRM, LLC
201 St. Charles Street
Baton Rouge, LA 70802
Phone: (225) 636-2642
Fax: (225) 387-3198
Email: jim@thecarverlawfirm.com

and

s/ Clifton J. Ivey _____
Clifton J. Ivey, J.D.
LA Bar #28094
THE IVEY LAW FIRM, LLC
8748 Quarters Lake Road, 2nd Floor
Baton Rouge, LA 70809
Phone: (225) 922-9111
Fax: (225) 922-9121
Email: cliftonivey@att.net

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

CARL CAVALIER	*	CIVIL ACTION
	*	
VERSUS	*	DOCKET NO. 21-656
	*	
STATE OF LOUISIANA; DEPT. OF PUBLIC SAFETY & CORRECTIONS;	*	JUDGE JOHN W. DEGRAVELLES
PUBLIC SAFETY SERVICES; OFFICE	*	
OF STATE POLICE	*	MAGISTRATE RICHARD L. BOURGEOIS, JR.
	*	

**MEMORANDUM IN SUPPORT OF
MOTION TO ENFORCE SETTLEMENT AGREEMENT**

Defendants, Louisiana Department of Public Safety & Corrections (Office of State Police) (“LSP”) and LSP Superintendent, Colonel Lamar Davis (“Col. Davis”), move to enforce the settlement agreement reached with the Plaintiff, Carl Cavalier.

BACKGROUND

Cavalier instituted three proceedings against LSP. He filed this civil suit asserting employment retaliation in the 19th JDC, which Defendants removed to this Court.¹ Thereafter, Cavalier filed a Charge of employment discrimination and retaliation with the Equal Employment Opportunity Commission, which Charge remains unresolved. Finally, Cavalier appealed disciplinary action (suspension and termination) imposed against him to the Louisiana State Police Commission. That appeal remains pending.

In this civil action, Magistrate Judge Bourgeois entered an order setting a settlement conference for October 6, 2022.² Cavalier and Col. Davis were both present at the conference, and the parties reached an agreement to settle all pending disputes including this civil matter,

¹ Rec. Doc. 1.
² Rec. Doc. 39.



Cavalier's EEOC Charge, and his administrative appeal to the Louisiana State Police Commission. Though not transcribed, Magistrate Bourgeois recited the terms of the settlement agreement at the conference, and both Cavalier and Col. Davis expressly affirmed that the terms were acceptable and agreed to be bound thereby.

At the close of the October 6 settlement conference, Magistrate Bourgeois entered an order which stated that "[a]fter a period of negotiations, the parties were able to reach a settlement, subject to necessary non-party approval."³ Additionally, after the settlement conference, counsel for the parties exchanged emails confirming the terms of the agreement.⁴

The following day, on October 7, this Court dismissed this matter without prejudice to either party's right to reopen the action within sixty days if settlement were not consummated.⁵

On October 13, Defendants became aware that Baton Rouge area media outlets covered a public statement released by Cavalier indicating his intent not to be bound by the settlement agreement he entered on October 6. In relevant part, Cavalier asserted "I am not satisfied with this proposed settlement . . . I have not signed any paperwork regarding any settlements."⁶

The next day, on October 14, Cavalier's (now former) counsel filed a Motion to Withdraw citing "an irreconcilable conflict."⁷ The Motion to withdraw was set for hearing on October 27. During the hearing, which Cavalier attended, Magistrate Bourgeois confirmed that both sides had accepted the terms of the settlement:

³ Rec. Doc. 40. The "non-party approval" refers to the State policy that the Department of Justice and Office of Risk Management approve the draft of the release agreement prior to execution.

⁴ Exhibit A – October 6, 2022 e-mail exchanges (filed under seal).

⁵ Rec. Doc. 41.

⁶ *State police whistleblower rejects settlement offer*, <https://www.wvltv.com/article/news/crime/state-police-whistleblower-rejects-settlement-offer/289-4f89cfe6-1ef7-42cd-bc5a-2303e07173f1>; *After deadly arrest, State Police offered whistleblower \$200k settlement to make him go away*, <https://www.wbrz.com/news/after-deadly-arrest-state-police-offered-whistleblower-200k-settlement-to-make-him-go-away>.

⁷ Rec. Doc. 43.

THE COURT: We have an agreement. I mean, I sat there and facilitated the conference. Everybody agreed . . .

* * *

THE COURT: Okay? And is there any chance I can get you to come back to what we resolved back in, earlier this month? I can't remember the exact date, October 7th.

Has somebody changed? I mean, are they telling you it's a different deal than we had worked out? Is that your concern or is it really you just changed your mind?

MR. CAVALIER: No, sir. It wasn't that I just changed my mind. My position was, was never accurately represented by, by my counsel.

THE COURT: Well, you - - that's why I have you at the conference.

MR. CAVALIER: Understood.⁸

The necessary non-party approval of the settlement documentation was obtained by LSP and a draft of the release agreement was provided to Cavalier's new counsel.⁹ Defense counsel were advised Cavalier refused to go forward with the settlement.

LSP and Col. Davis now move to enforce the settlement of the civil action and further move that Cavalier be ordered to sign the documents necessary to dismiss the EEOC Charge and the administrative appeal to the State Police Commission.

LAW AND ARGUMENT

A. Standard Of Review

This Court has federal question jurisdiction over this matter, and thus federal law governs the validity and enforceability of the settlement agreement, which is a contract.¹⁰ "Federal law does not require settlement agreements to be reduced to writing."¹¹ Rather, offer and acceptance

⁸ Exhibit B – October 27, 2022 Transcript, pp. 3 and 5.

⁹ Exhibit C – November 10, 2022 transmittal e-mail and Release Agreement (filed under seal).

¹⁰ *Rd. Sprinkler Fitters Loc. Union No. 669, U.A., AFL-CIO v. CCR Fire Prot., LLC*, No. CV 16-00448-JWD-EWD, 2019 WL 4739293, at *15 (M.D. La. Sept. 27, 2019)(quoting *Mid-S. Towing Co. v. Har-Win, Inc.*, 733 F.2d 386, 389 (5th Cir. 1984)); *In re Diamond Servs. Corp.*, No. 6:20-CV-00408, 2022 WL 4813911, at *2 (W.D. La. Sept. 30, 2022)(citations omitted).

¹¹ *Bowers v. Abundant Home Health, LLC*, No. 3:16-CV-1314-C, 2021 WL 706783, at *4 (N.D. Tex. Jan. 25, 2021), *report and recommendation adopted*, No. 3:16-CV-1314-C, 2021 WL 693652 (N.D. Tex. Feb. 23,

are judged by a party's "overt acts and words" and "outward, objective manifestations of assent."¹² "A settlement is valid and enforceable even if it contemplates the parties signing a document at a later date."¹³ However, it must "contain all of the elements of a binding contract, including that it encompass all of the material or essential terms."¹⁴ An agreement on all the material terms of a settlement generally exists when "the parties have agreed upon the monetary amount of the settlement payment and the fact that the plaintiff will release specific claims;" the terms must be "sufficiently definite to enable the court to understand each party's obligations."¹⁵

The party seeking enforcement of a settlement "must prove that the parties reached an agreement regarding all material terms."¹⁶ If that burden is carried, the non-moving party has the burden to prove that "the agreement is tainted with invalidity and should not be enforced," e.g., that some vice of consent exists or that counsel agreed to settle the case without having authority to do so.¹⁷ "When the parties negotiated at arms-length and there was no taint of fraud, deception, coercion, or overreaching, the settlement is binding, despite a claim of mutual mistake."¹⁸ "Absent

2021)(quoting *E.E.O.C. v. Philip Servs. Corp.*, 635 F.3d 164, 167 (5th Cir. 2011)); see also *Powell v. Omnicom*, 497 F.3d 124, 129 (2d Cir. 2007).

¹² *In re Diamond Servs. Corp.*, No. 6:20-CV-00408, 2022 WL 4813911, at *2 (W.D. La. Sept. 30, 2022)(citations omitted).

¹³ *Rd. Sprinkler Fitters Loc. Union No. 669, U.A., AFL-CIO v. CCR Fire Prot., LLC*, No. CV 16-00448-JWD-EWD, 2019 WL 4739293, at *15 (M.D. La. Sept. 27, 2019) (quoting *In re DEEPWATER HORIZON*, 786 F.3d 344 at 355 (5th Cir. 2015)).

¹⁴ *Rd. Sprinkler Fitters Loc. Union No. 669, U.A., AFL-CIO v. CCR Fire Prot., LLC*, No. CV 16-00448-JWD-EWD, 2019 WL 4739293, at *15 (M.D. La. Sept. 27, 2019)(citations omitted).

¹⁵ *Rd. Sprinkler Fitters Loc. Union No. 669, U.A., AFL-CIO v. CCR Fire Prot., LLC*, No. CV 16-00448-JWD-EWD, 2019 WL 4739293, at *17 (M.D. La. Sept. 27, 2019)(collecting cases).

¹⁶ *Lozano v. Metro. Transit Auth. of Harris Cnty.*, No. CV H-14-1297, 2016 WL 3906295, at *3 (S.D. Tex. July 19, 2016)(citing *Thompson v. Cont'l Emsco Co.*, 629 F. Supp. 1160, 1164 (S.D. Tex. 1986)).

¹⁷ *Coleman v. City of Opelousas*, No. 6:20-CV-01469, 2021 WL 3812483, at *3 (W.D. La. July 23, 2021), report and recommendation adopted, No. 6:20-CV-01469, 2021 WL 3780027 (W.D. La. Aug. 25, 2021); *Lozano v. Metro. Transit Auth. of Harris Cnty.*, No. CV H-14-1297, 2016 WL 3906295, at *3 (S.D. Tex. July 19, 2016)(citing *Thompson v. Cont'l Emsco Co.*, 629 F. Supp. 1160, 1164 (S.D. Tex. 1986)).

¹⁸ *Coleman v. City of Opelousas*, No. 6:20-CV-01469, 2021 WL 3812483, at *4 (W.D. La. July 23, 2021), report and recommendation adopted, No. 6:20-CV-01469, 2021 WL 3780027 (W.D. La. Aug. 25, 2021)(quoting *Mid-South Towing Co. v. Har-Win, Inc.*, 733 F.2d 386, 392 (5th Cir.1984)).

a factual basis rendering it invalid, an oral agreement to settle a federal claim is enforceable against a plaintiff who knowingly and voluntarily agreed to the terms of the settlement or authorized his attorney to settle the dispute.”¹⁹ If no material facts are in dispute, a court may summarily enforce a settlement agreement.²⁰ “[W]hen opposition to enforcement of the settlement is based not on the merits of the claim but on a challenge to the validity of the agreement itself, the parties must be allowed an evidentiary hearing on disputed issues of the validity and scope of the agreement.”²¹

LSP and Col. Davis contend there are no material facts in dispute and therefore this matter should be summarily resolved. However, in the event the Court should determine an evidentiary hearing is necessary, Defendants would request sufficient time to conduct limited discovery directed to the Plaintiff and his former counsel.

B. There Is No Genuine Dispute That A Binding Settlement Agreement Was Created

There is no genuine dispute that the parties confected a settlement agreement during the conference with the Magistrate Judge. At the conclusion of the conference, the Magistrate Judge recited the eight specific terms of the agreement, and Cavalier and Col. Davis each *personally* affirmed to the Court that they agreed to those terms as recited. Therefore, there was offer, acceptance, and meeting of the minds regarding settlement of this matter. And, so long as those terms included the essential or material terms, they were binding even if it had not been reduced to writing.

¹⁹ *Bowers v. Abundant Home Health, LLC*, No. 3:16-CV-1314-C, 2021 WL 706783, at *4 (N.D. Tex. Jan. 25, 2021), *report and recommendation adopted*, No. 3:16-CV-1314-C, 2021 WL 693652 (N.D. Tex. Feb. 23, 2021)(quoting *Fulgence v. J. Ray McDermott & Co.*, 662 F.2d 1207, 1209 (5th Cir. 1981)).

²⁰ *In re Diamond Servs. Corp.*, No. 6:20-CV-00408, 2022 WL 4813911, at *2 (W.D. La. Sept. 30, 2022)(quoting *In re DEEPWATER HORIZON*, 786 F.3d 344, 357 (5th Cir. 2015)).

²¹ *In re DEEPWATER HORIZON*, 786 F.3d 344, 354 (5th Cir. 2015)(quoting *Mid-South Towing Co. v. Har-Win, Inc.*, 733 F.2d 386, 390 (5th Cir.1984)).

The essential or material terms of a settlement are the monetary amount and the release of claims, along with all other terms that allow the court to fully understand each party's obligations. The emails exchanged between the parties' counsel after the settlement conference recite the terms as agreed by the parties.²² Those terms set out the monetary amount to be paid, the claims to be dismissed and the non-monetary consideration to be provided by each party. The only issue potentially left uncertain in those emails is the manner of disbursement, in order to ensure that any payment made by Defendants would not be subject to withholding or be classified as W-2 income.²³ That is solely a term regarding implementation of the agreement, however, not an essential or material substantive term.²⁴ Therefore, the absence of a final decision on the performance of disbursement does not undermine the binding nature of the settlement agreement.

The final condition of settlement was approval of the settlement documents by DOJ and ORM, as noted by the Magistrate Judge. That approval was received on November 10, 2022.²⁵ Therefore, the parties are bound by the settlement agreement to which they assented at the conference.

Because there is no genuine dispute that a binding settlement agreement was created between the parties, the burden falls to Cavalier to prove that the settlement agreement is invalid, which he has failed to do.²⁶

²² Exhibit A.

²³ Exhibit A.

²⁴ *Rd. Sprinkler Fitters Loc. Union No. 669, U.A., AFL-CIO v. CCR Fire Prot., LLC*, No. CV 16-00448-JWD-EWD, 2019 WL 4739293, at *19 (M.D. La. Sept. 27, 2019)(how funds are to be treated for tax purposes is not an essential material term, citing *McDonnell v. Engine Distributors*, 2007 WL 2814628 *8 (D. NJ Sept. 24, 2007)).

²⁵ Exhibit D -- November 10, 2022 approval.

²⁶ See Cavalier's November 30, 2022 *Motion to Reopen the Cause and Rescind the Proposed Settlement* [Rec. Doc. 52].

C. There Is No Genuine Dispute That The Settlement Agreement Is Valid

Cavalier’s public statements do not raise a genuine dispute regarding the validity of the settlement agreement. He does not allege that the agreement is “tainted with invalidity, either by fraud...or by a mutual mistake.”²⁷ His only stated grounds are that his (now former) attorney did not accurately represent his position during the settlement conference and pressured him to settle. That is not an attack on the validity of the agreement, but on Cavalier’s subjective determination that he wishes he had agreed to different terms than he did. It is well settled that dissatisfaction with the terms of a settlement agreement, realized after the fact, is insufficient ground to avoid enforcement, even if a party refuses to later sign a memorialization.²⁸ Therefore, the settlement agreement between the parties remains in full effect and binds Cavalier to its terms.

Remarkably on point is *Powell v. Omnicom, BBDO/PHD*, 497 F.3d 124 (2nd Cir. 2007). In *Powell*, just as in this instance, the parties participated in a settlement conference before the Magistrate Judge and reached an agreement. At the conclusion of the *Powell* settlement conference, the Magistrate Judge recited the nine essential terms of the agreement on the record and asked the plaintiff whether the terms were acceptable and whether “on the basis of agreeing

²⁷ *Coleman v. City of Opelousas*, No. 6:20-CV-01469, 2021 WL 3812483, at *4 (W.D. La. July 23, 2021), *report and recommendation adopted*, No. 6:20-CV-01469, 2021 WL 3780027 (W.D. La. Aug. 25, 2021)(quoting *Mid-South Towing Co. v. Har-Win, Inc.*, 733 F.2d 386, 392 (5th Cir.1984)).

²⁸ *See, e.g., Coleman v. City of Opelousas*, No. 6:20-CV-01469, 2021 WL 3812483 (W.D. La. July 23, 2021), *report and recommendation adopted*, No. 6:20-CV-01469, 2021 WL 3780027 (W.D. La. Aug. 25, 2021)(plaintiff agreed to the settlement during the conference, but later decided he was unsatisfied with its terms and indicated he would not sign the agreement); *United States v. Oliver St. 5.01(a), Inc.*, No. 3:20-CV-1021-B, 2022 WL 3290574 (N.D. Tex. Aug. 11, 2022)(all parties signed a term sheet, but the relator refused to sign a settlement agreement); *Jackson v. Howard*, No. CV 19-504-SDD-SDJ, 2021 WL 3185441 (M.D. La. July 6, 2021), *report and recommendation adopted*, No. CV 19-504-SDD-SDJ, 2021 WL 3179009 (M.D. La. July 27, 2021)(parties reached an agreement through email exchange and the plaintiff deposited the settlement check but refused to sign a release of claims); *Lozano v. Metro. Transit Auth. of Harris Cnty.*, No. CV H-14-1297, 2016 WL 3906295 (S.D. Tex. July 19, 2016)(parties agreed to settle but the plaintiff later refused to sign the memorialization); *Daftary v. Metro. Life Ins. Co.*, 136 F.3d 137 (5th Cir. 1998)(per curiam)(counsel for the parties reached an agreement after consulting with their clients, but the plaintiff refused to sign an agreement setting out those same terms).

to those terms that this case will be terminated with prejudice and cannot be reopened.” The plaintiff answered “yes” to both questions.²⁹ Thereafter, the plaintiff refused to sign the release agreement claiming he had been “pressured” by counsel into accepting it. Finding that the essential terms of the agreement had been agreed upon and that neither party expressly reserved the right not to be bound absent a writing, the Court rejected *Powell’s* argument that there was no settlement because it had not been reduced to writing.

Similarly here, Magistrate Bourgeois recited the eight essential terms to this settlement, asked whether Cavalier accepted them, and Cavalier personally acknowledged his consent to all of the enumerated terms. Although those statements were not on the record, the settlement terms were memorialized by counsel for the parties that same day. And, Cavalier’s consent to the settlement terms was confirmed by the Magistrate Judge during the hearing on Cavalier’s former counsel’s Motion to Withdraw. Now, Cavalier refuses to confection the settlement claiming his (now former) attorney pressured him to settle. Just as in *Powell*, this Court should conclude that the essential settlement terms were agreed and because “there was literally nothing left to negotiate or settle, so that all that remained to be done was to sign what had already been fully agreed to,”³⁰ enforce the settlement.

CONCLUSION

A settlement agreement was confectioned during the settlement conference before the Magistrate Judge. That Cavalier personally approved and accepted the terms of the settlement was confirmed by Magistrate Bourgeois’ comments during the hearing on the Motion to Withdraw – without denial or demurrer by Cavalier. The settlement terms were memorialized in writings

²⁹ *Powell*, 497 F.3d at 127.

³⁰ *Powell*, 497 F.3d at 130.

between the parties shortly thereafter and those terms includes all material or essential elements of the agreement. Therefore, the settlement is a binding contract between the parties. Cavalier has made public statements that he will not comply with the settlement, but has not articulated any challenge to its validity. Rather he has simply determined after-the-fact that he is “not satisfied” with the terms of the agreement. That is an insufficient reason for Cavalier to refuse to comply with the agreement he entered. Accordingly, the Court should summarily enforce the settlement terms.

LSP and Col. Davis pray that: (1) this motion be granted, (2) the Court summarily enforce the settlement agreement, and (3) Cavalier be ordered to comply with the terms of the settlement, execute the Release Agreement, and any other documents necessary to dismiss the EEOC Charge and the administrative appeal pending before the Louisiana State Police Commission.

Respectfully Submitted,
JEFF LANDRY
Attorney General

BY: /s/ Ben L. Mayeaux
JENNIE P. PELLEGRIN – LA. BAR ROLL NO. 25207
jpellegrin@neunerpate.com
BEN L. MAYEAUX – LA. BAR ROLL NO. 19042
bmayeaux@neunerpate.com
NEUNERPATE
One Petroleum Center, Suite 200
1001 West Pinhook Road (zip 70503)
Post Office Box 52828
Lafayette, LA 70505-2828
TELEPHONE: (337) 237-7000 FAX: (337) 233-9450
*Special Assistants Attorneys General and Counsel
for the Louisiana Department of Public Safety &
Corrections (Office of State Police) and Colonel
Lamar Davis*

CERTIFICATE OF SERVICE

I hereby certify that on December 5, 2022, a copy of this *Memorandum in Support of Motion To Enforce Settlement Agreement* was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be forwarded to all counsel by operation of the Court's electronic filing system.

/s/ Ben L. Mayeaux

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

CARL CAVALIER * CIVIL ACTION
*
VERSUS * DOCKET NO. 21-656
*
STATE OF LOUISIANA: DEPT. OF * JUDGE JOHN W. DEGRAVELLES
PUBLIC SAFETY & CORRECTIONS: *
PUBLIC SAFETY SERVICES; OFFICE * MAGISTRATE RICHARD L. BOURGEOIS, JR.
OF STATE POLICE *

EX PARTE MOTION FOR LEAVE TO FILE EXHIBITS UNDER SEAL

Defendants, Louisiana Department of Public Safety & Corrections (Office of State Police) (“LSP”) and LSP Superintendent, Colonel Lamar Davis (“Col. Davis”), request permission to file under seal certain exhibits to their *Motion to Enforce Settlement Agreement*. Those exhibits are communications which memorialize the terms of the settlement agreement reached between the parties, and this Court’s Settlement Conference Order requires confidentiality of any communications related to the settlement conference. Accordingly, Defendants asks this Court to seal Exhibits A and C to the *Motion to Enforce Settlement*, which are attached hereto.

Respectfully Submitted,
JEFF LANDRY
Attorney General

BY: /s/ Ben L. Mayeaux
JENNIE P. PELLEGRIN – LA. BAR ROLL No. 25207
jpellegrin@neunerpate.com
BEN L. MAYEAUX – LA. BAR ROLL No. 19042
bmayeaux@neunerpate.com
NEUNERPATE
One Petroleum Center, Suite 200
1001 West Pinhook Road (zip 70503)
Post Office Box 52828
Lafayette, LA 70505-2828
TELEPHONE: (337) 237-7000 FAX: (337) 233-9450



*Special Assistants Attorneys General and Counsel
for the Louisiana Department of Public Safety &
Corrections (Office of State Police) and Colonel
Lamar Davis*

CERTIFICATE OF SERVICE

I hereby certify that on December 5, 2022, a copy of this *Ex Parte Motion For Leave To File Exhibits Under Seal* was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be forwarded to all counsel by operation of the Court's electronic filing system.

/s/ Ben L. Mayeaux

EXHIBIT A
(to be filed under seal sought)

EXHIBIT C
(to be filed under seal sought)

Ben Mayeaux

From: enoticing@lamd.uscourts.gov
Sent: Thursday, December 8, 2022 9:19 AM
To: Courtmail@lamd.uscourts.gov
Subject: Activity in Case 3:21-cv-00656-JWD-RLB Cavalier v. The Louisiana Department of Public Safety & Corrections (Office of State Police) Order on Sealed Motion for Leave to File A Document

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

This is an automatic e-mail message generated by the CM/ECF system. Please **DO NOT RESPOND** to this e-mail because the mail box is unattended.

*****NOTE TO PUBLIC ACCESS USERS***** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

U.S. District Court

Middle District of Louisiana

Notice of Electronic Filing

The following transaction was entered on 12/8/2022 at 9:18 AM CST and filed on 12/8/2022

Case Name: Cavalier v. The Louisiana Department of Public Safety & Corrections (Office of State Police)

Case Number: 3:21-cv-00656-JWD-RLB

Filer:

WARNING: CASE CLOSED on 10/07/2022

Document Number: 58(No document attached)

Docket Text:

ORDER granting [57] SEALED Motion for Leave to File Under Seal. Consistent with this Courts Settlement Conference Order (R. Doc. 39), the Clerks Office shall file into the record the attached Exhibits A and C to the Motion to Enforce Settlement Agreement (R. Doc. 56) under seal. Signed by Magistrate Judge Richard L. Bourgeois, Jr. on 12/8/2022. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.) (Bourgeois, Richard)

3:21-cv-00656-JWD-RLB Notice has been electronically mailed to:

Ben Louis Mayeaux bmayeaux@neunerpate.com, tmobley@neunerpate.com

Clifton J. Ivey, Jr cliff@cilawfirm.com



James C. Carver jim@thecarverlawfirm.com, rebecca@thecarverlawfirm.com

Jennie Porche Pellegrin jpellegrin@neunerpate.com, cverret@neunerpate.com, ddugas@neunerpate.com

Kaitlin Aubrey Wall kwall@erlingsonbanks.com, notices@erlingsonbanks.com

3:21-cv-00656-JWD-RLB Notice has been delivered by other means to:

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**

CARL CAVALIER

CIVIL ACTION

VERSUS

NO. 21-656-JWD-RLB

**STATE OF LOUISIANA:
DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONS: PUBLIC
SAFETY SERVICES, ET AL.**

MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION

Before the Court is Defendants’ Motion to Enforce Settlement Agreement (R. Doc. 56). Plaintiff opposes the motion.

Also before the Court are Intervenor’s Motion to Deem Privilege Waived (R. Doc. 77) and Intervenor’s Consent Motion for Leave to Review Exhibits In Camera (R. Doc. 78).

Because Plaintiff entered into an enforceable compromise with Defendants, the Court recommends granting Defendants’ motion and denying Intervenor’s motions as moot.

I. Background

Plaintiff, Carl Cavalier, allegedly settled his claims with Defendants Louisiana Department of Public Safety & Corrections (Office of State Police) (“LSP”) and LSP Superintendent, Colonel Lamar Davis. Cavalier had asserted employment discrimination claims following his termination from the Louisiana State Police. (R. Doc. 1-2). The parties and their attorneys appeared at a judicial settlement conference before the undersigned. (R. Doc. 40). Following negotiations, the parties agreed to a settlement which resolved all of Plaintiff’s claims. (*See id.*). That afternoon, counsel for the parties exchanged emails confirming the material terms of the settlement agreement. (R. Doc. 56-2). Based upon the parties’ representations, the Court



dismissed the action subject to the right to reopen the case within sixty (60) days upon a showing of good cause if the settlement was not consummated. (R. Doc. 41).

One week after agreeing to a compromise at the judicial settlement conference, Plaintiff informed his counsel of his dissatisfaction with the agreement. (*See* R. Doc. 60-3). Shortly thereafter, Plaintiff sought to rescind the agreement and reopen this case. (R. Doc. 52).¹ Plaintiff asserts that he never actually agreed to the terms of the settlement and his attorney coerced him into accepting the settlement at the judicial conference. (R. Doc. 52-2 at 5). Specifically, Plaintiff alleges that his reemployment was a necessary term for any compromise. (R. Doc. 60 at 2). However, his attorney allegedly pressured him into accepting an agreement that did not reinstate his position by telling him that “he could not win at trial, nor could he win on appeal.” (R. Doc. 52-2 at 8). Additionally, Plaintiff contests the settlement on the grounds that he had not authorized his attorney to enter into the agreement on his behalf. (*Id.* at 7). Plaintiff states that therefore the settlement is an unenforceable, oral agreement. Accordingly, Plaintiff obtained new counsel and moved to reopen the case and rescind the proposed settlement. (R. Docs. 51, 52).

Defendants opposed Plaintiff’s motion and filed a counter Motion to Enforce Settlement Agreement (R. Doc. 56). Defendants assert that Plaintiff entered into a valid, oral compromise at the settlement conference. (R. Doc. 56-1 at 5). Plaintiff, and not counsel, personally assented to those terms at the conference. (R. Doc. 59 at 5). The parties confirmed all of the material terms of the agreement in writing in a subsequent email exchange. (R. Doc. 56-1 at 5). The parties, therefore, do not dispute any material facts. Defendants further assert that Plaintiff has not alleged any facts which legally constitute duress or otherwise invalidate the agreement. (R. Doc. 59 at 6). Any pressure to settle applied by Plaintiff’s counsel does “not rise to the level of duress

¹ On January 3, 2022, the Court granted Plaintiff’s Motion “to the extent it seeks to reopen this action to consider whether the settlement agreement is enforceable.” (R. Doc. 71).

or undue influence.” (*Id.* at 7). Therefore, they request that the Court enforce the agreement. (*Id.*).

Plaintiff’s former counsel disputes Plaintiff’s allegations and her law firm has filed a Complaint in Intervention (R. Doc. 74). She requests that the Court “recognize[s] and protect[s]” a lien on the proceeds from the compromise arising from the firm’s written contingency fee agreement with Plaintiff. (*Id.* at 9).

II. Legal Standards

A court may summarily enforce a settlement agreement when it has retained jurisdiction. *Richardson v. Famous Bourbon Mgmt. Grp., Inc.*, 857 F. App’x 182, 183-84 (5th Cir. 2021). “[A] settlement agreement once entered into cannot be repudiated by either party.” *Cia Anon Venezolana De Navegacion v. Harris*, 374 F.2d 33, 35 (5th Cir. 1967). However, when a party disputes the validity of the settlement agreement, a court must hold an evidentiary hearing on any disputed issues affecting the validity or scope of the agreement. *Mid-South Towing Co. v. Harwin, Inc.*, 733 F.2d 386, 390 (5th Cir. 1984); *see also In re Deepwater Horizon*, 786 F.3d 344, 354 (5th Cir. 2015).

“[T]he construction and enforcement of settlement agreements is governed by the principles of state law applicable to contracts generally.” *Sundown Energy, L.P. v. Haller*, 773 F.3d 606, 611 (5th Cir. 2014) (quoting *E. Energy, Inc. v. Unico Oil & Gas, Inc.*, 861 F.2d 1379, 1380 (5th Cir. 1988)); *see also Fla. Educ. Ass’n, Inc. v. Atkinson*, 481 F.2d 662, 663 (5th Cir. 1973) (It is a “well-settled rule that the construction and enforcement of settlement agreements are governed by principles of local law applicable to contracts generally.”). A suit to enforce a settlement is, in essence, “a claim for breach of a contract, part of the consideration for which was dismissal of an earlier federal suit.” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S.

375, 381 (1994). The facts regarding the breach of a settlement agreement are “quite separate” from the facts in the underlying suit, and therefore the underlying suit does not automatically confer federal jurisdiction. *Id.* Nonetheless, federal law applies to disputes over the enforcement or validity of settlement agreements when “the substantive rights and liabilities of the parties derive from federal law.” *Mid-South Towing Co.*, 733 F.2d at 389 (applying federal law to determine the validity of an agreement to settle maritime law claims); *but see, Deville v. United States ex rel. Dep’t of Veterans Affairs*, 202 F. App’x 761, 763 (5th Cir. 2006) (“The Fifth Circuit has not decided which law applies to govern the enforceability of the settlement of FTCA cases: federal common law or the law of the state where the alleged tort occurred.”).

“Settlement agreements are highly favored in the law and will be upheld whenever possible.” *Mass. Cas. Ins. Co. v. Forman*, 469 F.2d 259, 261 (5th Cir. 1972) (quoting *D. H. Overmyer Co. v. Loflin*, 440 F.2d 1213, 1215 (5th Cir. 1971)). Under both federal and Louisiana law, the party seeking to enforce an agreement bears the burden of establishing the existence of a compromise. *Faris v. Williams WPC-I, Inc.*, 332 F.3d 316, 322 (5th Cir. 2003); *Brown v. Drillers, Inc.*, 630 So. 2d 741, 747 (La. 1994). If the moving party establishes that a compromise was agreed to, the party contesting the settlement bears the burden of demonstrating the invalidity of the agreement. *Id.*; *see also Mid-South Towing Co.*, 733 F.2d at 392 (“One who attacks a settlement must bear the burden of showing that the contract he has made is tainted with invalidity.” (quoting *Callen v. Penn. R.R. Co.*, 332 U.S. 625, 630 (1948))).

III. Analysis

A. The Parties Formed a Compromise

The parties entered into a binding agreement to settle this suit at the conclusion of the judicial settlement conference. Plaintiff, however, contends that they merely “agreed to agree.”

(R. Doc. 60 at 1). Plaintiff asserts that there was no compromise because: (1) the agreement was not put into writing; (2) Plaintiff's attorney did not have settlement authority; and (3) the agreement does not cover all material terms. (*See id.*). Specifically, the agreement is incomplete because it does not provide for Plaintiff's reemployment with the LSP. (*See id.*). The Court expressly retained jurisdiction in its dismissal order, and Defendants seek to enforce the settlement agreement.

As a threshold matter, the parties assert that federal law governs whether they entered a valid compromise. (R. Docs. 59 at 2; 60 at 2). Generally, a compromise is a contract governed by state law, and suits to enforce compromises form independent causes of action typically heard in state court. *Kokkonen*, 511 U.S. at 381. Federal law, nonetheless, applies to substantive rights and liabilities derived from federal law. *Mid-South Towing Co.*, 733 F.2d at 389. The Fifth Circuit has applied federal law to disputes over contractual rights to a settlement founded upon federal law. *See, e.g., Fisk Elec. Co. v. DQSI, L.L.C.*, 894 F.3d 645 (5th Cir. 2018) (disputing the enforceability of an agreement under the Miller Act); *Fulgence v. J. Ray McDermott & Co.*, 662 F.2d 1207, 1209 (5th Cir. 1981) (disputing whether Title VII requires that a settlement must be in writing); *Mid-South Towing Co.*, 733 F.2d at 389 (seeking to enforce a settlement under admiralty jurisdiction). The parties have not identified any substantive federal rights at issue beyond the underlying federal civil rights claims; however, some courts have looked to the underlying cause of action to determine the applicable law. *See, e.g., Rodgers v. Jefferson Par. Sheriff's Off.*, No. 15-2642, 2016 WL 4427210, at *2 (E.D. La. June 28, 2016), *report and recommendation adopted*, 2016 WL 4418959 (E.D. La. Aug. 19, 2016); *see also Glazer v. J.C. Bradford & Co.*, 616 F.2d 167, 169 (5th Cir. 1980) (applying state law to an action based upon diversity jurisdiction). Courts have even looked to both federal and state law to determine the

enforceability of a compromise when a Plaintiff asserted both federal and state causes of action. *See, e.g., Carlson v. Ackal*, No. 17-469, 2018 WL 4169135, at *4 (W.D. La. Aug. 29, 2018). Regardless of whether federal or state law applies here, the parties agreed to a compromise.

Under Louisiana law, settlement agreements, or compromises, are contracts “whereby the parties, through concessions made by one or more of them, settle a dispute or an uncertainty concerning an obligation or other legal relationship.” La. Civ. Code art. 3071. Essentially a compromise must contain a “(1) mutual intention of preventing or putting an end to the litigation, and (2) reciprocal concessions of the parties to adjust their differences.” *Preston Law Firm, L.L.C. v. Mariner Health Care Mgmt. Co.*, 622 F.3d 384, 390 (5th Cir. 2010) (quoting *Klebanoff v. Haberle*, 978 So. 2d 598, 602 (La. Ct. App. 2nd Cir. 2008)). A compromise must be made in writing or in open court and capable of being transcribed from the record of the proceedings. La. Civ. Code art. 3072. Emails may qualify as signed writings. La. Rev. Stat. Ann. § 9:2607(c); *see also Preston Law Firm, L.L.C.*, 622 F.3d at 391. Moreover, the agreement does not need to be contained within a single document. *Felder v. Ga. Pac. Corp.*, 405 So. 2d 521, 523 (La. 1981). “Where two instruments, read together, outline the obligations each party has to the other and evidence each party's acquiescence in the agreement, a written compromise agreement has been perfected.” *Klebanoff*, 978 So. 2d at 601-02.

Federal law governing settlement agreements applies the general common law principles of contracts. *See In re Deepwater Horizon*, 786 F.3d 344, 354 (5th Cir. 2015). To form a settlement agreement, there must be an offer, an acceptance, consideration, the inclusion of all material or essential terms, and a meeting of the minds among the parties. *See id.* at 355-60. An offer and acceptance “is judged by the parties’ overt acts and words, not by the subjective or secret intent of the [parties].” *Id.* at 355. For there to have been a meeting of the minds, the

parties must have “knowingly and voluntarily” entered into the agreement. *Bowers v. Abundant Home Health, L.L.C.*, 803 F. App’x 765, 767 (5th Cir. 2020). So long as these requirements have been met, “[f]ederal law does not require settlement agreements to be reduced to writing.” *EEOC v. Philip Servs. Corp.*, 635 F.3d 164, 167 (5th Cir. 2011).

Plaintiff agreed to a compromise following the judicial settlement conference. The parties made mutual concessions to resolve the litigation and affirmed their agreement before the Court. (*See* R. Doc. 40). Although Plaintiff now states that he was under duress, he concedes that he “did agree to the Settlement, even though he did not actually agree to the terms.” (R. Doc. 52-2 at 5; *see also* R. Doc. 70 at 4 (“Mr. Cavalier caved and agreed to an oral version of the settlement even though he never really agreed either to the dollar figure or the non-economic issues.”)). As purported evidence that Plaintiff never actually agreed to the compromise, Plaintiff cites to earlier communications with his attorney in which he stated that he would not agree to the proposed terms. (*See* R. Doc. 52-3). However, Plaintiff’s prior statements do not negate that he expressly agreed to the terms during the settlement conference. Plaintiff’s “reluctance... does not diminish the fact” that he agreed to the terms of the compromise. *Preston Law Firm, L.L.C.*, 622 F.3d at 391; *see also Klebanoff*, 978 So. 2d at 604 (“[R]eservations about the commitment ... [do] not alter the showing of consent and mutual concessions.”).

The parties are bound by their compromise despite Plaintiff’s contention that they only entered into an unenforceable, oral agreement. Under federal law, which Plaintiff states applies, settlement agreements do not need to be reduced to writing. *Philip Servs. Corp.*, 635 F.3d at 167. Louisiana, however, requires that compromises be made in writing or recited in open court. La. Civ. Code art. 3072; *Lavan v. Nowell*, 708 So. 2d 1052, 1052 (La. 1998). Although the judicial settlement conference was not put on the record in open court, the parties put their agreement

into writing. Immediately after the conference, the parties memorialized their agreement in an exchange of emails. (R. Doc. 56-2). The emails included all material terms of the compromise. (*See id.*). In Louisiana, emails may jointly qualify as a signed, written compromise. *Preston Law Firm, L.L.C.*, 622 F.3d at 391; *Klebanoff*, 978 So. 2d at 600-05. Fundamentally, the parties' email exchange "satisfied the two essential elements of the compromise: a mutual intent to end the litigation and reciprocal concessions." *Klebanoff*, 978 So. 2d at 604. Therefore, they combine to constitute a binding compromise.

Lastly, Plaintiff contends that the compromise failed to address all material terms. (*See R. Doc. 60 at 2*). Plaintiff states that the agreement is incomplete because it "did not include a provision by which he would be reemployed by the Louisiana State Police." (R. Doc. 70 at 2; *see also R. Doc. 60 at 1-3*). However, the compromise explicitly addressed his employment. Indeed, the negotiation and agreed upon terms almost exclusively dealt with the ending of Plaintiff's employment. Re-employment was never considered.

The parties' agreement, as set forth in their email exchange, stated that "(2) Mr. Cavalier resigns as of 1/31/22... (3) Mr. Cavalier is not eligible for rehire and will not seek reemployment with Department of Public Safety and Corrections." (R. Doc. 56-2 at 2). Plaintiff's regret that the agreement bars his reemployment with LSP does not mean that the agreement failed to address the issue of his future employment. Plaintiff simply is dissatisfied with the terms that he agreed to, and he is not disputing the scope of the agreement or the meaning of its terms. Plaintiff has not identified any other material or essential terms missing from the compromise. (*See R. Docs. 52, 60, 70*). Accordingly, no factual dispute exists that the parties entered into an enforceable compromise.

B. Alleged Pressure to Settle Applied by Plaintiff's Attorney Does Not Constitute Duress Sufficient to Invalidate Agreement

Having entered into a compromise, Plaintiff has not identified a sufficient basis to invalidate that agreement. A compromise may not be set aside absent a showing of fraud, mutual mistake, or other circumstance tainting its validity. *See Mid-South Towing Co.*, 733 F.2d at 392. Plaintiff asserts that he only agreed to the compromise under duress applied by his counsel. (R. Doc. 70). He claims that “[h]is counsel threatened to abandon him if he did not agree to the [compromise],” and he “knew he could not proceed alone and needed her.” (*Id.*). Plaintiff did not identify another factual basis to invalidate the settlement.

Duress results when a person makes an improper threat that induces a party to agree and the person has no reasonable alternative. *Reimonenq v. Foti*, 72 F.3d 472, 477-78 (5th Cir. 1996). To taint the validity of a contract, duress must be of “such a nature as to cause a reasonable fear of unjust and considerable injury to a party's person, property, or reputation.” *Wolf v. La. State Racing Comm'n*, 545 So. 2d 976, 980 (La. 1989). “[A] threat of doing a lawful act or a threat of exercising a right does not constitute duress.” *Id.*

Plaintiff's allegations fail to rise to the level of duress. The statements by Plaintiff's attorney assessing the strength of his case and the merits of the proposed settlement do not constitute duress. Furthermore, counsel's warning that she would cease representing him if he chose not to accept the proposed settlement was not an improper threat. *See Macktal v. Sec'y of Labor*, 923 F.2d 1150, 1157-58 (5th Cir. 1991) (finding that pressure exerted by attorneys on plaintiff to settle a case did not constitute duress); *Associated Estates LLC v. BankAtlantic*, 164 A.3d 932 (D.C. 2017) (upholding a decision to enforce a settlement agreement despite “considerable pressure” from plaintiff's counsel to settle). Plaintiff's dissatisfaction with

the agreement does not invalidate it. In the absence of factual allegations, which if proven true could legally constitute duress, Plaintiff fails to meet his burden to rescind the agreement.

Relatedly, Plaintiff contends that his attorney ignored his wishes and lacked authority to settle the dispute. However, Plaintiff, and not his attorney, agreed to the compromise before the Court. Moreover, Plaintiff's approval of the terms of settlement in Court provided his counsel with the apparent authority to memorialize the compromise in writing. *See Preston Law Firm, L.L.C.*, 622 F.3d at 389 ("Under Louisiana law, a principal may be bound by the acts of an agent only if the agent has 'apparent authority' to bind the principal."). As Plaintiff has not identified any disputed issues of material fact affecting the validity of the agreement, the Court may enforce the compromise.

IV. Conclusion

Based on the foregoing,

IT IS RECOMMENDED that the Court **GRANTS** Defendants' Motion to Enforce Settlement Agreement (R. Doc. 56) and **ORDERS** the parties to comply with the terms of their settlement agreement.

IT IS FURTHER RECOMMENDED that Intervenor's Motion to Deem Privilege Waived (R. Doc. 77) and Intervenor's Consent Motion for Leave to Review Exhibits In Camera (R. Doc. 78) be **DENIED AS MOOT**.

Signed in Baton Rouge, Louisiana, on February 24, 2023.



RICHARD L. BOURGEOIS, JR.
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

CARL CAVALIER

CIVIL ACTION

VERSUS

NO. 21-656-JWD-RLB

STATE OF LOUISIANA:
DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONS: PUBLIC
SAFETY SERVICES, ET AL.

RULING AND ORDER


After independently reviewing the entire record in this case and for the reasons set forth in the Magistrate Judge's Report dated February 24, 2023 (Doc. 83), to which an objection and an opposition to Plaintiff's Objection were filed and considered (Docs. 84 and 85);

IT IS ORDERED that the Defendants' Motion to Enforce Settlement Agreement (Doc. 56) is **GRANTED**, and the parties are **ORDERED** to comply with the terms of their settlement agreement.

IT IS FURTHER ORDERED that Intervenor's Motion to Deem Privilege Waived (Doc. 77) and Intervenor's Consent Motion for Leave to Review Exhibits in Camera (Doc. 78) are **DENIED AS MOOT**.

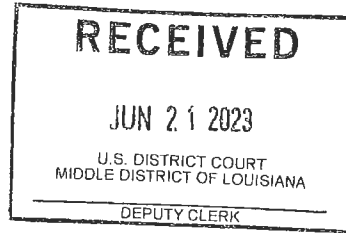
IT IS FURTHER ORDERED that this matter is referred back to the Magistrate Judge for a scheduling conference to address any remaining issues.

Signed in Baton Rouge, Louisiana, on May 22, 2023.



JUDGE JOHN W. deGRAVELLES
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA





UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

CARL CAVALIER

CIVIL ACTION NO.: 21-656-JWD-RLB

VERSUS

JUDGE: JOHN W. DEGRAVELLES

THE LOUISIANA DEPT. OF
PUBLIC SAFETY & CORRECTIONS,
ET AL.

MAGISTRATE JUDGE: RICHARD
L. BOURGEOIS, JR.

MOTION FOR REHEARING ON RULING AND ORDER

NOW INTO COURT comes Plaintiff, Carl Cavalier, appearing herein pro se, who respectfully moves this Honorable Court to reconsider the Ruling and Order of May 22nd 2023 (hereinafter "Order"), and represents the following, to wit:

1.

Plaintiff avers that the Order of May 22nd 2023 is contrary to Local Rule 16 (c), specifically that Notice of Settlement under Alternative Dispute Resolution, is required to be immediately filed into a Joint Notice of Settlement signed by Counsel (Jill Craft) for Plaintiff into the record.

2.

Plaintiff avers that the Order is also contrary to Rule 16 (c) in that those claims unsettled, specifically the reinstatement of his employment, were not outlined in such a document as required by Local Rule.



3.

Plaintiff avers that the considerations taken under review by this Honorable Court failed to include all evidence and considerations of Plaintiffs expression of Duress and Error, specifically that Counsel present with Plaintiff disregarded Plaintiffs desires of how representation was to be handled.

4.

Plaintiff shows that according to State and Federal Rules of Professional Conduct, counsel failed to abide by Plaintiff's decisions concerning the objectives of representation.

5.

Plaintiff further shows that counsel further violated said Rules of Professional Conduct by not abiding by Plaintiff's decision whether or not to settle in the foregoing matter.

6.

Plaintiff further shows that Counsel violated said Rules of Professional Conduct by limiting the scope of representation without Plaintiff's informed consent, specifically with regards to the terms under which Plaintiff was willing to settle.

7.

Plaintiff further shows that Counsel violated said Rules of Professional Conduct by failing to inform Plaintiff of decisions and circumstances which required Plaintiff's informed consent.

8.

Plaintiff further shows that there are several audio recordings and other documented communications between Counsel and Plaintiff which were not reviewed by this Honorable Court prior to rendering the Order. (Exhibits 3, 4, &5 of the Motion to Reopen the Cause and Rescind Settlement, filed 12.02.2022)

9.

Plaintiff also avers that the Magistrate's Report and Recommendation (Report), which was the basis for the Order, is contradictory. Specifically, on page 9, the Report states that the agreement almost "exclusively dealt with the ending of Plaintiff's employment. Re-employment was never considered." The following paragraph goes on to admit that re-employment would be barred by the agreement, then doubles back and states that it, in pertinent part, "...does not mean that the agreement failed to address the issue of his *future* employment."

10.

Plaintiff shows that, according to precedent, Louisiana law governs the construction and validity of the (alleged) settlement agreement in this case. Specifically, Article 3072 of the Louisiana Code of Civil Procedure mandates that a compromise be in writing and signed in open court.

11.

Plaintiff further shows that Article 3076 of the Louisiana Civil Code states that a compromise "settles only those differences that the parties *clearly* intended to settle...". Plaintiff

informed Counsel throughout the entire representation that he would not agree to termination, resignation, or inability to be employed in the future.

12.

Plaintiff further shows that Article 3082 of the Louisiana Civil Code allows for a compromise to be “rescinded for error, fraud, and other grounds for the annulment of contracts.

13.

Plaintiff further shows that, according to Article 2031 of the Louisiana Civil Code, “A contract is relatively null when it violates a rule intended for the protection of private parties”. As described above, those rules of which Counsel violated have - at least in part - the intent to protect the Client within an attorney/client relationship. Also, Local Rule 16, supra, necessarily protects Plaintiff’s rights to judicial review by mandating the agreement be put into the record *and* those unsettled claims be outlined.

CONCLUSION

Plaintiff believes there are sufficient grounds, as listed herein, for rehearing this matter and prays this Honorable Court hold an evidentiary hearing for the purpose of reviewing all related information as to whether or not Counsel ever had authority to enter into the agreement as was outlined subsequent to the settlement conference. Plaintiff further prays this Honorable Court allow both parties to submit to the Court any and all evidence relating to the issues outlined herein. Plaintiff further requests that Plaintiff be allowed to reserve the right to amend the claims outlined herein, whether by form of additional evidence or brief and memorandum in support, prior to any evidentiary hearing held. Plaintiff believes that the interests of justice would be served by allowing the requested relief and, further, the ensured protection of Plaintiff's constitutional and civil rights.

Respectfully submitted this 20 day of June, 2023, at Baton Rouge La.

Carl Cavalier

Carl Cavalier, Pro Se
248 Ciera Dr.
Houma, La. 70364

(504) 316-0351

DOUG WELBORN, CLERK OF COURT
19th Judicial District Court
Parish of East Baton Rouge
300 North Boulevard
Baton Rouge, LA 70801
Phone (225)389-3960

NO. C-732938 24

JULY 18, 2023

TO: LAFAYETTE PARISH SHERIFFS OFFICE
PO BOX 3508
LAFAYETTE, LA 70502

Please find attached (1) **CIVIL SUBPOENA** to be served in your parish for the above numbered suit.

Kindly make your return(s) on the duplicate(s) enclosed, and

(X) SEND US YOUR BILL FOR SERVICE

Thank You,



Alice Monact

Deputy Clerk of Court for
Doug Welborn, Clerk of Court

Requesting Attorney: **FEENEY, M LENORE**
(225) 387-3221

REPLY: _____

DATE: _____

By: _____

Deputy Sheriff, Parish of _____





CIVIL SUBPOENA

NUMBER C-732938 24

CARL CAVALIER
(Plaintiff)

19th JUDICIAL DISTRICT COURT

VS

PARISH OF EAST BATON ROUGE

LOUISIANA STATE POLICE COMMISSION
(Defendant)

STATE OF LOUISIANA

TO: BEN L. MAYEAUX
NEUNERPATE
ONE PETROLEUM CENTER
1001 WEST PINHOOK ROAD, SUITE 200
LAFAYETTE, LA 70503

You must come to Court at 300 North Boulevard, Baton Rouge, Louisiana, on AUGUST 7, 2023 at 10:00 A.M., Courtroom No. 8B Judge HON DONALD R. JOHNSON.

You must remain in Court until discharged by the Judge. You must testify to the truth, to the best of your knowledge, in this case, under DIRECT/CROSS examination. (Ordered by FEENEY, M LENORE, Attorney.)

IF YOU DO NOT APPEAR, YOU WILL BE VIOLATING THE LAW AND MAY BE SUBJECT TO PENALTIES.

Ordered by the Court on JULY 18, 2023, Baton Rouge, Louisiana.



Alice Monaco

Deputy Clerk of Court for
Doug Welborn, Clerk of Court

SERVICE INFORMATION:

Received on the _____ day of _____, 20____ and on the _____ day of _____, 20____, served on the above named party as follows:

PERSONAL SERVICE: On the party herein named at _____.

DOMICILIARY SERVICE: On the within named _____, by leaving the same at his domicile in this parish in the hands of _____, a person of suitable age and discretion residing in the said domicile at _____.

DUE AND DILIGENT: After diligent search and inquiry, was unable to find the within named _____ or his domicile, or anyone legally authorized to represent him.

RETURNED: Parish of East Baton Rouge, this _____ day of _____, 20____.

SERVICE: \$ _____
MILEAGE \$ _____
TOTAL: \$ _____

Deputy Sheriff



M. LENORE FEENEY
Of Counsel
(225) 381-0255 TELEPHONE
(225) 215-8712 DIRECT FAX
(225) 346-8049 FACSIMILE
lenore.feeney@taylorporter.com

July 18, 2023

Hon. Doug Welborn
Clerk of Court-19th JDC/Parish of East Baton Rouge
300 North Boulevard
Baton Rouge, LA 70801

Re: **Carl Cavalier v. La. State Police Commission**
Suit No.: C-732938, Division 24; 19th JDC; Parish of East Baton Rouge; State of Louisiana

Dear Sir:

Please issue a trial subpoena to the below listed individual to appear at the one-day hearing of the referenced matter to testify on behalf of defendant, the Louisiana State Police Commission, beginning at 10:00 a.m. on August 7, 2023, Div. 24, Room 8B, the Honorable Donald R. Johnson presiding:

Ben L. Mayeaux
NeunerPate
One Petroleum Center
1001 West Pinhook Road, Ste. 200
Lafayette, LA 70503

NAME	ATTENDANCE AT HEARING	MILEAGE	TOTAL
Ben L. Mayeaux	\$50/day	\$74.28	\$124.28

Our firm check for the mileage and witness fees for the witness will be mailed to the witness today.

In the meantime, should you have any questions, please do not hesitate to contact me.
Sincerely,

TAYLOR, PORTER, BROOKS & PHILLIPS L.L.P.

M. Lenore Feeney
M. Lenore Feeney

MLF:mh

5196674.v1
TAYLOR, PORTER, BROOKS & PHILLIPS L.L.P.
www.taylorporter.com

BATON ROUGE	LAKE CHARLES
450 Laurel Street, Suite 800 Baton Rouge, Louisiana 70801	Post Office Box 2471 Baton Rouge, LA 70821 225.387.3221 PHONE 225.346.8049 FAX



Certified True and Correct Copy
CertID: 2023071801465

Alice Monaco

East Baton Rouge Parish
Deputy Clerk Of Court

Generated Date:
7/18/2023 4:08 PM



CIVIL SUBPOENA

NUMBER C-732938 24

CARL CAVALIER
(Plaintiff)

19th JUDICIAL DISTRICT COURT

VS

PARISH OF EAST BATON ROUGE

LOUISIANA STATE POLICE COMMISSION
(Defendant)

STATE OF LOUISIANA

TO: BEN L. MAYEAUX
NEUNERPATE
ONE PETROLEUM CENTER
1001 WEST PINHOOK ROAD, SUITE 200
LAFAYETTE, LA 70503

You must come to Court at 300 North Boulevard, Baton Rouge, Louisiana, on **AUGUST 7, 2023** at 10:00 A.M., Courtroom No. **8B** Judge **HON DONALD R. JOHNSON**.

You must remain in Court until discharged by the Judge. You must testify to the truth, to the best of your knowledge, in this case, under DIRECT/CROSS examination. (Ordered by **FEENEY, M LENORE**, Attorney.)

IF YOU DO NOT APPEAR, YOU WILL BE VIOLATING THE LAW AND MAY BE SUBJECT TO PENALTIES.

Ordered by the Court on **JULY 18, 2023**, Baton Rouge, Louisiana.



Alice Monaco

Deputy Clerk of Court for
Doug Welborn, Clerk of Court

SERVICE INFORMATION:

Received on the _____ day of _____, 20____ and on the _____ day of _____, 20____, served on the above named party as follows:

PERSONAL SERVICE: On the party herein named at _____.

DOMICILIARY SERVICE: On the within named _____, by leaving the same at his domicile in this parish in the hands of _____, a person of suitable age and discretion residing in the said domicile at _____.

DUE AND DILIGENT: After diligent search and inquiry, was unable to find the within named _____ or his domicile, or anyone legally authorized to represent him.

RETURNED: Parish of East Baton Rouge, this _____ day of _____, 20____.

SERVICE: \$ _____
MILEAGE \$ _____
TOTAL: \$ _____

Deputy Sheriff

Served by: _____
i.e. Sheriff's Department, Process Server

Received by: RC

Disposition/Given to: JPP

Matter description or caption: Carl Cavalier v. LA State Police Commission

Description of document(s) being served: Civil Subpoena

CARL CAVALIER
(Plaintiff)

VS

LOUISIANA STATE POLICE COMMISSION
(Defendant)

NUMBER C-732938 24

19th JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

TO: JENNIE P. PELLEGRIN
NEUNERPATE
ONE PETROLEUM CENTER
1001 WEST PINHOOK ROAD, SUITE 200
LAFAYETTE, LA 70503

You must come to Court at **300 North Boulevard**, Baton Rouge, Louisiana, on **AUGUST 10:00 A.M.**, Courtroom No. **8B** Judge **HON DONALD R. JOHNSON**.

You must remain in Court until discharged by the Judge. You must testify to the truth, to your knowledge, in this case, under DIRECT/CROSS examination. (Ordered by **FEENEY, MI** Attorney.)

IF YOU DO NOT APPEAR, YOU WILL BE VIOLATING THE LAW AND MAY BE SUBJECT TO PENALTIES.

Ordered by the Court on **JULY 14, 2023**, Baton Rouge, Louisiana.



Alice Monaco

Deputy Clerk of Court for
Doug Welborn, Clerk of Court

SERVICE INFORMATION:

Received on the _____ day of _____, 20____ and on the _____ day of _____, 20____ on the above named party as follows:

PERSONAL SERVICE: On the party herein named at _____.

DOMICILIARY SERVICE: On the within named _____, by leaving the same at in this parish in the hands of _____, a person of suitable age and discretion residing in the same _____.

DUE AND DILIGENT: After diligent search and inquiry, was unable to find the within named _____ his domicile, or anyone legally authorized to represent him.

RETURNED: Parish of East Baton Rouge, this _____ day of _____, 20____.

SERVICE: \$ _____
MILEAGE \$ _____
TOTAL: \$ _____

Deputy Sheriff

July 14, 2023

Hon. Doug Welborn
 Clerk of Court-19th JDC/Parish of East Baton Rouge
 300 North Boulevard
 Baton Rouge, LA 70801

Re: **Carl Cavalier v. La. State Police Commission**
 Suit No.: C-732938, Division 24; 19th JDC; Parish of East Baton Rouge; State of
 TPBP File No.: 6555/00001

Dear Sir:

Please issue a trial subpoena to each of the below listed individuals to appear a day hearing of the referenced matter to testify on behalf of defendant, the Louisiana St Commission, beginning at 10:00 a.m. on August 7, 2023, Div. 24, Room 8B, the Honorab R. Johnson presiding:

JASON HANNAMAN
Louisiana State Police Commission
Dept. of Agriculture and Forestry Bldg.
 5825 Florida Blvd., Ste. 1180
 Baton Rouge, LA 70806

COLONEL LAMAR A. DAVIS, SUPERINTENDANT
 7979 Independence Blvd.
 Baton Rouge, Louisiana 70806

JENNIE P. PELLEGRIN
 NeunerPate
 One Petroleum Center
 1001 West Pinhook Road, Ste. 200
 Lafayette, LA 70503

5194863.v1
 TAYLOR, PORTER, BROOKS & PHILLIPS L.L.P.
 www.taylorporter.com

BATON ROUGE

LAKE CHARLES

450 Laurel Street, Suite 800
 Baton Rouge, Louisiana 70801

Post Office Box 2471
 Baton Rouge, LA 70821

225.387.32
 225.346.80



**Certified True and
 Correct Copy**
 CertID: 2023071400329

Alice Monas

East Baton Rouge Parish
 Deputy Clerk Of Court

7

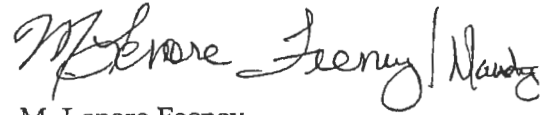
NAME	ATTENDANCE AT HEARING	MILEAGE
Jason Hannaman	\$50/day	\$5.50
Col. Lamar A. Davis	\$50/day	\$7.20
Jennie P. Pellegrin	\$50/day	\$74.28

Attached are our firm checks to be deposited into the registry for the mileage fees for each of the witnesses.

In the meantime, should you have any questions, please do not hesitate to contact

Sincerely,

TAYLOR, PORTER, BROOKS & PHILLIPS



M. Lenore Feeney

MLF:mh

Attachments

5194863.v1



Certified True and Correct Copy
CertID: 2023071400329

Alice Monaco

East Baton Rouge Parish
Deputy Clerk Of Court

71

Alteration and subsequent re-filing of this certified copy may violate La. R.S. 14:132, 133, and/or RPC Rule 3.3(a)(3).

111125
9:21am

Served by: _____
i.e. Sheriff's Department Process Server

Received by: RC

Position/Given to: JPP

Description or caption: Carl Canali v. LA State Police Commission

Description of document(s) being served: Subpoena Duces Tecum

PLEASE RUSH

NUMBER C-732938 24

CARL CAVALIER
(Plaintiff)

19th JUDICIAL DISTRICT COURT

VS

PARISH OF EAST BATON ROUGE

LOUISIANA STATE POLICE COMMISSION
(Defendant)

STATE OF LOUISIANA

TO: JENNIE PELLEGRIN
NEUNERPATE
ONE PETROLEUM CENTER
1001 WEST PINHOOK ROAD, SUITE 200
LAFAYETTE, LA 70503

You have been ordered by the Court to produce in the office of:

TAYLOR, PORTER, BROOKS & PHILLIPS, L.L.P.
450 LAUREL STREET, 8TH FLOOR
BATON ROUGE, LA 70801

at 10:00 A.M. on JULY 17, 2023 the following:

***SEE ATTACHED LETTER, NOTICE OF DEPOSITION AND
EXHIBIT FOR DOCUMENTS TO BE PRODUCED***
SEE ATTACHED CODE OF CIVIL PROCEDURE ARTICLE 1354

If this case is continued, you must bring those items back with you. If you do not come and bring these items, you will be violating the law and may be subject to penalties.

This SUBPOENA was requested by Attorney FEENEY, M LENORE and was issued by the Court on JULY 14, 2023.



Alice Monaco

Deputy Clerk of Court for
Doug Welborn, Clerk of Court

SERVICE INFORMATION:

Received on the _____ day of _____, 20____ and on the _____ day of _____, 20____
on the above named party as follows:

PERSONAL SERVICE: On the party herein named at _____.

DOMICILIARY SERVICE: On the within named _____, by leaving the same at
in this parish in the hands of _____, a person of suitable age and discretion residing in the said
_____.

DUE AND DILIGENT: After diligent search and inquiry, was unable to find the within named _____
his domicile, or anyone legally authorized to represent him.

RETURNED: Parish of East Baton Rouge, this _____ day of _____, 20____.

SERVICE: \$ _____
MILEAGE \$ _____
TOTAL: \$ _____

Deputy Sheriff

- A. A subpoena may order a person to appear and/or and produce at the trial, deposition, or hearing, books, papers, documents, or any other tangible things, or electronically stored information, in his possession or under his control, if a reasonably accurate description thereof is given;. A subpoena may specify the form or forms in which electronically stored information is to be produced. A party or an attorney requesting the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or cost on a person subject to that subpoena. but the court in which the action is pending in its discretion may vacate or modify the subpoena if it is unreasonable or oppressive. Except when otherwise required by order of the court, certified copies, extracts, or photostatic copies of books, papers, and documents may be produced in obedience to the subpoena duces tecum instead of the originals thereof. If the party or attorney requesting the subpoena does not specify that the named person shall be ordered to appear, the person may designate another person having knowledge of the contents of the books, papers, documents, or other things, or electronically stored information, to appear as his representative.
- B. A person commanded to respond to a subpoena duces tecum may within fifteen days after service of the subpoena or before the time specified for compliance, if such time is less than fifteen days after service, send to the party or attorney designated in the subpoena written objections, with supporting reasons, to any or all of the requests, including objection to the production of electronically stored information in the form or forms requested. If objection is so made, the party serving the subpoena may file a motion to compel compliance with the subpoena and may move for sanctions for failure to reasonably comply.
- C. A person responding to a subpoena to produce books, papers, or documents shall produce them as they are kept in the usual course of business or may organize and label them to correspond with the categories in the demand.
- D. If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena may produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably useable.
- E. A person responding to a subpoena need not produce the same electronically stored information in more than one form.
- F. A person responding to a subpoena need not produce books, papers, documents, or electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel production or to quash, the person from whom production is sought shall show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order production from such sources if the requesting party shows good cause. The court may specify conditions, including an allocation of the costs, for the production.
- G. When the person subpoenaed is an adverse party, the party requesting the subpoena duces tecum may accompany his request with a written request under oath as to what facts he believes the books, papers, documents, electronically stored information, or tangible things will prove, and a copy of such statement must shall be attached to the subpoena. If the party subpoenaed fails to comply with the subpoena, the facts set forth in the written statement shall be taken as confessed, and in addition the party subpoenaed shall be subject to the penalties set forth in Article 1357.
- H. Subpoenas duces tecum shall reproduce in full the provisions of this Article.

July 13, 2023

Via Hand Delivery

Hon. Doug Welborn
Clerk, 19th Judicial District Court
Governmental Building
222 St. Louis Street
Baton Rouge, LA 70802/70821

Re: Carl Cavalier v. La. State Police Commission
Suit No. 732938, Division 24
19th JDC, East Baton Rouge Parish
Our File No. 6555/00001

Dear Clerk:

We represent the Louisiana State Police Commission in the above referenced suit. Attach find our *Notice of Deposition and Subpoena Duces Tecum to Jennie Pellegrin*. Please Subpoena Duces Tecum for the documents requested on the *Notice* and request the sheriff same, as follows:

Deponent:

Jennie Pellegrin
NeunerPate
One Petroleum Center
1001 West Pinhook Road, Ste. 200
Lafayette, LA 70503

Records Requested:

1. Copies of all emails between Jennie Pellegrin and Jill Craft that memorializations of the terms of the settlement agreement between Carl Cav: the Department of Public Safety & Corrections (Office of State Police), follo settlement conference before Magistrate Judge Richard Bourgeois, Jr. on O 2022, in connection with the lawsuit entitled, "Carl Cavalier versus State of L Dept of Public Safety & Corrections: Public Safety Services; Office of State bearing Docket No. 21-656, in the United States District Court for the Middl of Louisiana.

5194831.v1
TAYLOR, PORTER, BROOKS & PHILLIPS L.L.P.
www.taylorporter.com

BATON ROUGE	LAKE CHARLES	
450 Laurel Street, Suite 800	Post Office Box 2471	225.387.322
Baton Rouge, Louisiana 70801	Baton Rouge, LA 70821	225.346.804



**Certified True and
Correct Copy**
CertID: 2023071400297

Alice Monaco

East Baton Rouge Parish
Deputy Clerk Of Court

2. Copy of the document that was the normal release agreement prepared in connection with the settlement of the lawsuit entitled, "Carl Cavalier versus State of Louisiana Dept of Public Safety & Corrections: Public Safety Services; Office of State Safety Services", bearing Docket No. 21-656, in the United States District Court for the Middle District of Louisiana, and that was the document referenced in the Motion to Dismiss Settlement Agreement filed in that same proceeding.

The documents are to be received by M Lenore Feeney, at the office of Taylor Porter Phillips LLP, 450 Laurel Street, 8th Floor (70801), P.O. Box 2471, Baton Rouge, LA 70801 before **July 27, 2023**.

Thank you for your assistance with this matter. Should you have any questions, please feel free to contact me.

Sincerely,

TAYLOR, PORTER, BROOKS & PHILLIPS L.L.P.



M. Lenore Feeney

MLF:mh
Enclosure

cc: Carl Cavalier; Pro Se via: email and U.S. Mail
248 Ciera Drive
Houma, LA 70364
karlcavalier@yahoo.com

Jennie Pellegrin
NeunerPate
One Petroleum Center
1001 West Pinhook Road, Ste. 200
Lafayette, LA 70503

5194831.v1



**Certified True and
Correct Copy**

CertID: 2023071400297

Alice Monaco

East Baton Rouge Parish
Deputy Clerk Of Court

71

CARL CAVALIER

NUMBER: C-732938 / SECTION

VERSUS

19TH JUDICIAL DISTRICT CO

PARISH OF EAST BATON RO

LOUISIANA STATE POLICE
COMMISSION

STATE OF LOUISIANA

**NOTICE OF DEPOSITION AND SUBPOENA DUCES TECUM TO
THE LOUISIANA STATE POLICE COMMISSION**

TO: Jennie Pellegrin
NeunerPate
One Petroleum Center
1001 West Pinhook Road, Ste. 200
Lafayette, LA 70503

PLEASE TAKE NOTICE that the Louisiana State Police Commission through under counsel, will take the **records-only deposition** of Jennie Pellegrin on July 27, 2023, at a.m. at the office of Taylor, Porter, Brooks & Phillips L.L.P., 450 Laurel St., 8th floor, I Rouge, Louisiana 70801. Pursuant to the Louisiana Code of Civil Procedure, the Record Custodian for the witness is to produce the records identified below:

1. Copies of all emails between Jennie Pellegrin and Jill Craft the memorializations of the terms of the settlement agreement between Carl Cavalier the Department of Public Safety & Corrections (Office of State Police), following settlement conference before Magistrate Judge Richard Bourgeois, Jr. on 6/22/2022, in connection with the lawsuit entitled, "Carl Cavalier versus State of Louisiana Dept of Public Safety & Corrections: Public Safety Services; Office of State Police" bearing Docket No. 21-656, in the United States District Court for the Middle District of Louisiana.
2. Copy of the document that was the formal release agreement prepared in connection with the settlement of the lawsuit entitled, "Carl Cavalier versus State of Louisiana Dept of Public Safety & Corrections: Public Safety Services; Office of State Police" bearing Docket No. 21-656, in the United States District Court for the Middle District of Louisiana, and that was the document referenced in the Motion to Dismiss Settlement Agreement filed in that same proceeding.

In connection with the Notice of Records Deposition, a Subpoena Duces Tecum is being served on the above identified deponent to produce the records identified. The deposition will be taken before a Notary Public or some other person duly authorized by law to administer oaths and for the purposes allowed by law.

If the records are mailed to M. Lenore Feeney at the office of Taylor, Porter, Brooks & Phillips L.L.P., 450 Laurel St., 8th Floor (70801), P.O. Box 2471, Baton Rouge, Louisiana 70821, or via email to: lenore.feeney@taylorporter.com prior to July 27, 2023 then a court appearance by Jennie Pellegrin is necessary.

A copy of Article 1354 of the Louisiana Code of Civil Procedure is attached as Exhibit

5194753.v1



Certified True and
Correct Copy
CertID: 2023071400298

Alice Monaco

East Baton Rouge Parish
Deputy Clerk Of Court

Respectfully submitted,
TAYLOR, PORTER, BROOKS & PHILLIPS

By *M Lenore Feeney*
M. Lenore Feeney, Bar # 18597
450 Laurel Street, 8th Floor (70801)
P.O. Box 2471
Baton Rouge, LA 70821-2471
Telephone: (225) 381-0255
Direct Fax: (225) 215-8766
Email: lenore.feeney@taylorporter.com

**Attorneys for The Louisiana State Police
Commission**

5194753.v1



**Certified True and
Correct Copy**
CertID: 2023071400298

Alice Monaco

East Baton Rouge Parish
Deputy Clerk Of Court

7/

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing upon the following perso
mail, telephone facsimile device, and/or First Class U.S. mail property addressed ar
prepaid this 14th day of July, 2023:

Carl Cavalier, Pro Se
248 Ciera Drive
Houma, LA 70364
Method of Service

Via Email: karlcavalier@yahoo.com


M. LENORE FEENEY

5194753.v1



Certified True and
Correct Copy
CertID: 2023071400298

Alice Monaco

East Baton Rouge Parish
Deputy Clerk Of Court

C
7/1

A. A subpoena may order a person to appear and produce at the trial, deposition, or hearing, books, papers, documents, any other tangible things, or electronically stored information, in his possession or under his control, if a reasonably accurate description thereof is given. A subpoena may specify the form or forms in which electronically stored information is to be produced. The party or an attorney requesting the issuance and service of a subpoena shall take reasonable steps to avoid imposing an undue burden or cost on a person subject to that subpoena. The court in which the action is pending in its discretion may vacate or modify the subpoena if it is unreasonable or oppressive. Except when otherwise required by order of the court, certified copies, or copies of books, papers, and documents may be produced in obedience to the subpoena duces tecum instead of the originals thereof. If the party or attorney requesting the subpoena does not specify that the named person shall be ordered to appear, the person may designate another person having knowledge of the contents of the books, papers, documents, or things, or electronically stored information, to appear as his representative.

B. A person commanded to respond to a subpoena duces tecum may, within fifteen days after service of the subpoena or the time specified for compliance, if such time is less than fifteen days after service, send to the party or attorney designating the subpoena written objections, with supporting reasons, to any or all of the requests, including objection to the production of electronically stored information in the form or forms requested. If objection is so made, the party serving the subpoena may file a motion to compel compliance with the subpoena and may move for sanctions for failure to reasonably comply.

C. A person responding to a subpoena to produce books, papers, or documents shall produce them as they are kept in the course of business or may organize and label them to correspond with the categories in the demand.

D. If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena may produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably useable.

E. A person responding to a subpoena need not produce the same electronically stored information in more than one form.

F. A person responding to a subpoena need not produce books, papers, documents, or electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel production or to quash, the person from whom production is sought shall show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order production from such sources if the requesting party shows good cause. The court may specify conditions, including an allocation of the costs, for the production.

G. When the person subpoenaed is an adverse party, the party requesting the subpoena duces tecum may accompany his request with a written request under oath as to what facts he believes the books, papers, documents, electronically stored information, or tangible things will prove, and a copy of such statement shall be attached to the subpoena. If the party subpoenaed fails to comply with the subpoena, the facts set forth in the written statement shall be taken as confessed, and in addition the subpoenaed party shall be subject to the penalties set forth in Article 1357.

H. Subpoenas duces tecum shall reproduce in full the provisions of this Article.

Credits

Amended by Acts 1978, No. 593, § 1; Acts 2008, No. 824, § 2, eff. Jan. 1, 2009.

5194450.v1

P



**Certified True and
Correct Copy**
CertID: 2023071400299

Alice Monaco

East Baton Rouge Parish
Deputy Clerk Of Court

C
7/1