UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
ABERDEEN DIVISION

WILL McRANEY **PLAINTIFF**

V. **No. 1:17cv080-GHD-DAS**

THE NORTH AMERICAN MISSION BOARD OF THE SOUTHERN BAPTIST CONVENTION, INC. **DEFENDANT**

MEMORANDUM IN SUPPORT OF NAMB'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE TO FILE AMENDED COMPLAINT

Introduction and Summary

Plaintiff's Motion should be denied under Local Uniform Civil Rule 7(b) because it is untimely, and under Federal Rule of Civil Procedure 16(b) because Plaintiff has failed to show good cause for the out-of-time amendment. Plaintiff's Motion is before the Court:

- one year after the Court's amendment deadline passed,
- one year into substantive discovery, including extensive written discovery and depositions, and
- two and a half months before the current discovery deadline.

Plaintiff has known about the allegations he seeks to bring into this action since well before the deadline to amend pleadings, yet he makes no attempt to explain why he waited until October 2022 to seek leave to amend. In fact, Plaintiff's Motion is devoid of a "good cause" analysis at all; thus, Plaintiff has abandoned any claim of good cause.

As set forth below, even if the Court were to reach a good cause analysis notwithstanding Plaintiff's failure to assert *any* cause, the good cause factors weigh in favor of NAMB and against amendment. Not only is the proposed amendment not sufficiently important to warrant

the relief requested, but NAMB would suffer substantial prejudice if the Motion is granted because the proposed Amended Complaint significantly expands the scope of this case. NAMB has tailored its discovery strategy to the Complaint that has been operative since 2017. Depositions have been conducted. Interrogatories and requests for production have been served and responded to. And in keeping with the Fifth Circuit's prematurity ruling, NAMB has worked to sufficiently develop the record to show its "valid religious reasons" for the challenged actions in this case. Plaintiff's proposed amendment, however, would further violate NAMB's First Amendment rights because it will require further discovery and force NAMB to defend against additional claims that don't belong in a court of law.

The parties have lived with the same allegations for five years. Now is not the time to change course. Plaintiff's Motion should be denied.

Factual and Procedural Background Relevant to NAMB's Response

This case has a lengthy history, most of which is familiar to the Court. Relevant to Plaintiff's Motion, Plaintiff filed suit on April 7, 2017. (Doc. 2). His original Complaint set forth five claims: (1) intentional interference with Plaintiff's contractual relationship with the Baptist Convention of Maryland and Delaware ("BCMD"); (2) defamation resulting in Plaintiff's termination from BCMD; (3) intentional interference with Plaintiff's speaking engagement in Mississippi; (4) intentional interference with Plaintiff's speaking engagement in Florida; and (5) intentional infliction of emotional distress by placing a photograph of Plaintiff at the reception desk of NAMB's headquarters. (*Id.*). Plaintiff sought punitive damages for the foregoing conduct. (*Id.*).

Following early Rule 12 briefing and settlement efforts, the Court entered a Case Management Order ("CMO") on September 17, 2018, establishing certain deadlines for the

litigation. (*See* doc. 31). The CMO included a deadline for "[m]otions for … amendments to the pleadings" of December 3, 2018. (*Id.* at 4). The deadline passed without any amendment efforts from Plaintiff.

In April 2019, the Court dismissed the case for lack of subject matter jurisdiction under the First Amendment. (Doc. 63). In July 2021, following a lengthy appeals process, the case returned to this Court based on the Fifth Circuit's conclusion that the dismissal on First Amendment grounds was "premature" on the factual record at the time. (*See* doc. 68 at 8).

In August 2021, this Court entered a new CMO with a new deadline for "[motions] for … amendments to pleadings" of November 22, 2021. (Doc. 82 at 4). Again, the deadline passed without any amendment efforts from Plaintiff.

The CMO also ordered a March 28, 2022, deadline for the completion of discovery, and in a section labeled "Motions," it provided that "[a]ll dispositive motions and *Daubert*-type motions … must be filed by April 11, 2022." (*Id.* at 4–5). No orders extending these CMO deadlines were entered until 2022, i.e. well after the deadline for motions for leave to amend had expired. (*See generally* docket).

On January 26, 2022, the parties appeared before the Court on certain discovery disputes. (*See* docs. 95, 100). As relevant here, Plaintiff asked the Court to compel NAMB to produce certain documents, including "communications with others about Plaintiff" from January 1, 2013, through the present. (*See* doc. 100 at 1–4). NAMB opposed these requests on several bases, including that they were not temporally limited and sought communications and other documents dated after the events alleged in the Complaint. (*See id.*). During the hearing, Plaintiff specifically pointed out that the case had been filed "five years ago" and argued that "things have been happening since April 4th, 2017" that were part of NAMB's alleged attempts

to "blackball and blacklist" him. (*See* Jan. 26, 2022 Hr'g Tr. (doc. 168-1) at 17–18). He further argued that he believed NAMB was continuing to engage in wrongdoing, and that the Court should allow him to seek discovery accordingly. (*Id.* at 18–19). In an order dated February 16, 2022 (the "February 2022 Order"), the Court directly rejected this argument and concluded that the timeframe relevant to this action was January 1, 2013, through January 1, 2017. (Doc. 100 at 2–4).

In that Order, the Court extended the "remaining case management deadlines," setting a deadline for discovery of October 28, 2022, and a deadline for "Motions" of November 11, 2022. (*Id.* at 4 (emphasis added)). In July 2022, the Court entered another order that again extended the "remaining" deadlines for 63 days. (Doc. 111 (emphasis added)).

It was not until October 11, 2022 — after the November 2021 amendment deadline, after two depositions had been conducted, and after NAMB had prepared, served, and responded to extensive discovery — that Plaintiff approached NAMB about amending his Complaint. NAMB opposed the request, of course, given that it was untimely and would prejudice NAMB and delay the proceedings. Plaintiff then filed the present Motion on October 26, 2022, almost a year after his deadline to request leave to amend had expired.

A review of the proposed Amended Complaint shows that it would significantly expand the scope of this litigation. In his original Complaint, for example, Plaintiff's claim for intentional infliction of emotional distress ("IIED") (Count V) alleged that NAMB inflicted emotional distress by displaying his picture at NAMB headquarters. (Doc. 2 at 7). In other words, the IIED claim was limited to this conduct — and only this conduct. The proposed Amended Complaint, on the other hand, adds an IIED claim arising from NAMB's alleged conduct leading to Plaintiff's termination from BCMD, and an open-ended claim for IIED for

NAMB's alleged "tortious conduct" from his separation from BCMD through the present. (*See* doc 148-1 at 11–12). In the same vein, Plaintiff's original tortious interference claims were limited to specific events (NAMB's alleged conduct in getting him terminated (Count I), and the Mississippi and Florida symposia (Counts III and IV)). (*See* doc. 2 at 6–7). In the proposed Amended Complaint, Plaintiff seeks to bring, *inter alia*, a generalized claim for tortious interference in connection with NAMB's alleged post-termination "tortious conduct," which purportedly includes the Florida symposium event that this Court already dismissed with prejudice. (*See* doc. 148-1 at 11; doc. no. 18). By expanding the factual bases for his causes of action, Plaintiff is indeed attempting to expand the scope of this litigation, thereby undermining the discovery strategy NAMB has employed thus far, risking a significant delay of the trial in this case, causing NAMB to incur additional expense, and further violating NAMB's First Amendment rights.

In sum, the facts and procedural history discussed above show that Plaintiff's Motion is untimely and without merit. For these reasons, and for the reasons discussed in further detail below, this Court should deny Plaintiff's request for leave to amend.

Argument and Authorities

I. Plaintiff's Motion should be denied because it is untimely.

Under the August 2021 CMO, Plaintiff had until November 22, 2021, to file a motion to amend the complaint. (Doc. 82 at 4). His current Motion was filed (and served) almost a year after that deadline. (*See* doc. 148). The Motion is therefore untimely and should be denied. L.U. Civ. R. 7(b)(11).

Plaintiff appears to be operating under the mistaken assumption that the deadline for filing motions to amend is January 13, 2023. (*See* doc. 149 at 4 (citing docs. 100 and 111)). No

fair reading of the scheduling-related orders entered in this case supports that assumption. The CMO was clear that motions to amend the pleadings were due on or before November 22, 2021. (Doc. 82 at 4). That deadline came and went before the Court entered any further scheduling orders. (*See generally* docket). And in both extension orders the Court entered after November 22, 2021, the Court specifically stated that it was only extending the "remaining" (i.e. unexpired) deadlines in the case. (*See* doc. 100 at 4; doc. 111 at 1). Those orders had no effect on the already-passed deadline to seek leave to amend. Moreover, the reference to "Motions" in these two 2022 extension orders (on which Plaintiff appears to rely) does not change the analysis — it is clear from a review of these orders *in pari materia* with the August 2021 CMO that the reference to "Motions" meant dispositive and *Daubert*-related motions, not motions to amend. (*See* doc. 82 (CMO) at 4–5 (establishing a deadline for motions to amend and a separate, much later (post-discovery) deadline for dispositives/*Dauberts* under the heading "Motions"); doc. 100 at 4 (extending the (post-discovery) deadline for "Motions"); doc. 111 (same)).

Further, the "Motions" deadline Plaintiff refers to in the present Motion comes *after* the deadline for discovery. It would make no sense for a court to set a deadline to amend (and thereby expand the scope of the case) *after* discovery had closed. (*See* doc. 100 at 4). Indeed, the August 2021 CMO recognizes this. It established deadlines in the following chronological order (as relevant here): (1) motions for leave to amend; (2) the close of discovery; and (3) dispositive/*Daubert* motions. (Doc. 82 at 4).

In sum, there can be no genuine dispute that Plaintiff's Motion was served nearly a year after the November 22, 2021, deadline. As the Court's Local Uniform Civil Rules provide, "[a]ny nondispositive motion served beyond the motion deadline imposed in the Case Management Order may be denied solely because the motion is not timely served." L.U. Civ. R.

7(b)(11). This Court has previously denied untimely motions for non-dispositive relief on this basis. *Tate v. Sharp*, 1:11-cv-268-GHD-DAS, 2014 WL 1600038, at *1 (N.D. Miss. Apr. 21, 2014) (Davidson, J.) (granting defendants' motion to strike plaintiff's motion to bifurcate liability and damages because it was filed more than 30 days after the motion deadline in the case management order"), *Estate of Manus v. Webster County*, 1:11-cv-149-SA-DAS, 2014 WL 3866608, at *7 (N.D. Miss. Aug. 6, 2014) (denying plaintiffs' motion to exclude doctor's testimony because it was filed several months after the case management order deadline). And the Fifth Circuit has affirmed the practice of denying motions as untimely under L.U. Civ. R. 7(b)(11)). *See Smith v. FTS USA/Unitek Global Serv.*, 676 F. App'x 264, 266 (5th Cir. Jan. 20, 2017) (finding district court did not abuse its discretion by denying Smith's motion to compel because it was filed one month after the motion deadline in violation of L.U. Civ. R. 7(b)(11)).

In keeping with this practice, and in the interests of furthering the purpose of the scheduling deadlines established by the Court and sanctioned by the Federal Rules of Civil Procedure and Local Rules, this Court should deny Plaintiff's Motion as untimely.

II. The Court should deny Plaintiff's Motion because it wholly fails to address "good cause" or Rule 16.

Federal Rule of Civil Procedure 16(b) governs the amendment of pleadings after a scheduling order's deadline to amend has expired. *Fahim v. Marriott Hotel Servs., Inc.*, 551 F.3d 344, 348 (5th Cir. 2008); *Fielder v. Toyota Boshoku Miss., LLC*, 1:14-cv-160-SA-DAS, 2015 WL 13767591, at *1 (N.D. Miss. Oct. 6, 2015) (Sanders, J.). Rule 16(b) provides that a scheduling order "may be modified only for good cause and with the judge's consent." Fed. R. Civ. P. 16(b); *Fielder*, 2015 WL 13767591, at *1 (noting the "less deferential" standard of "good cause" applies where a plaintiff moves to amend after "the case management order's deadline for amending pleadings has expired").

Plaintiff does not address or argue that he has "good cause" to amend his Complaint. Given that he incorrectly asserts entitlement to relief under Fed. R. Civ. P. 15, his Motion and Memorandum are silent in this regard. He makes no attempt to explain why he failed to timely file his Motion, for example, and addresses prejudice through the much more lenient lens of Rule 15. Because Plaintiff has not made any "good cause" arguments, he has abandoned any claim of good cause. *Simmons v. Abel*, 3:94-cv-64-S-O, 1995 WL 1945524, at *2 (N.D. Miss. Mar. 2, 1995) (holding that "issues not presented and argued in brief are abandoned"). The rationale behind the abandonment doctrine is especially present here: Plaintiff has not explained why he has "good cause," so NAMB cannot fairly "respond" to any "good cause" arguments. The Court should deny the Motion on this basis alone.

III. Plaintiff's Motion should be denied because he has failed to show good cause for amending the Complaint out of time.

Should the Court evaluate good cause notwithstanding Plaintiff's failure to raise it, the analysis favors denying Plaintiff's Motion. Good cause is evaluated using four factors: "(1) the explanation for the failure to timely move for leave to amend; (2) the importance of the amendment; (3) potential prejudice in allowing the amendment; and (4) the availability of a continuance to cure such prejudice." *Southwestern Bell Tel. Co. v. City of El Paso*, 346 F.3d 541, 546 (5th Cir. 2003); *Fielder*, 2015 WL 13767591, at *1. As set forth below, these factors weigh heavily against allowing Plaintiff's amendment.

1. Plaintiff has not explained his failure to timely move for leave to amend, and there is no explanation that favors allowing the amendment.

Because Plaintiff appears to believe his Motion is timely, he offers no explanation for why it is actually one year overdue. *Fielder*, 2015 WL 13767591, at *1. But even if Plaintiff attempted to offer an explanation, there is none that could warrant amendment at this stage.

When Plaintiff first raised the issue of amendment to NAMB ten months after the amendment deadline, he stated an amendment was needed because "NAMB continues to misread or misrepresent Dr. McRaney's allegations in its discovery responses and before the Court," namely that Plaintiff claims his complaint alleges ongoing tortious conduct after the filing of the Complaint. Doc. 148-2 at 3. But this is not a new argument. NAMB served objections to discovery requests on October 20, 2021, regarding Plaintiff's definition of the "Relevant Time Period" (January 1, 2013, to present) for discovery because it "extends beyond the alleged events in Plaintiff's Complaint." Ex. A, NAMB's Resps. to Pl.'s 1st Reqs. For Prod. The parties could not reach a resolution of the issue through the meet and confer process, so the Court heard argument on January 26, 2022. Plaintiff argued that the scope of this case includes post-filing conduct (i.e. conduct that occurred after April 2017), and that he should be entitled to, *inter alia*, documents concerning NAMB's "communications with others about Plaintiff" from January 2013 through the present because "things ha[d] been happening since" the filing of the Complaint that were part of NAMB's allege scheme to "blackball and blacklist him." (Jan. 26, 2022 Hr'g Tr. (doc. 168-1)). In February 2022, this Court squarely rejected this argument and concluded that events after 2017 were not relevant to Plaintiff's claims. *See* doc. 100 at 2.

In short, Plaintiff has known since at least February 2022 that, in the Court's view, the claims in his Complaint are based on discrete events that occurred before April 2017. If Plaintiff believed the Court got it wrong, he should have asked for reconsideration. He didn't do that. If Plaintiff otherwise had an issue with the outcome — i.e. if he felt he needed to amend his Complaint to expand the scope of the case to events that allegedly occurred after 2017 — he should have sought relief within a reasonable time after the Court's ruling. Either way, he should not have allowed NAMB to proceed with eight months of extensive discovery based on

its understanding from the Court that the action was limited to pre-2017 conduct. *Fielder*, 2015 WL 13767591, at *1 (noting that the first factor weighed against amendment where the plaintiff knew of the underlying allegations for months prior to the motion).

A review of the proposed amendment also shows that the only specific events alleged therein occurred well before the November 2021 amendment deadline established in the CMO. Plaintiff asserts, for example, that NAMB engaged in "egregious misconduct" in connection with an amicus brief filed by a third party in the Fifth Circuit on August 21, 2020, which allegedly included "known factual and doctrinal errors." (Proposed Amended Complaint ¶ 37). This alleged wrongdoing occurred more than a year before the November 2021 deadline for leave to amend, yet Plaintiff fails to offer any explanation for why he is just now seeking to file an amended complaint to include these allegations.[1]

This delay, coupled with Plaintiff's failure to offer any explanation, conclusively shows that there is not "good cause" for Plaintiff's Motion. This factor weighs in favor of NAMB.

2. The amendment is not sufficiently important to warrant the requested relief.

The second factor also weighs in NAMB's favor. *Bell Tel. Co.*, 346 F.3d at 546. Plaintiff attempts to deflect from his goal of expanding the scope of this litigation by asserting that his proposed Amended Complaint asserts the same causes of action as his original pleading. *See* Pl.'s Mem. at 2. If this is true (it is not), the Amended Complaint is unimportant, as it would not allow Plaintiff to seek relief beyond the relief requested in his original Complaint. And if it

[1] It is also difficult to see what these allegations have to do with the dispute between Plaintiff and NAMB, or how Plaintiff was personally harmed by this purported misconduct. Moreover, such alleged statements in a legal brief are protected by a judicial proceedings privilege and would not give rise to an independent tort claim by the Plaintiff. Even if Plaintiff's allegations were correct (they are not), to hold that he has standing to bring a claim arising from these alleged misstatements in a legal brief filed by a third party would effectively invite every member of any Southern Baptist church to sue NAMB for statements made in another entity's brief.

does expand the scope of this litigation, it is improper because it would significantly prejudice NAMB (see below).

The timing of the motion, i.e. close to the close of discovery as of the date of the filing, also suggests amendment is not important. So, too, does the fact that Plaintiff's proposed amendment is nearly devoid of any specific post-April 2017 tortious conduct. A reading of the proposed amendment makes clear that Plaintiff simply wants to increase the scope of his case beyond January 2017 without actually setting forth allegations showing that such an increase is grounded in fact.

The second factor weighs in favor of NAMB.

3. NAMB will be substantially prejudiced if the Court permits the late amendment.

The third factor weighs heavily in favor of NAMB for two overarching reasons: (1) the significantly increased scope of the case at this stage in the case; and (2) the further violations of NAMB's constitutional rights under the First Amendment.

i. Plaintiff's proposed amended complaint significantly increases the scope of the litigation, without sufficiently specifying the new purported "tortious conduct," after a year of discovery.

Although Plaintiff asserts that his proposed Amended Complaint asserts "no new causes of action," this is simply untrue. (Doc. 149 at 3). While the proposed Amended Complaint does not advance a new theory of recovery (i.e. breach of contract, promissory estoppel), it significantly broadens the factual bases that underpin each of Plaintiff's claims. Without the amendment, for example, the IIED claim is limited to the alleged posting of Plaintiff's picture at NAMB's headquarters. Under the proposed Amended Complaint, Plaintiff could seek IIED damages for any wrongdoing he alleges against NAMB. The same analysis applies to his tortious interference claims. Before, they were limited to his termination from BCMD and the two symposia, one of which the Court already dismissed with prejudice. Now, they are

expanded beyond those events to any alleged "tortious conduct" that occurred after Plaintiff left BCMD.

The prejudice is compounded by Plaintiff's failure to plead the specifics of any of the purported new conduct that makes up his proposed amended complaint. For example, although Plaintiff generally alleges that "NAMB's interference with contractual and economic relations, disparagement, and infliction of emotional distress have continued since Plaintiff filed his complaint against NAMB in state court, in April 2017" (Doc. 148-1 ¶ 31), his "examples" are comments from unidentified persons at NAMB to unidentified persons at unidentified times in unidentified media that Plaintiff violated an agreement between BCMD and NAMB and called Plaintiff a liar and "delusional" (Doc. 148-1 ¶ 32). He also alleges that an unidentified non-NAMB employee suggested to an unidentified journalist that she should stop writing about Plaintiff, that NAMB has made purportedly false statements about Plaintiff in post-litigation press releases, and that a non-NAMB entity made a misstatement about Southern Baptist polity in appellate briefing in the Fifth Circuit. (Doc. 148-1 ¶¶ 32, 36, 37).

While the lack of specifics and questions regarding actual harm to Plaintiff are problematic in their own right, it is the open-ended nature of Plaintiff's proposed Amended Complaint that makes matters worse. Indeed, when pleading these "specifics," Plaintiff qualifies them as mere examples. *See, e.g.*, *id.* ¶¶ 31, 36. Accordingly, if the Court allows the amendment, NAMB will not only have to engage in discovery to learn the specifics on the limited matters Plaintiff has pled, but NAMB will also have to ask Plaintiff in discovery to spell out all other claimed tortious conduct so that NAMB knows what Plaintiff intends to tell a jury at trial. Additionally, NAMB has specifically tailored its discovery thus far with the parameters of the current complaint in mind. It has also been diligent in abiding by the deadlines set by this

Court in the CMO and has relied on them in developing its defense strategy, and the resulting discovery it served (and responded to) based on its understanding of the scope of this action. And in keeping with the Fifth Circuit's prematurity ruling, NAMB has worked to sufficiently develop the record to show its "valid religious reasons" for the challenged actions in this case. Allowing Plaintiff's proposed amendment would essentially dilute, if not render meaningless, the efforts NAMB has taken to discover the bases and support for Plaintiff's claims and NAMB's defenses.

This prejudice warrants denying Plaintiff's Motion.

ii. Allowing the amendment will further violate NAMB's constitutional rights under the First Amendment.

As this Court has previously acknowledged, "[t]he ecclesiastical abstention doctrine, rooted in the First Amendment's free exercise clause, is built out of numerous Supreme Court cases affirming that churches have the 'power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.'" Apr. 22, 2019 Order (Doc. 63) at 3 (quoting *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94 (1952)). *See also Bell v. Presbyterian Church (U.S.A.)*, 126 F.3d 328, 332 (4th Cir.1997) ("courts must defer to the decisions of religious organizations 'on matters of discipline, faith, internal organization, or ecclesiastical rule, custom or law'" (quoting *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 713 (1976))).

When the ecclesiastical abstention doctrine is again before the Court, the Court will have to determine why BCMD terminated Plaintiff, why a church rescinded an invitation for Plaintiff to speak at a church missions symposium, and whether NAMB's challenged actions were done "without right or justifiable cause"— in other words, whether NAMB had "valid religious reasons" for its alleged actions. *McRaney v. N. Am. Mission Bd. of the So. Baptist Conv., Inc.*,

966 F.3d 346, 351 (5th Cir. 2020). As NAMB has always maintained, these analyses will necessarily invade matters of faith and doctrine in addition to matters of internal organization and governance of multiple religious ministries, including NAMB. This Court previously agreed and dismissed the case. Although the Fifth Circuit reversed, it did so based on its holding that the dismissal was premature — not that dismissal was wrong. *See id.* Specifically, the Fifth Circuit held that at that stage in the litigation, the record was not sufficiently developed for the Court to say Plaintiff's claims would necessarily require the court to preside over issues "concerning theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required." *Id.*

The circumstances have changed since the Fifth Circuit made that decision. The parties have engaged in substantive discovery for more than a year, and the facts in the record will show that this Court should once again dismiss Plaintiff's current claims on First Amendment grounds. NAMB has participated, in good faith, in an extensive discovery process, which it continues to respectfully maintain is violative of its First Amendment rights. But because Plaintiff's proposed amended complaint would expand the scope of this litigation to purported, unspecified tortious conduct over an additional five-year period, NAMB would necessarily have its First Amendment rights further violated by being forced to engage in even more discovery to demonstrate that Plaintiff's new claims also do not belong in a court of law. *Cf. Whole Woman's Health v. Smith*, 896 F.3d 362, 373 (5th Cir. 2018) (in context of subpoena to non-party religious organization, explaining the unique burden of discovery on religious organizations, and particularly regarding internal communications); *id.* at 374 ("We need not and do not finally resolve whether the order enforcing discovery of the internal emails violated TCCBs constitutional rights, but the issues

raised above should have given pause to the district court before it waved away TCCB's privilege claims.").

The third factor therefore weighs significantly against amendment (and in favor of NAMB).

4. The availability of a continuance is insufficient to remedy prejudice and favors denying Plaintiff's Motion.

This Court has already rescheduled the deadlines in this case on multiple occasions. As of now, discovery is set to end in December 2022, and trial is set for June. To be clear, the parties have moved to extend those deadlines, but not to the extent necessary for NAMB to restart discovery to ensure it can defend against the expanded scope of Plaintiff's proposed Amended Complaint. To cure this prejudice, the trial date (and all earlier deadlines) would need to be pushed back even further than the deadlines requested in the most recent motion to extend. Thus, the amendment would significantly delay a trial of this matter, and it would thereby unnecessarily expend judicial resources.

Moreover, as set forth above, the act of engaging in further discovery creates its own prejudice to NAMB. No continuance could adequately remedy the substantial prejudice NAMB would experience by the impact of expanded discovery on its First Amendment rights. In that regard, a continuance does not remedy prejudice; it exacerbates it. Thus, the fourth factor weighs in favor of NAMB.

In light of the foregoing, the "good cause" factors overwhelmingly weigh in favor of NAMB and against the requested amendment. This Court should, therefore, deny Plaintiff's Motion for lack of good cause.

IV. Even if the Court applies the more lenient standard set forth in Fed. R. Civ. P. 15(a)(2), it should deny Plaintiff's Motion.

Again, Plaintiff's Motion is subject to Rule 16(b) because he filed it after the amendment deadline, and it should be denied because he has not shown and cannot show "good cause." Even if the Court applies Fed. R. Civ. P. 15(a)'s more lenient standard, however, there are substantial reasons to deny the Motion.

Although Rule 15(a)(2) provides that a court should "freely give leave when justice so requires," leave to amend is not automatic. Fed. R. Civ. P. 15(a)(2); *Bloom v. Bexar Cnty., Tex.*, 130 F.3d 722, 727 (5th Cir. 1997). The decision to grant or deny leave "is within the sound discretion of the district court," and a court may deny a request for leave when there are "substantial reason[s]" for doing so. *Marucci Sports, L.L.C. v. Nat'l Collegiate Athletic Ass'n*, 751 F.3d 368, 378 (5th Cir. 2014). In making the inquiry, the court may consider a variety of factors, including undue delay and undue prejudice to the opposing party. *Id.*

Here, for the reasons discussed in the "good cause" section above, there are "substantial reasons" for denying Plaintiff's request for leave to amend. Plaintiff's Motion is the product of "undue delay" given that he filed it years after he knew about the only specific events alleged in the proposed Amended Complaint (which all occurred in August 2020 or earlier), and eight months after this Court specifically rejected his timeframe argument and held that the relevant discovery period was from January 2013 through January 2017. And NAMB will suffer undue prejudice because it has tailored its discovery strategy based on the current allegations (and relevant time frame as establish by the district court), and because requiring it to engage in further discovery will violate its First Amendment rights.

In sum, based on the arguments set forth in the "good cause" section of this memorandum, there are "substantial reasons" for denying leave to amend even if the Court applies Rule 15(a)(2). This Court should therefore deny the Motion.

Conclusion

Plaintiff has sat on his hands and failed to abide by the deadlines set forth by this Court. NAMB should not be penalized for Plaintiff's missteps. Plaintiff's motion should be denied under Local Uniform Civil Rule 7(b) because it is untimely, under Federal Rule of Civil Procedure 16(b) because Plaintiff has failed to show good cause for the out-of-time amendment, and under Federal Rule of Civil Procedure 15(a)(2) because there are substantial reasons for denial. For the foregoing reasons, NAMB respectfully requests that this Court deny Plaintiff's Motion for Leave to File an Amended Complaint. NAMB also requests all other and further relief which the Court may deem appropriate.

Respectfully submitted, this the 21st day of November, 2022.

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Counsel for Defendant The North American Mission Board of the Southern Baptist Convention, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using this Court's ECF system, which sent notification of such filing to all counsel of record.

SO CERTIFIED, this the 21st day of November, 2022.

s/ Kathleen Ingram Carrington
KATHLEEN INGRAM CARRINGTON

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