

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

MAXWELL KADEL, et al.,

Plaintiffs,

v.

DALE FOLWELL, et al.,

Defendants.

No. 1:19-cv-00272-LCB-LPA

**JOINT MOTION TO DISMISS PLAINTIFF’S CLAIMS AGAINST DPS
DEFENDANT WITH PREJUDICE**

Pursuant to Federal Rule of Civil Procedure 41(a)(2), or, in the alternative, Federal Rule of Civil Procedure 21, Plaintiff Dana Caraway (“Plaintiff”),¹ on the one hand, and Defendant North Carolina Department of Public Safety (“DPS Defendant”), on the other hand, respectfully move this Court to dismiss with prejudice Plaintiff’s claim against DPS Defendant under Title VII of the Civil Rights Act of 1964 (“Title VII”), which is the only claim being brought against DPS Defendant in Plaintiff’s Amended Complaint. Plaintiff and DPS Defendant have reached a negotiated settlement of that claim, and Plaintiff seeks to dismiss her Title VII claim against DPS Defendant in consideration of that agreement.

¹ Plaintiffs Maxwell Kadel, Jason Fleck, Connor Thonen-Fleck, Julia McKeown, Michael D. Bunting, Jr., C.B., by his next friends and parents, Michael D. Bunting, Jr. and Shelley K. Bunting, and Sam Silvaine have not asserted any claims against DPS Defendant.

Federal Rule of Civil Procedure 41(a)(2) provides that “an action may be dismissed at the plaintiff’s request only by court order, on terms that the court considers proper.” “While there is a split of authority as to whether Rule 41(a) permits voluntary dismissal of fewer than all defendants, including among district courts within the Fourth Circuit,” “the ‘sounder view’ is that Rule 41(a) permits the voluntary dismissal of fewer than all defendants in an action.” *Duke Progress Energy LLC v. 3M Co.*, No. 5:08-CV-460-FL, 2015 WL 5603344, at *2 (E.D.N.C. Sept. 23, 2015); 9 Charles Alan Wright, et. al., *Federal Practice and Procedure* § 2362 (3d ed.) (noting that “the sounder view and the weight of judicial authority” would support permitting a plaintiff to dismiss one of several defendants under Rule 41(a)).

Alternatively, Federal Rule of Civil Procedure 21 provides that “[o]n motion or on its own, the court may at any time, on just terms, add or drop a party,” and that “[t]he court may also sever any claim against a party.” Given the settlement between Plaintiff and DPS Defendant, dismissal of the Title VII claim against DPS Defendant would be “on just terms.” Fed. R. Civ. P. 21.

Dismissal of Plaintiff’s Title VII claim against DPS Defendant will serve party and judicial economy, as well as be in the interests of justice, because Plaintiff and DPS Defendant have reached a settlement agreement that fully resolves this claim. Because “[i]t has long been clear that the law favors settlement,” *United States v. Manning Coal Corp.*, 977 F.2d 117, 120 (4th Cir. 1992), dismissal of this claim is “proper” under either Rule 41(a)(2) or Rule 21.

Plaintiff and DPS Defendant will each bear their own attorney's fees and costs.

* * *

Dated: August 1, 2023

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* Appearing by special appearance
pursuant to L.R. 83.1(d).

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was filed electronically with the clerk of Court using the CM/ECF system which will send notifications of such filing to all registered users.

Dated: August 1, 2023

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[Proposed] Order

Upon consideration of the joint motion by Plaintiff Dana Caraway (“Plaintiff”) and Defendant North Carolina Department of Public Safety (“DPS Defendant”) to dismiss with prejudice Plaintiff’s claim against DPS Defendant under Title VII of the Civil Rights Act of 1964 (“Title VII”), which is the only claim being brought against DPS Defendant, it is hereby

ORDERED that the motion is **GRANTED**. Plaintiff’s claim against DPS Defendant under Title VII is dismissed *with prejudice*. Each party will bear its own attorney’s fees and costs.

Dated: _____

U.S. District Court Judge for the
Middle District of North Carolina