IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION

TERRANCE WILLIAMS
AND JOYCE MULLEN **PLAINTIFFS**

v. **Case No. 5:14-cv-00040-KGB**

STANT USA CORP.
FRANKIE HART **DEFENDANTS**

OPINION AND ORDER

Plaintiffs Terrance Williams and Joyce Mullen bring this action against defendants Stant USA Corp. ("Stant") and Frankie Hart and allege claims of race discrimination and retaliation under 42 U.S.C. § 1981 (Dkt. No. 15). Before the Court is Stant's motion for partial summary judgment seeking dismissal of Mr. Williams's claims and dismissal of Ms. Mullen's discrimination claim based on *res judicata* (Dkt. No. 17). Plaintiffs have responded (Dkt. No. 26), and Stant has replied (Dkt. No. 32). Also before the Court is Mr. Hart's motion for summary judgment based on *res judicata* (Dkt. No. 23), to which plaintiffs have responded (Dkt. No. 35), and Mr. Hart has replied (Dkt. No. 40). In response to Mr. Hart's motion for summary judgment, Ms. Mullen abandons her claims against Mr. Hart (Dkt. No. 35, ¶ 6). In addition, defendants filed a supplement to their respective motions for summary judgment (Dkt No. 103). Mr. Williams, proceeding *pro se*, filed a response in opposition to the supplement (Dkt. No. 118).

After defendants filed their respective motions for summary judgment, Ms. Mullen filed motions to dismiss voluntarily her cause of action without prejudice (Dkt. Nos. 45, 106). The Court granted Ms. Mullen's motions to dismiss (Dkt. No. 113). Because Ms. Mullen had abandoned her claims against Mr. Hart in response to his motion for summary judgment, the

Court dismissed with prejudice Ms. Mullen's claims against Mr. Hart and dismissed without prejudice her remaining claims against Stant. Accordingly, defendants' motions for summary judgment are now moot as to Ms. Mullen.

For the reasons that follow, the Court grants defendants' motions for summary judgment (Dkt. Nos. 17, 23, 103).

I. Factual Background

Mr. Williams and Ms. Mullen are African-American. Mr. Williams is a former employee of Stant, and Ms. Mullen is a current employee of Stant. In plaintiffs' amended complaint, Mr. Williams alleges that defendants terminated his employment on September 1, 2010, because of his race and in retaliation for complaining to his supervisor, Mr. Hart, of racial discrimination in the workplace. Ms. Mullen alleges that Mr. Hart and Stant promoted lesser-qualified Caucasian employees over Ms. Mullen between 2010 and January 2012 and demoted Ms. Mullen for a false reason in March 2012 after she complained about discrimination.

A. State-Court Litigation

Plaintiffs previously filed in state court claims based on the same subject matter as this case. On August 31, 2011, Mr. Williams filed suit against Stant and two individuals, Lanetta Plunkett and Eddie Power, in the Circuit Court of Jefferson County, Arkansas, Case No. CV-2011-531-2, alleging employment discrimination and retaliation under the Arkansas Civil Rights Act ("ACRA") and slander based on Stant's September 1, 2010, termination of Mr. Williams's employment. On June 21, 2012, Mr. Williams voluntarily dismissed that case without prejudice.

On May 17, 2013, Mr. Williams again filed suit against Stant, Ms. Plunkett, and Mr. Power in the Circuit Court of Jefferson County, Arkansas, Case No. CV-2013-237-2, asserting claims of discrimination, retaliation, and common law defamation. An amended complaint was filed in that case on May 24, 2014, adding Ms. Mullen as a plaintiff. Plaintiffs' amended

complaint stated claims of employment discrimination and retaliation in violation of the ACRA, alleging that "Mr. Williams and Ms. Mullen are victims of Defendant [*sic*] concerted pattern of race discrimination in promotion and termination decisions." (Dkt. No. 17-5, ¶ 1). As to Mr. Williams, the amended complaint was again based on Stant's September 1, 2010, termination of his employment. As to Ms. Mullen, the amended complaint was based on a promotion she alleges she was denied on January 2012 followed by her alleged March 22, 2012, demotion after complaining about discrimination.

On May 8, 2014, Stant filed a motion to dismiss with prejudice in state court. Apparently the other defendants had been dismissed from the case at that time. Stant sought dismissal with prejudice as to all of Mr. Williams's claims and as to Ms. Mullen's failure-to-promote / discrimination claim, arguing that those claims were time-barred by the ACRA's one-year limitations period for discrimination claims, Ark. Code Ann. § 16-123-107(c)(2), and three-year limitations period for retaliation claims, *Smith v. ConAgra Foods, Inc.*, 431 S.W.3d 200, 203-04 (Ark. 2013) (holding that Arkansas's general three-year statute of limitations, Ark. Code Ann. § 16-56-105, applies to retaliation claims under the ACRA) (Dkt. No. 17-6, at 4). Specifically, Stant argued that plaintiffs failed to toll the statute of limitations under Arkansas's saving statute, Ark. Code Ann. § 16-56-126(a)(1) ("If any action is commenced within the time . . . prescribed . . . and the plaintiff therein suffers a nonsuit, . . . the plaintiff may commence a new action within one (1) year after the nonsuit suffered"), because plaintiffs did not perfect timely service of the original complaint, *see Green v. Wiggins*, 803 S.W.2d 536, 539 (Ark. 1991) (holding that a failure to obtain timely service resulted in a failure to commence the action so as to effectuate the savings provision of Ark. Code Ann. § 16-56-126). Stant also moved for dismissal with prejudice of Ms. Mullen's demotion / retaliation claim under Arkansas Rule of Civil Procedure

12(b)(8), which bars any claim where there is "pendency of another action between the same parties arising out of the same transaction or occurrence," based on Ms. Mullen's filing of her claims in this suit (Dkt. No. 17-6, at 5). Following a May 30, 2014, hearing, the state court entered an order dismissing with prejudice plaintiffs' claims against Stant, stating:

> The remaining Defendant, Stant USA Corporation, has filed a motion to dismiss this suit against it with prejudice based on the statute of limitations as to all of Plaintiff Williams' claims as well as Plaintiff Mullen's promotion claim, and under Arkansas Rule of Civil Procedure 12(b)(8) as to Plaintiff Mullen's demotion claim.
>
> Based on the motion, the Court hereby orders that Stant USA Corporation is dismissed from this action with prejudice. As Stant USA Corporation is the only remaining defendant, the Court also dismisses this action with prejudice.

(Dkt. No. 17-8).

Mr. Williams and Ms. Mullens appealed to the Arkansas Court of Appeals and argued that the dismissal should have been without prejudice. On March 11, 2015, while the current motions were pending, the Arkansas Court of Appeals affirmed the dismissal of Mr. Williams and Ms. Mullen's claims but modified the dismissal of Ms. Mullen's retaliation claim to be without prejudice, finding that Arkansas Rule of Civil Procedure 12(b)(8) did not provide a basis for dismissal. *Williams v. Stant USA Corp.*, 458 S.W.3d 755 (Ark. Ct. App. 2015). On appeal, Mr. Williams and Ms. Mullen admitted that they failed to obtain timely service on Stant and did not challenge that the relevant limitations period had expired on Mr. Williams's claims and Ms. Mullen's discrimination claim. *Id.* at 757 & nn. 1-2. However, they argued that the trial court should have dismissed those claims without prejudice to avoid the risk that the dismissals may be *res judicata* to their pending federal claims before this Court. *Id.* at 758. The Arkansas Court of Appeals rejected this argument but explicitly declined to address issues of *res judicata*, which were not before that court. *Id.* at 758 & n.4.

B. Mr. Hart

Mr. Hart was employed as Distribution Supervisor at Stant's Pine Bluff, Arkansas, plant where Mr. Williams and Ms. Mullen worked. Mr. Hart's employment with Stant ended on January 31, 2011, a year before Ms. Mullen's alleged January 2012 denied promotion and 14 months before her alleged March 22, 2012, demotion. Stant's records indicate that Mr. Hart was responsible for only one employee's promotion from January 2010 through the end of his employment, the promotion of an African-American female employee. As Distribution Supervisor, Mr. Hart was in charge of packaging and distribution at the Pine Bluff plant. Plaintiffs' amended complaint in this case alleges that Stant has a policy against racial discrimination, that Mr. Hart's actions were not authorized by Stant, but that Mr. Hart acted with "apparent authority" from Stant (Dkt. No. 15, ¶ 1).

II. Summary Judgment Standard

Summary judgment is proper if the evidence, when viewed in the light most favorable to the nonmoving party, shows that there is no genuine issue of material fact and that the defendant is entitled to entry of judgment as a matter of law. Fed. R. Civ. P. 56; *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). A factual dispute is genuine if the evidence could cause a reasonable jury to return a verdict for either party. *Miner v. Local 373*, 513 F.3d 854, 860 (8th Cir. 2008). "The mere existence of a factual dispute is insufficient alone to bar summary judgment; rather, the dispute must be outcome determinative under the prevailing law." *Holloway v. Pigman*, 884 F.2d 365, 366 (8th Cir. 1989). Summary judgment is not precluded by disputes over facts that could not, under the governing law, affect the outcome of the suit. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

Parties opposing a summary judgment motion may not rest merely upon the allegations in their pleadings. *Buford v. Tremayne,* 747 F.2d 445, 447 (8th Cir. 1984). The initial burden is on

the moving party to demonstrate the absence of a genuine issue of material fact. *Celotex Corp.*, 477 U.S. at 323. Once this burden is discharged, if the record shows that no genuine dispute exists, the burden then shifts to the non-moving party who must set forth affirmative evidence and specific facts showing there is a genuine dispute on a material factual issue. *Anderson*, 477 U.S. at 249. "The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." *Id.* at 255.

III. Stant's Motion For Summary Judgment

Stant moves for summary judgment on of all of Mr. Williams's claims and Ms. Mullen's claim alleging failure to promote based on racial discrimination. Stant argues that this Court should apply *res judicata* and find that the state-court dismissal on the basis of the statute of limitations has preclusive effect as to these claims. Because Stant's motion is now moot as to Ms. Mullen since this Court granted Ms. Mullen's motion to dismiss voluntarily her claims against Stant in this action, the Court will consider Stant's arguments as to Mr. Williams. Stant's arguments as to Mr. Williams seek summary judgment as to all of Mr. Williams's pending claims based on *res judicata*. Before addressing the merits of Stant's *res judicata* arguments, the Court considers plaintiffs' arguments as to waiver and judicial estoppel.

A. Waiver And Judicial Estoppel

Plaintiffs argue that Stant waived the defense of *res judicata* by failing to answer timely plaintiffs' original complaint in this case and by failing to move to consolidate the state cases (Dkt. No. 26, ¶ 3; Dkt. No. 28, at 3-4). The Court rejects both arguments. As to the former, the Court previously denied plaintiffs' motion for default judgment and granted Stant's motion for leave to file a late answer to plaintiffs' original complaint (Dkt. No. 12). Stant timely answered plaintiffs' complaint, as well as plaintiffs' amended complaint. As to the consolidation

argument, this court interprets plaintiffs' argument to be that Stant failed to consolidate the state case with this case, as it does not appear that there were two separate and simultaneously pending state cases to consolidate. In support, plaintiffs cite two cases in which courts found that the respective defendants waived the defense of *res judicata* by tacitly approving of the claim split. *See Klipsch, Inc. v. WWR Tech., Inc.*, 127 F.3d 729, 733-34 (8th Cir. 1997); *Baptist Health v. Murphy*, 373 S.W.3d 269, 278-79 (Ark. 2010). In both of those cases, the defendants failed to object that another action was pending on the same claim while the cases were pending simultaneously. Here, Stant objected in state court to the claim split by invoking Arkansas Rule of Civil Procedure 8, and Stant raised its *res judicata* defense to plaintiffs' complaint and amended complaint to this Court. Stant did not tacitly approve of the claim split.

Plaintiffs also argue that Stant is judicially estopped from asserting *res judicata* as an affirmative defense. The purpose of the doctrine of judicial estoppel is "to protect the integrity of the judicial process by prohibiting parties from deliberately changing positions according to the exigencies of the moment." *New Hampshire v. Maine*, 532 U.S. 742, 748 (2001) (internal quotation marks and citations omitted). "[A] party that takes a certain position in a legal proceeding, and succeeds in maintaining that position, is prohibited from thereafter assuming a contrary position simply because his interests have changed." *Stallings v. Hussmann Corp.*, 447 F.3d 1041, 1047 (8th Cir. 2006) (quoting *New Hampshire*, 532 U.S. at 748) (internal quotation marks omitted). Judicial estoppel is an equitable doctrine that is invoked by a court at its discretion. *New Hampshire*, 532 U.S. at 748.

Plaintiffs argue that "Defendants should be judicially estopped from asserting the defense of *res judicata* since they have asserted that Plaintiffs would not be prejudiced to this Court." (Dkt. No. 28, at 8). The Court assumes that plaintiffs are referring to Stant's assertion in its

motion for leave to file a late answer that plaintiffs would not be prejudiced by allowing Stant to file a late answer with its affirmative defenses, including *res judicata*. The Court rejects this argument for invoking judicial estoppel. For judicial estoppel to apply, "a party's later position must be clearly inconsistent with its earlier position." *Stallings*, 447 F.3d at 1047 (quoting *New Hampshire*, 532 U.S. at 750-51). In seeking leave to file a late answer and opposing plaintiffs' motion for default judgment, Stant argued that plaintiffs would not be prejudiced by a 32-day delay in answering plaintiffs' complaint (Dkt. No. 5-1, ¶ 12). Nothing about that argument is inconsistent with Stant's assertion of *res judicata*. Further, Stant filed a supplemental motion that argued that Stant's *res judicata* affirmative defense had merit (Dkt. No. 9).

B. Merits of Stant's *Res Judicata* Defense

The preclusive effect of a prior state-court judgment is determined by the Constitution's Full Faith and Credit Clause, Article IV, § 1, as implemented by the federal Full Faith and Credit Statute, 28 U.S.C. § 1738. *Rick v. Wyeth, Inc.*, 662 F.3d 1067, 1069 (8th Cir. 2011). "It is now settled that a federal court must give to a state-court judgment the same preclusive effect as would be given that judgment under the law of the State in which the judgment was rendered." *Migra v. Warren City Sch. Dist. Bd. of Educ.*, 465 U.S. 75, 81 (1984).

"The concept of *res judicata* has two facets, one being issue preclusion and the other claim preclusion." *Lindsey v. Green*, 369 S.W.3d 1, 4 (Ark. 2010) (citing *Carwell Elevator Co. v. Leathers*, 101 S.W.3d 211 (Ark. 2003)). "Under claim preclusion, a valid and final judgment rendered on the merits by a court of competent jurisdiction bars another action by the plaintiff or his privies against the defendant or his privies on the same claim." *Id.* As in other states, under Arkansas law, *res judicata* bars relitigation of a subsequent suit when: (1) the first suit resulted in a final judgment on the merits; (2) the first suit was based upon proper jurisdiction; (3) the

first suit was fully contested in good faith; (4) both suits involve the same claim or cause of action; and (5) both suits involve the same parties or their privies. *Jayel Corp. v. Cochran*, 234 S.W.3d 278, 281 (Ark. 2006)

The purpose of *res judicata* is to put an end to litigation by preventing a party who had one fair trial on a matter from relitigating the matter a second time. *Kulbeth v. Purdom*, 805 S.W.2d 622, 623 (Ark. 1991). *Res judicata* bars not only the relitigation of claims which were actually litigated in the first suit, but also those that could have been litigated. *Id.* Where a case is based on the same events as the subject matter of a previous lawsuit, *res judicata* will apply even if the subsequent lawsuit raises new legal issues and seeks additional remedies. *Id*. However, *res judicata* is only applicable when the party against whom the earlier decision is being asserted had a fair and full opportunity to litigate the issue in question. *Lindsey*, 369 S.W.3d at 4; *Carwell Elevator*, 101 S.W.3d at 217.

Stant argues that plaintiffs could have included their 42 U.S.C. § 1981 claims in the state-court suit. It is undisputed that both lawsuits are based on the same events and subject matter. The parties have briefed this issue of whether dismissals on statute of limitations grounds constitute decisions on the merits for *res judicata* purposes. Stant states that, while Arkansas appellate courts do not appear to have addressed whether dismissals on statute of limitation grounds constitute decisions on the merits for *res judicata* purposes, the Eighth Circuit has recognized that Minnesota, New York, Missouri, and Louisiana so hold. *See Rick v. Wyeth, Inc.*, 662 F.3d 1067, 1070-72 & n.2 (8th Cir. 2011) (applying New York law and noting Minnesota law); *Tramble-Bey v. Skiba*, 25 F. App'x 486, 488 (8th Cir. 2002) ("Missouri law holds that 'dismissal of an action on the basis of the statute of limitations is a final adjudication on the merits for purposes of *res judicata*.'" (quoting *Jordan v. Kansas City*, 929 S.W.2d 882, 886

(Mo. App. 1996))); *Austin v. Super Valu Stores, Inc.*, 31 F.3d 615, 618 (8th Cir. 1994) ("Both Minnesota and Louisiana law, as well as some federal courts, grant preclusive effect to dismissals based on statute of limitations grounds."). Stant states that there is every reason to believe that the Arkansas Supreme Court would reach the same results, but Stant offers little to support that conclusion. Indeed, Stant makes no attempt to explore the reasoning of courts from other states or whether this is the majority or minority view on the issue. Nor does Stant cite any Arkansas cases dealing with other *res judicata* issues that might shed light on how Arkansas courts would decide the issue.

The Court again notes that in the parties' state-court litigation the Arkansas Court of Appeals declined to shed light on this issue, as it was not before that court. 458 S.W.3d at 758 n.4. Before the court of appeals, Mr. Williams's did not contest the trial court's finding that he failed to obtain service on the state-court defendants in compliance with Arkansas Rule of Civil Procedure 4(i). Likewise, Mr. Williams did not contest that the statute of limitations had run as to his ACRA and tort claims. Because these two issues were not contested, the court of appeals determined that the trial court's dismissal with prejudice, as opposed to a dismissal without prejudice, was proper because Mr. Williams failed to obtain service and the statute of limitations had expired for each of his claims. *Williams*, 458 S.W.3d at 758 ("'[T]he dismissal without prejudice language [in Rule 4(i)] does not apply if the plaintiff's action is otherwise barred by the running of a statute of limitations.' *McCoy*, 370 Ark. at 337, 259 S.W.3d at 433–34. Therefore, the circuit court properly dismissed [Mr. Williams's] ACRA and tort claims with prejudice.").

Federal courts are required to respect the decisions of state courts. According to 28 U.S.C. § 1738, "[t]he records and judicial proceedings of any court of any. . . State . . . shall have

the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State." Therefore, federal courts are limited to the extent the federal court cannot give review to claims that have already been fully adjudicated in state court. If a state court would not hear the case because it was precluded by a previous holding in that state's courts, the federal courts must "give the same preclusive effect to state court judgments that those judgments would be given in the courts of the State from which the judgments emerged." *Kremer v. Chem. Constr. Corp.*, 456 U.S. 461, 466 (1982) (footnote omitted). Federal courts do not provide a forum to relitigate claims previously decided adversely in state courts. *Sparkman Learning Ctr. v. Arkansas Dep't of Human Servs.*, 775 F.3d 993, 998 (8th Cir. 2014).

Under 28 U.S.C. § 1738, this Court applies a state's law to decide whether claims previously decided in that state's courts, which are then brought in federal court, are precluded by the prior state court judgment. Arkansas law bars relitigation under claim preclusion when: (1) the first suit resulted in a final judgment on the merits; (2) the first suit was based on proper jurisdiction; (3) the first suit was fully contested in good faith; (4) both suits involve the same claim or cause of action; and (5) both suits involve the same parties or their privies. *Baptist Health v. Murphy*, 373 S.W.3d 269, 278 (Ark. 2010). Under Arkansas law, where a dismissal is with prejudice, it is conclusive of the rights of the parties as if the suit had been prosecuted to a final adjudication adverse to the plaintiff. *Crooked Creek, III, Inc. v. City of Greenwood*, 101 S.W.3d 829, 833 (Ark. 2003); *see also Orr v. Hudson*, 374 S.W.3d 686, 691 (Ark. 2010) ("a dismissal of a cause of action with prejudice is a final adjudication on the merits"); *Hicks v. Allstate Ins. Co.*, 799 S.W.2d 809, 810 (Ark. 1990) (quoting *Union Indemnity Co. v. Benton County Lumber Co.*, 18 S.W.2d 327 (Ark. 1929) ("This term [with prejudice] has a well

recognized legal import; it is the converse of the term without prejudice; and is as conclusive of the rights of the parties as if the suit had been prosecuted to a final adjudication adverse to the plaintiff.")).

In reaching this conclusion, the Court is mindful that the Arkansas Supreme Court has indicated that there are limitations to the doctrine of *res judicata*. *See Lindsey v. Green*, 369 S.W.3d 1, 7 (Ark. 2010) (holding that a federal court dismissal for failure to file with the EEOC was not a judgment "on the merits" that would operate to bar appellants' state law claims under *res judicata*). In *Lindsey*, the Arkansas Supreme Court cited the following passage with approval:

> A valid and final personal judgment for the defendant, which rests on the prematurity of the action or on the plaintiff's failure to satisfy a precondition to suit, does not bar another action by the plaintiff instituted after the claim has matured, or the precondition has been satisfied unless a second action is precluded by operation of the substantive law. *Cox v. Keahey*, 84 Ark.App. 121, 133 S.W.3d 430 (2003) (quoting Restatement (Second) of Judgments § 20(2) (1982)).

Id.

This Court is not faced with a situation in which the valid and final judgment dismissing Mr. Williams's claim with prejudice rested on the prematurity of the action or on Mr.Williams's failure to satisfy a precondition to suit. The "prematurity of the action" or the "failure to satisfy a precondiction to suit," implies that the cause of action has not yet accrued when the plaintiff files suit. Thus, a dismissal for those reasons does not operate to bar a second action once the cause of action has accrued. In contrast, the statute of limitations cannot begin to run until the cause of action has accrued. *See, e.g.*, *Dupree v. Twin City Bank*, 777 S.W.2d 856, 858 (Ark. 1989) ("[I]f the right of action depends upon some contingency or a condition precedent, the cause of action accrues and the statute of limitations begins to run when the contingency occurs or the condition precedent is complied with.").

This Court also notes that under Arkansas law a plaintiff may pursue independent state and federal cases against the same defendant based on the same events. Arkansas recognizes that federal district courts and state courts are separate jurisdictions and identical cases between the same parties can be pending in each court at the same time. *Carter v. Owens-Illinois, Inc.*, 551 S.W.2d 209, 209–10 (Ark. 1977). However, the "first forum to dispose of the case" enters "a judgment that is binding on the parties. *Nat'l Bank of Commerce v. Dow Chem. Co.*, 1 S.W.3d 443, 447 (Ark. 1999). Here, the state court was the first court to enter a judgment and dismiss Mr. Williams's claims with prejudice. Under Arkansas law, that dismissal with prejudice operates as an adjudication on the merits. That judgment is binding on the parties, and this Court will not disturb that judgment or the well-settled Arkansas law regarding dismissal with prejudice. The court of appeals determined that the dismissal of Mr. Williams's claims with prejudice was proper. This Court will not review that decision.

It is well established that claim-splitting is discouraged. All claims must be brought together, and cannot be parsed out to be heard by different courts. *Elgin v. Dep't of Treasury*, ___ U.S. ___, 132 S.Ct. 2126, 2147, 183 L.Ed.2d 1 (2012). A claim is barred by *res judicata* if it arises out of the same nucleus of operative facts as the prior claim. *Banks v. Int'l Union Elec., Elec., Technical, Salaried & Mach. Workers*, 390 F.3d 1049, 1052 (8th Cir. 2004). Where a plaintiff fashions a new theory of recovery or cites a new body of law that was arguably violated by a defendant's conduct, *res judicata* will still bar the second claim if it is based on the same nucleus of operative facts as the prior claim. *Id*. In effect, "*res judicata* bars relitigation not only of those matters that were actually litigated, but also those which could have been litigated in the earlier proceeding." *King v. Hoover Group, Inc.*, 958 F.2d 219, 223 (8th Cir.1992). Mr. Williams's claims before this Court arise from the same nucleus of operative facts as his claims

in state court. Thus, Mr. Williams could have pursued those claims in the state court litigation, but he chose not to do so. He took the risk that the state court would decide his claims first and would preclude this Court from reaching the merits of his claims. This Court will not permit Mr. Williams to continue to pursue litigation based on the same set of facts when the state court has dismissed his claim with prejudice.

While the "traditional rule" in claim preclusion "is that expiration of the applicable statute of limitations merely bars the remedy and does not extinguish the substantive right, so that dismissal on that ground does not have claim-preclusive effect in other jurisdictions with longer, unexpired limitations periods," *Semtek Int'l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 504 (2001), the outcome in this case is dictated by Arkansas state law holding that dismissals with prejudice are adjudications on the merits for *res judicata* purposes. This Court will not alter the rules of the state in which it sits. Simply put, this case is distinguishable from the facts of *Semtek* because the state court would not permit Mr. Williams to pursue his § 1981 claim—which arose from the same nucleus of operative facts as his prior claims—after his prior claims were dismissed with prejudice.

IV. Frankie Hart's Motion for Summary Judgment

Relying on Stant's motion for partial summary judgment, Mr. Hart argues that *res judicata* also bars Mr. Williams's claims and Ms. Mullen's failure-to-promote / discrimination claim as against him because he was an agent of Stant. Mr. Hart also moves for summary judgment as to Ms. Mullen's claims on the basis that his employment with Stant ended on January 31, 2011, a year before Ms. Mullen's alleged January 2012 denied promotion and 14 months before her alleged March 2012 demotion.

As stated above, Ms. Mullen, in response to Mr. Hart's motion for summary judgment, abandoned her claims against Mr. Hart (Dkt. No. 35, ¶ 6). As a result, the Court dismissed with prejudice Ms. Mullen's claims against Mr. Hart when granting her motion to dismiss (Dkt. No. 113). Accordingly, Mr. Hart's motion is moot as to Ms. Mullen's claims. As to Mr. Williams's claims, the Court grants Mr. Hart's motion for summary judgment. The Arkansas Supreme Court has made clear that neither privity nor an agency relationship between the successive defendants is a prerequisite to application of *res judicata*. *Davidson v. Lonoke Prod. Credit Ass'n*, 695 F.2d 1115, 1120 (8th Cir. 1982) (citing *Rose v. Jacobs*, 329 S.W.2d 170 (Ark. 1959)). What is of import for *res judicata* purposes is that the plaintiff had his day in court on the identical issue. *Id*. As the *Rose* court held:

> [T]he true reason for holding an issue res judicata is not necessarily the identity or privity of the parties, but the policy of the law to end litigation by preventing a party who has had one fair trial of a question of fact from again drawing it into controversy, and that a plaintiff who deliberately selects his forum is bound by an adverse judgment therein in a second suit involving the same issues, even though defendant in the second suit was not a party, nor in privity with a party, in the first suit.

Rose, 329 S.W.2d 170, 172.

The Arkansas Supreme Court has never required strict privity in the application of *res judicata*; instead, it has supported the idea that there must be a "substantial identity of parties" to apply the doctrine. *Jayel Corp. v. Cochran*, 234 S.W.3d 278, 281–82 (Ark. 2006) (citing *Wells v. Heath*, 269 Ark. 473, 602 S.W.2d 665 (1980); *Rose v. Jacobs*, 231 Ark. 286, 329 S.W.2d 170 (1959)). For example, that court has found privity for purposes of *res judicata* between a brother and a sister in a claim alleging civil conspiracy and tortious interference, *Francis v. Francis*, 343 Ark. 104, 31 S.W.3d 841 (2000) (holding that son's settlement with father involving a guardianship proceeding was *res judicata* as to father's subsequent suit against daughter); between an insurer and its insured, *Southern Farm Bureau Casualty Insurance Co. v. Jackson*,

262 Ark. 152, 555 S.W.2d 4 (1977) (holding that privity exists where insurer provided defense of insured except where the interests of the insured and insurer conflicted); and between a husband and wife in a land-dispute lawsuit, *Collum v. Hervey*, 176 Ark. 714, 3 S.W.2d 993 (1928) (holding that a title quieted against a husband was conclusive against the wife who had not been a party in the original lawsuit). *See also Hardie v. Estate of Davis*, 312 Ark. 189, 848 S.W.2d 417 (1993); *Phelps v. Justiss Oil Co.*, 291 Ark. 538, 726 S.W.2d 662 (1987); *Southern Farm Bureau Cas. Ins. Co. v. Jackson*, 262 Ark. 152, 555 S.W.2d 4 (1977); *Curry v. Hanna*, 228 Ark. 280, 307 S.W.2d 77 (1957).

When dealing with *res judicata* in the principal-agent context, the Arkansas Supreme Court has all but done away with the privity requirement, choosing instead to focus on whether or not the plaintiff is attempting to relitigate an issue that has already been decided. *Jayel Corp.*, 234 S.W.3d at 282. In *Russell v. Nekoosa Papers, Inc.*, 547 S.W.2d 409 (Ark. 1977), two men were killed in a car accident involving two employees of Nekoosa Papers, Inc. The administrators for the deceaseds brought a negligence action against the employees, resulting in a settlement agreement between the parties. The terms of the settlement released the employees from any litigation, but reserved the right to bring a claim against any other parties with potential liability. *Russell*, 547 S.W.2d 409. Two years later, the administrators brought an action against Nekoosa based on respondeat superior.

In dismissing the action, the *Russell* court articulated Arkansas's approach regarding *res judicata* in cases involving an employer-employee relationship:

> We agree with the appellants that it is well settled that the relationship of an employer-employee is not privity for the purpose of the application of the doctrine of res judicata. Appellants, however, recognize that this court has in the past discussed terms as to "an extension of res judicata" to one not a party or privy to an action. Here appellants recognize that these cases are identified as "exceptions" to the privity requirement . . .

> since appellee's liability, if any, is derivative of their alleged negligence, the present action would be a relitigation of that issue and, consequently, the action is barred.

Id. at 410 (citations omitted).

Here, Mr. Williams contends that Mr. Hart acted with "apparent authority" from Stant (Dkt. No. 15, 1). This Court interprets Mr. Williams's "apparent authority" argument to be that Mr. Hart was an agent of Stant. Under Arkansas precedent, *res judicata* prohibits Mr. Williams's from pursuing a claim against Stant's agent, Mr. Hart, when his claim against the principal has previously been dismissed with prejudice and the claim against the agent arises from the same nucleus of operative facts. Even absent an actual agent-principal relationship between Stant and Mr. Hart, this Court determines that Mr. Hart has a "substantial identity" with Stant such that *res judicata* bars Mr. Williams's attempt to pursue a second lawsuit against Mr. Hart based on the same set of facts that he pursued against Stant.

V. Conclusion

For the reasons above, this Court grants Stant's and Mr. Hart's respective motions for summary judgment (Dkt. Nos. 17, 23, 103). The Court denies as moot all remaining pending motions (Dkt. Nos. 50, 65, 114).

SO ORDERED this the 30th day of September, 2015.

Kristine G. Baker
United States District Judge