

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	*	

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”), for the reasons given in the attached memorandum in support of this motion, respectfully request that this Court reopen this matter for the limited purpose of enforcing the settlement agreement previously reached by the parties during a court-ordered settlement conference [Rec. Docs. 39, 40].¹ Specifically, Carl Cavalier has refused to be bound by the terms of the parties’ settlement agreement and has rejected/refused to sign the proposed formal release agreement and/or to receive/accept transfer of the settlement checks issued as a result of the parties’ settlement agreement. LSP and Col. Davis therefore ask the Court to now enforce the terms of the parties’ settlement agreement as approved and confirmed by Magistrate Judge Bourgeois on October 6, 2022.

¹ Defendants will file an opposition to Plaintiff’s Motion to Rescind the Settlement (Rec. Doc. 52) in accordance with the briefing schedule therefor.

Respectfully Submitted,
JEFF LANDRY
Attorney General

BY: /s/ Ben L. Mayeaux

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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 *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

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**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

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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

EXHIBIT A
(to be filed under seal sought)

1 P R O C E E D I N G S

2 (Call to Order of the Court)

3 THE COURT: Be seated, please.

4 Let's call the case.

5 THE COURTROOM DEPUTY: Civil Action 21-656, Carl
6 Cavalier versus Louisiana Department of Safety & Corrections.

7 THE COURT: Counsel?

8 MS. CRAFT: Yes, sir. Jill Craft and Brett Conrad as
9 movers on the motion to withdraw.

10 THE COURT: Good afternoon.

11 MS. PELLEGRIN: Good afternoon, Judge. Jennie
12 Pellegrin and Ben Mayeaux on behalf of the Department of Public
13 Safety & Corrections and Colonel Davis.

14 THE COURT: Good afternoon to everyone.

15 I will start by saying I learned earlier today that
16 Mr. Cavalier had reached out to my Chambers sometime before the
17 motion was filed to indicate that he had changed his mind, I
18 think is what my Judicial Assistant had informed me. I just
19 want you guys to know that. I didn't know about that. The
20 first I knew that there was any issue was when the motion to
21 withdraw was filed.

22 I will assume we have not executed settlement
23 documents?

24 MS. PELLEGRIN: No, your Honor, we have not.

25 THE COURT: Ms. Craft, without going in any attorney-

1 client communications, I'm assuming that this is part of the
2 reason you filed the motion?

3 MS. CRAFT: Yes, sir.

4 THE COURT: Okay.

5 Mr. Cavalier?

6 MR. CAVALIER: Yes, sir.

7 THE COURT: Why don't you come up to the podium.

8 You understand your attorney wants to get off the
9 case. It would leave you --

10 Yep, come on up.

11 (Mr. Cavalier complies)

12 THE COURT: This will leave you, at least for the, for
13 the immediate time being, unrepresented. Do you understand
14 that?

15 MR. CAVALIER: I understand.

16 THE COURT: Again, not going into your conversations
17 with them and whether we, I mean, I'll say this. We have an
18 agreement. I mean, I sat there and facilitated the conference.
19 Everybody agreed. Now whether it's one that can be enforced or
20 whether your case will ever come back is yet to be determined,
21 but I just want to make sure we understand where I'm coming
22 from.

23 So from my perspective, the case is closed. If I let
24 Ms. Craft off, it's going to be up to you to figure out with
25 the opposing counsel exactly how you intend to move forward.

1 I'm more than happy to address any concerns you might have
2 today because I hate to see us get off track when at least the
3 portions of my involvement in this, I don't know what, what
4 would be the impediment. Again, I'm trying not to go into any
5 of the settlement negotiations, but, I mean, if there's any
6 concerns you have that I can help you with, I'm more than happy
7 to address those.

8 What do you want to do? You want Ms. Craft to
9 withdraw and --

10 MR. CAVALIER: No. I never asked for Ms. Craft to
11 withdraw. I just asked her to clarify her position, if she
12 wanted to withdraw or not.

13 THE COURT: Okay. Well -- and, and so it, it
14 certainly appears that whatever happened from when we all said
15 we've got a deal to October 14th something has happened in, in
16 you guys' relationship. And I'm not one to keep somebody on if
17 they feel that they've got a reason they can't move forward
18 with representing you.

19 But you understand right now we've got a closed case
20 and a, what will be an unrepresented plaintiff moving forward.
21 Now whether the defense files a motion to reopen the case or
22 you file a motion to reopen the case or they file a motion to
23 enforce a settlement agreement -- and again, I, I keep
24 referring to that because the record, I mean, I put it in the
25 record, right? We have an agreement. Judge deGravelles is

1 under the impression that there's been an agreement -- you'd
2 have to move forward in, in defending that position, whatever
3 it may be, by yourself?

4 MR. CAVALIER: Okay.

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

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

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

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

16 MR. CAVALIER: Understood.

17 THE COURT: And so you were sitting right there and
18 anything she said to me was with you right there. I mean, I'm
19 not going into the details of it, but -- so it sounds like,
20 what, you just decided that what we directly discussed at the
21 conference is no, not your position, is that what I'm hearing?

22 MR. CAVALIER: That was not totally my position, no,
23 sir.

24 THE COURT: Okay. And I'm assuming that maybe that's
25 a reason why your attorney is saying -- 'cause you didn't say

1 anything along those lines during the conference. Well --

2 MR. CAVALIER: I -- excuse me, Judge.

3 I did say that. When you were flipping back and forth
4 from LSP --

5 THE COURT: Uh-huh (indicating an affirmative
6 response).

7 MR. CAVALIER: -- to our side, me and my counsel, my
8 counsel and I was having a conversation and I reminded her of
9 my position prior to settlement discussions or -- excuse me --
10 prior to settlement discussions all the way from the beginning
11 from when I hired her prior to settlement discussions, during
12 settlement discussions, all the way up until the mediation on
13 October 6th.

14 THE COURT: Uh-huh (indicating an affirmative
15 response).

16 MR. CAVALIER: And when you took a break and flipped
17 over to the other side, I explained to her, "Hey, please don't
18 make me explain myself, my position to the judge because you're
19 better at explaining my position. You're, you're an attorney.
20 You're my attorney. You represent me." And I asked her to
21 explain my position to you and I asked her specifically, "Hey,
22 can you ask for my job back? Can you put that on the table?
23 Can you ask for my job back?" She just told me no, she wasn't
24 doing it.

25 THE COURT: Uh-huh (indicating an affirmative

1 response).

2 MR. CAVALIER: 'Cause State Police wasn't going to
3 give me my job back, but I at least wanted to put the offer on
4 the table. And that -- and that -- that wasn't just in the
5 mediation. That wasn't just out of thin air in the mediation.
6 That was from the beginning.

7 THE COURT: Okay. Well, you -- as I said, I'm not
8 inclined to get back involved in settlement until we figure out
9 what to do with the fact that this case was settled. Now
10 again, I'm not suggesting that that's necessarily an
11 enforceable agreement. We'll have to go into whatever law
12 needs to be addressed there.

13 But I will grant the motion to withdraw as counsel of
14 record.

15 And Mr. Cavalier, if there's some relief you think you
16 can get out of this case in the current posture it's in, it's
17 something you'll have to do yourself.

18 I'll remind everybody. I've got a 60-day dismissal in
19 place with Judge deGravelles. So the case is closed as far as
20 we're concerned and, and anything else, you guys will have to
21 figure out how we move forward from there.

22 If you want to have new counsel enroll or represent
23 you and figure out how to get the case reopened, we can
24 certainly do that. And again, there may be some impediments
25 here in, in getting the case closed without anything further.

1 I hate to ask. Was there any e-mail correspondence
2 after the conference, anything like that in writing? And I'm
3 getting heads nodding yes.

4 MS. PELLEGRIN: Yes, your Honor.

5 THE COURT: Well, I would, if that's the case, I would
6 suggest a motion to enforce the settlement agreement, if, if
7 that's what we're required to do, and we'll have to move that
8 way.

9 So I -- I -- again, we'll see what gets filed, but I
10 think that that's a fair question.

11 And this may be an issue between you and Ms. Craft at
12 the end of the day. If, if this case was resolved and your
13 representative on your behalf indicated that it's resolved,
14 Judge deGravelles will be the one to weigh in on whether that's
15 an enforceable agreement and then it just becomes a dispute
16 between you and your attorney. And so maybe that does make
17 more sense on why Ms. Craft would need to, to get off. Okay.

18 Well, I can't say I've been a lot of help other than
19 just kind of seeing a path forward. I'll keep an eye out for
20 anything that's filed.

21 Mr. Cavalier, what I would suggest -- I'm assuming you
22 have e-mail?

23 MR. CAVALIER: Yes.

24 THE COURT: Yep? Okay. If you want -- when you leave
25 here if you want to go down to the clerk's office -- that's in

1 the first floor just inside the metal detectors -- if you want
2 to tell them we've got the case if you're willing to accept
3 notices by e-mail. That way, you'll get them from the Court
4 instantaneously. We don't let attorneys, they don't have a
5 choice anymore. We've required every attorney, if they want to
6 be involved in federal court, they have to receive e-mail
7 notices. It's optional for, for parties who are unrepresented.

8 But I strongly recommend it only because sometimes
9 there's an emergency or something comes up by the Court where
10 we've got to set something.

11 You guys okay?

12 MS. PELLEGRIN: I just have a --

13 THE COURT: All right.

14 MS. PELLEGRIN: -- question for you when you're done,
15 Judge.

16 THE COURT: Okay.

17 So I, I would suggest it. Sometimes it's kind of the
18 older parties don't want to worry about e-mail, but I would
19 just suggest it for that reason. If I need to send you
20 something, if all we have is a mailing address, it's going to
21 take a couple of days and we have to hope the mail gets there.
22 If you have an e-mail address, we can e-mail you right away.

23 So there's a form down there where you can consent to
24 receiving e-mail notifications and that way, you're going to be
25 completely in the loop by anything the Court does right when it

1 happens.

2 Does that make sense?

3 MR. CAVALIER: Yes. Just where to go on the first
4 floor?

5 THE COURT: If you go to the first floor, you'll see
6 right by the metal detectors, one side is Probation and Parole.
7 You don't want to go there. The other side is the clerk's
8 office and you can go in there. You can give them this case
9 number -- and I'll have my, my courtroom deputy make sure they
10 know that we're about to grant this motion -- and so when they
11 see that you're unrepresented, you can say there's a form --
12 and in fact, it looks like Samantha has a copy of it right
13 there -- you can just give them that form where you say, "Look,
14 I agree to accept e-mail notices from the Court." And again,
15 it just, it works a lot better if you have e-mail.

16 Counsel?

17 MS. PELLEGRIN: Your Honor, given that you're granting
18 Ms. Craft's motion to withdraw, first a housekeeping matter.
19 Could we have Mr. Cavalier provide his contact information on
20 the record so that we can communicate --

21 THE COURT: Yeah.

22 MS. PELLEGRIN: -- directly with him --

23 THE COURT: That's a -- sure.

24 MS. PELLEGRIN: -- as we move forward?

25 And then the second housekeeping matter we wanted to

1 bring up, there's a 60-day order in place at the time. The
2 Louisiana State Police Commission proceeding, which was one of
3 the collateral issues that was resolved at the settlement
4 conference, your Honor --

5 THE COURT: Right.

6 MS. PELLEGRIN: -- there was a previously set matter
7 for November 10th. It's my understanding -- and, and Gail
8 Holland for Louisiana State Police may be able to speak to that
9 issue directly -- but as I understand it, that matter is, is
10 stayed, for lack of a better way of saying it, until -- they
11 knew we were having this hearing today and they wanted to see
12 what the outcome was. Given that that's November 10th, we have
13 the settlement checks, your Honor, and we don't think that
14 there's any reason for much more delay in perfecting the
15 settlement.

16 So we would like to present everything to Mr. Cavalier
17 and if at that point he chooses not to go forward with the
18 settlement, then we'll seek relief from the Court as we need.
19 But in the interim, they have the State Police Commission
20 proceeding that may end up sort of reviving itself.

21 Is there any chance that we could have a date prior to
22 November 10th by which we can get everything finalized with the
23 Court to the extent Mr. Cavalier will go forward with the
24 settlement?

25 THE COURT: A date -- November 10th is still within

1 the 60 days, right?

2 MS. PELLEGRIN: I think you gave us -- we were here on
3 October 6th. You gave us a 60-day order.

4 THE COURT: Right.

5 MS. PELLEGRIN: And we'd like to perfect everything
6 before that so as to --

7 THE COURT: Well, there, as I say, that's the last
8 day, as far as we're concerned. So I mean, you guys, I mean, I
9 think if, if we've got everything in line --

10 These are all hypotheticals, Mr. Cavalier. You can
11 just simply say no.

12 But if we've got everything in line, you got
13 everything to, to finalize the settlement, you make that as a
14 presentation or you just say, "Look, here's the document.
15 Here's the check. Sign here. We've got it all done." If this
16 still remains falling apart or, Mr. Cavalier, maybe you do a
17 little research or talk to some attorneys and they say, "Look,
18 this is kind of what you're, what you're stuck with." if it's
19 not finalized then, then I think then you file something with
20 Judge deGravelles or with the, in the case. Let's say that.
21 I'm not punting it to him, but he'll, he'll probably have to
22 get involved. Just make sure you do that within the 60 days.

23 MS. PELLEGRIN: Okay.

24 THE COURT: So I don't need, I mean, I can --
25 basically, the, the best way to describe a conditional 60-day

1 dismissal is you guys have 60 days to finish everything. If
2 you don't finish it all, you need to let us know before Day 61.

3 MS. PELLEGRIN: Right.

4 THE COURT: So that's, that's all we're looking out
5 for and if you get to Day 59 and say, "We need some more time,"
6 you can ask for that, also. A lot of times the settlements,
7 particularly the ones I do with the United States Government,
8 can take six months to get the Government to cut a check
9 oftentimes.

10 Am I -- other concerns?

11 MS. CRAFT: I, I just want to note. I have notified
12 counsel of the existence of our lien pursuant to the contract
13 and I also provided it to Mr. Cavalier as well. I just want to
14 make sure that --

15 THE COURT: Yeah.

16 MS. CRAFT: -- so that's somewhere.

17 THE COURT: You, you still got --

18 MS. CRAFT: Yes, sir.

19 THE COURT: Sure. I understand.

20 What else?

21 MR. MAYEAUX: Your Honor, in the event, hopefully
22 unnecessary, that we have to file a motion to enforce, do, do
23 you know if the Court would entertain an expedited hearing
24 date, given the November 10th proceeding before the State
25 Police Commission?

1 THE COURT: Oh, I, I'm sure -- now look, I, I'm not
2 quite understanding the November 10th date. Is that day, we
3 need an answer before November 10th or --

4 MS. PELLEGRIN: As I understand it, your Honor, there
5 was a hearing set on his appeal of his termination and the
6 termination issue would be rendered moot as a result of the
7 parties' agreement.

8 THE COURT: Got it.

9 MS. PELLEGRIN: And, and so if --

10 THE COURT: Ah.

11 MS. PELLEGRIN: -- if there's no need to go forward
12 with that hearing, we would like to take that off the calendar.
13 However, between the date that Ms. Craft filed her motion to
14 withdraw and today's hearing Mr. Cavalier sent correspondence
15 to the State Police Commission stating that he wanted to go
16 forward with that proceeding.

17 THE COURT: Understood. Okay.

18 So that's all accurate, Mr. Cavalier?

19 MR. CAVALIER: That's correct.

20 THE COURT: All right.

21 I'd get something filed quickly.

22 MS. PELLEGRIN: Okay.

23 THE COURT: I can't speak for Judge deGravelles. And,
24 and the concern I've got is if I were to handle it all, it
25 would still probably have to be in the form of a Report and

1 Recommendation because we're talking about a dispositive issue.

2 And so you have to add 14 days by statute. So --

3 MS. PELLEGRIN: We're beyond that, I think.

4 THE COURT: That's the best I can do, right? Today's
5 October 27th. And so if, even if I were today to say the case
6 is, is going away --

7 And Mr. Cavalier, this is just me recognizing my
8 limitations of what I can do. Oftentimes, the District Judges
9 will ask me to handle something but depending on what it is, I
10 would do it as a recommendation and people could offer varying
11 opinions on how often they follow our recommendations. But the
12 statute that applies to that requires a 14-day kind of period
13 for you guys to object.

14 So this would be one that if your hearing is on
15 November 10th, any resolution between now and then would have
16 to be done by the, by the District Judge, in your case Judge
17 deGravelles.

18 So that's -- the sooner you get it filed, I mean, I'll
19 certainly make him aware that there's some issues here and
20 that's the best I will do. Again, I'm not going to go any
21 farther than that, but if you get something filed he'll, he'll
22 kind of see what he has to deal with. Okay.

23 MR. CAVALIER: Judge, if you don't mind --

24 THE COURT: Yep.

25 MR. CAVALIER: -- just for my notes. The 60 days, it

1 started the day of October 6th, correct?

2 THE COURT: Right.

3 MR. CAVALIER: Okay.

4 THE COURT: Yeah. And, and that's a -- again, I want
5 to make sure you understand what we're doing and how. That is
6 a -- a -- an informal -- well, I don't say informal. It's
7 formal. It's a court order -- but it's a, it's a time period
8 that we've decided should give parties plenty of time to do and
9 effectuate the agreement that I helped facilitate.

10 MR. CAVALIER: Uh-huh (indicating an affirmative
11 response).

12 THE COURT: So -- and it's the most amount of time.
13 We're not saying you need to take 60 days and sometimes in
14 cases involving insurance companies, for example, they really
15 only have 30. But it just gives us enough time to kind of keep
16 it open in case we need to get back involved.

17 MR. CAVALIER: Uh-huh (indicating an affirmative
18 response).

19 THE COURT: And so that's a deadline that both sides
20 need to be aware of. If, if this case is ever to, to come back
21 to life, it needs to happen within that 60-day period or at
22 least have a judge kind of look at it.

23 MR. CAVALIER: Okay.

24 Second question, Judge, if you don't mind.

25 THE COURT: No. This is y'all's hearing.

1 MR. CAVALIER: Okay. So maybe you can help me out or
2 counsels can help me out on this one. As far as this Court
3 goes, does it have any jurisdiction over what happens at the
4 State Police Commission or --

5 THE COURT: Only unless and to the extent you guys
6 executed an enforceable agreement that covers that and our
7 Court has that. Then, in, in that case, we have the ability to
8 enforce the agreement.

9 MR. CAVALIER: Yes, sir.

10 THE COURT: And, and so --

11 MR. CAVALIER: So up until that point, State Police
12 Commission, they can roll on just as normal as far as the
13 November 10th date?

14 THE COURT: I -- look, you're asking me a question
15 about how the State Police Commission runs their shop and, and
16 the best answer I can give you is they do their work. I do
17 mine.

18 MR. CAVALIER: Gotcha.

19 THE COURT: You, you've just identified an area where
20 those two things will cross over.

21 MR. CAVALIER: Gotcha.

22 THE COURT: And that is if I say we've got a deal here
23 and, and, and they need to stop. So, you know, our Court can
24 tell them, "No, you're not going to move forward," you know,
25 "because we've got a federal interest that we need to protect

1 here as well."

2 So it sounds like they're going to file something
3 pretty quickly and, and we may want to handle this on an
4 expedited basis.

5 What, what else? Any other questions?

6 MR. CAVALIER: I think that's it without being --

7 THE COURT: Now you got an address here on Ciera Drive
8 in Houma. Is that still your address?

9 MR. CAVALIER: That's correct.

10 THE COURT: This is in the, the motion to withdraw. A
11 phone number ending in 0351.

12 MR. CAVALIER: That --

13 THE COURT: Is that a landline or a cell?

14 MR. CAVALIER: Cell.

15 THE COURT: Okay. And then if you're going to provide
16 an e-mail address to the clerk's office, that'll end up on our
17 docket sheet. So you're going to need to give this contact
18 information.

19 Are you okay with opposing counsel reaching out to you
20 by e-mail?

21 MR. CAVALIER: That's fine.

22 THE COURT: All right. I found that that's kind of,
23 should be encouraged. 'Cause again, it gives us a good paper
24 record of what's done. You guys can certainly talk by phone,
25 but you do understand that at least for the time where you're

1 unrepresented, they have to talk directly to you. It -- it --
2 it's different when you have counsel representing you, but they
3 would have to go directly to you, okay?

4 MR. CAVALIER: Understood.

5 THE COURT: All right.

6 Anything else?

7 MR. CAVALIER: I had a question. I, I lost it. While
8 you were speaking, I lost it.

9 Within the 60 days -- I'm trying to gain my question
10 back. Within the 60 days, that is also my time, counsel's time
11 to file an enforceable motion, also my time to also -- if they
12 filed a motion, we'll have to come back and hear that motion
13 again --

14 THE COURT: You --

15 MR. CAVALIER: -- I assume?

16 THE COURT: You'd have to explain why and, and the
17 Court would either put in some expedited briefing schedule.
18 Again, I don't, I don't want to speak hypotheticals 'cause I
19 might be the one that has to look at this. I just can't
20 explain that.

21 But yeah, if they file a motion and say, "Here's what
22 we've got. Here's what's supports it."

23 MR. CAVALIER: Uh-huh (indicating an affirmative
24 response).

25 THE COURT: "This case should be done," that judge, he

1 -- he could -- he could do it in a hearing, but he could also
2 just do it on what's filed.

3 MR. CAVALIER: Okay.

4 THE COURT: I mean, he would -- does that make sense?

5 MR. CAVALIER: Makes sense.

6 THE COURT: Yeah.

7 MR. CAVALIER: Makes sense.

8 THE COURT: What, what else?

9 MR. CAVALIER: I, I guess I, I would prefer a hearing
10 if there's -- as it -- I mean, I know it's not up to me, but
11 it, I mean, if I, if I had a --

12 THE COURT: I mean --

13 MR. CAVALIER: If, if I had a chance, you know, to
14 explain, fully explain, you know, why --

15 THE COURT: Well, I guess I just --

16 MR. CAVALIER: -- I took, I took this position after us
17 sitting down and, you know, like I wanted to say before I, you
18 know, when I came in here that I didn't mean to waste your time
19 or anyone's time, but my concerns are really serious, of course
20 to me, but --

21 THE COURT: Yeah. And, you know, what I find
22 sometimes when I'm in this position right now is the, the, the
23 way the law works is, is those concerns about whether this is
24 fair or not or whether I should have accepted, I'll use just a
25 hypothetical on a true financial settlement, right, you know,

1 where somebody just decides later they should have gotten more
2 money or they, they slept on it. I'm not suggesting that
3 that's this one, but what I often tell individuals in those
4 positions is that, by way of the law, that ship has sailed.
5 We're not, we're no longer having that conversation anymore.

6 So why or the nature of miscommunication between you
7 and your attorney is not as relevant as was she your lawyer at
8 the time, your agent representing you. Were you at the
9 conference? Was there an exchange of, of some writing or did
10 we put it on the record in court, which we didn't do that.

11 MR. CAVALIER: Uh-huh (indicating an affirmative
12 response).

13 THE COURT: And, and that's all. So I can't speak for
14 Judge deGravelles, but that's the conversation I have with
15 folks sometimes, is say, "Look," you know, "the, the day to
16 address all of those concerns was October 6th and not October
17 7th and not the 9th and not the 14th and not the 27th."

18 So it -- it -- the case is different. It's just a
19 different case now. It's no longer about how your employment
20 was handled. The case now is about did we have an agreement on
21 October 7th that's enforceable in court and that's all the case
22 is about and less.

23 So I'll, I mean, Judge deGravelles, you can tell him
24 or you can file something to say, "Look, I'd rather have an in-
25 person hearing," and if he wants to do that, he can certainly

1 do it. And he's one that, that often will do those kinds of
2 things.

3 MR. CAVALIER: Uh-huh (indicating an affirmative
4 response).

5 THE COURT: If you guys want something addressed
6 sooner rather than later, I would put that in any motion that
7 you file and, you know, we'll be aware of that. Because I do
8 recall now the circumstances that we were, we were trying to
9 get this done by that date as well. Okay.

10 Anything else, Mr. Cavalier?

11 MR. CAVALIER: No, sir. I appreciate it.

12 THE COURT: Defense, anything?

13 MS. PELLEGRIN: No, thank you, your Honor.

14 THE COURT: All right.

15 Former counsel, anything?

16 MS. CRAFT: No, sir. Thank you.

17 THE COURT: All right.

18 THE COURTROOM DEPUTY: All rise.

19 THE COURT: We are at recess. I'll come back. All
20 right.

21 (Proceedings concluded at 1:48 p.m.)

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CERTIFICATE

I, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

/s/ Janice Russell

October 31, 2022

Janice Russell, Transcriber

Date

EXHIBIT C
(to be filed under seal sought)

Ben Mayeaux

From: Evans, James <EvansJ@ag.louisiana.gov>
Sent: Thursday, November 10, 2022 1:25 PM
To: Ben Mayeaux; Crystal Bounds
Cc: Jennie Pellegrin; CivilRightsSectionChief; German, Rose; BRXmail
Subject: RE: 22507 : Carl Cavalier v. State of Louisiana, et al / BLM's 4th DRAFT Receipt, Release and Indemnity Agreement (excludes)

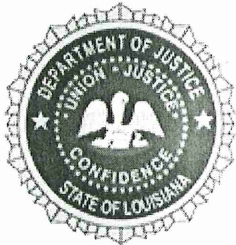
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Good Afternoon Jennie & Ben,

Please be advised that the revised agreement has been approved. You may present the document to the Plaintiff.

Please keep up posted on next steps, and whether Cavalier rejects the agreement.

Thank you.



James "Gary" Evans
Assistant Attorney General
Section Chief, Civil Rights Section
Litigation Division
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Phone: (225) 326-6300 Fax: (225) 326-6495
www.AGJeffLandry.com



From: Ben Mayeaux <BMayeaux@neunerpate.com>
Sent: Thursday, November 3, 2022 10:16 AM
To: Evans, James <EvansJ@ag.louisiana.gov>; Crystal Bounds <Crystal.Bounds@la.gov>
Cc: Jennie Pellegrin <jpellegrin@neunerpate.com>; CivilRightsSectionChief <CivilRightsSectionChief@ag.louisiana.gov>; German, Rose <Rose.German@sedgwick.com>; BRXmail <BRXmail@sedgwickcms.com>
Subject: 22507 : Carl Cavalier v. State of Louisiana, et al / BLM's 4th DRAFT Receipt, Release and Indemnity Agreement (excludes)

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Gary and Crystal,



Attached is the revised proposed Release Agreement and the e-mail exchange of the terms confirmed by counsel following the settlement conference. Please advise if this version is approved.

Thank you,

Ben



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ATTORNEY

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