

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
ABERDEEN DIVISION**

**JAMES MORELAND**

Plaintiff

v.

**MARIETTA WOOD SUPPLY, INC.,**

Defendant.

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**Civil Action No. 1:12-cv-100-DAS**

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**PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT  
AS TO DEFENDANT'S LIABILITY**

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COME NOW, Plaintiff JAMES MORELAND ("Plaintiff"), by and through his attorney of record, and move this Court for summary judgment under Federal Rule of Civil Procedure 56, on the grounds that there is no genuine issue as to any material fact, and Plaintiff is entitled to summary judgment as a matter of law as to Defendant's liability and is entitled to a hearing, with a jury, to determine the amount of damages owed to him by Defendant. In support of this Motion, Plaintiff would show as follows:

I.

Plaintiff asserts claims under 42 U.S.C. § 2000 et seq., Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991, for unlawful discrimination based on religious beliefs and retaliation suffered for engaging in protected activity.

II.

Rule 56 of the Federal Rules of Civil Procedure provides summary judgment shall be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact. A fact is material if it is

essential to the plaintiff's cause of action under the applicable theory of recovery, and without which the plaintiff cannot prevail.<sup>1</sup>

The party that moves for summary judgment bears the initial burden of identifying those portions of the pleadings and discovery on file, together with any affidavits, which it believes demonstrates the absence of a genuine issue of material fact.<sup>2</sup> If the moving party fails to meet this burden, the motion must be denied, regardless of the nonmovant's response.<sup>3</sup> If the movant does meet this burden, however, the nonmovant must go beyond the pleadings and designate specific facts showing that there is a genuine issue for trial.<sup>4</sup> If the nonmovant fails to meet this burden, then summary judgment is appropriate.<sup>5</sup>

To defeat Plaintiff's motion, Defendant **must** offer "significant probative evidence" from which a reasonable jury could find in his favor on every element of Plaintiff's claim.<sup>6</sup> Neither conclusory allegations nor unsubstantiated assertions will satisfy this burden.<sup>7</sup>

### III.

Plaintiff has demonstrated the following undisputed facts: (i) the Jesus decal was not consistent with his sincerely held religious beliefs, (ii) he informed Defendant of the conflict between the decal and his religious faith, (iii) he requested that the Jesus decal be removed, (iv) Defendant never responded to his request to remove the Jesus decal, (v) he informed Defendant that he had contacted the ACLU because he felt the business was forcing religion on him, (vi) Defendant admitted that Plaintiff was fired because he complained to the ACLU about the decal, (vii) Defendant admitted Plaintiff was fired because they believed he was going to sue them over the

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<sup>1</sup> *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548 (1986).

<sup>2</sup> *Id.*

<sup>3</sup> *Tubacex, Inc. v. M/V Risan*, 45 F.3d 951, 954 (5th Cir. 1995)

<sup>4</sup> *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250, 106 S.Ct. 2505, 2511, (1986).

<sup>5</sup> *Tubacex*, 45 F.3d at 954.

<sup>6</sup> *Anderson*, 477 U.S. at 249 (quoting *First Nat'l Bank of Ariz. v. Cities Serv. Co.*, 391 U.S. 253, 290 (1968)).

<sup>7</sup> *Wallace v. Tex. Tech Univ.*, 80 F.3d 1042, 1047 (5th Cir. 1996).

Jesus decal, and (viii) Defendant could have easily accommodated Plaintiff by simply removing the Jesus decal or assigning him to his previous truck.

IV.

In defending this case, Defendant has failed to offer any evidence that would create a disputed material fact or argue against liability.

V.

In support of this response, Plaintiff relies on the following evidentiary materials attached to this response:

- Exhibit A: Defendant's statement to the Equal Employment Opportunity Commission;
- Exhibit B: Deposition of Craig Pharr;
- Exhibit C: Deposition of Felicia (Lisa) Pharr;
- Exhibit D: Defendant's Responses to Plaintiff's First Set of Interrogatories, Requests for Production of Documents and Requests for Admission;
- Exhibit E: Deposition of James Moreland; and
- Exhibit F: Pictures of the Jesus Saves Decal.

VI.

Plaintiff seeks a judgment as a matter of law against Defendant as to liability, a hearing, with a jury, to determine damages, and any additional relief the Court finds just and necessary.

VII.

A brief in support of Plaintiff's Motion for Summary Judgment is being filed simultaneously herewith.

WHEREFORE, in light of the above-stated reasons, Plaintiff prays that his Motion for Summary Judgment be GRANTED, as well as any relief requested

Respectfully Submitted,

/s/ Joseph R. Murray, II

Joseph R. Murray, II

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**CERTIFICATE OF SERVICE**

I, Joseph R. Murray, II, attorney for Plaintiff, do hereby certify that I have filed the forgoing with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

Ronald D. Michael  
rmichael@rmichaellaw.com

Respectfully submitted this the 15<sup>th</sup> day of May, 2013,

/s/ Joseph R. Murray, II

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