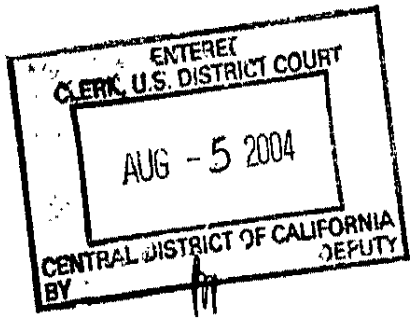

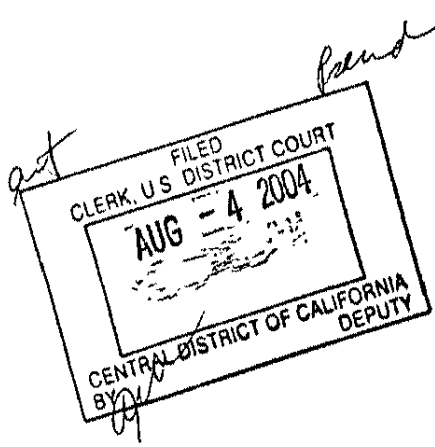

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

United States Equal Employment Opportunity Commission,

Plaintiff,

Donald Lagatree,

Plaintiff-in-Intervention,

vs.

Luce, Forward, Hamilton & Scripps, LLP,

Defendant.

CV 00-01322 FMC (CTx)

Order Re Cross-Motions for Summary Judgment

This matter is before the Court on the Motions for Summary Judgment of Plaintiff-in-Intervention Donald Lagatree and Defendant Luce, Forward, Hamilton & Scripps (docket #77, 84). The Court deems this matter appropriate for decision without oral argument. See Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearing set for August 9, 2004, is removed from the Court's calendar. For the reasons set forth below, the Defendant's Motion is granted, and the Plaintiff-in-Intervention's Motion is denied.

102

I. Background

This matter is before the Court on remand from the Ninth Circuit Court of Appeals. The facts of action, which are only briefly summarized below, are set forth in more detail in this Court's November 21, 2000, opinion, as well as the panel and *en banc* decisions of the Ninth Circuit. *See EEOC v. Luce, Forward, Hamilton & Scripps*, 122 F. Supp. 2d 1080 (C.D. Cal. 2000), *vacated and remanded,* 303 F.3d 994 (2002) (panel decision), *withdrawn by* 345 F.3d 742 (2003) (*en banc*) (remanding in part).

In this action, Plaintiff United States Equal Employment Opportunity Commission ("EEOC") brought claims on behalf of Plaintiff-in-Intervention Lagatree ("Lagatree"). These claims were based on the failure of Defendant Luce, Forward, Hamilton & Scripps ("LFHS") to hire Lagatree. LFHS refused to hire him based on Lagatree's refusal to execute an agreement that would have required him to submit to binding arbitration, pursuant to the Federal Arbitration Act, 9 U.S.C. §§ 1 *et seq.*, any "claims arising from or related to [his] employment or termination of [his] employment."

The EEOC also brought claims on its own behalf, in its role to protect the public interest by preventing employment discrimination. It sought injunctive relief prohibiting LFHS from conditioning employment on an applicant's willingness to execute an arbitration agreement.

On November 21, 2000, this Court issued an order that held that the claims for monetary damages asserted on behalf of Lagatree were barred by *res judicata*,[1] but that Plaintiff EEOC was entitled to an injunction. 122 F. Supp. 2d at 1086.

The Court rejected LFHS's argument that the EEOC was also precluded, on *res judicata* grounds, from seeking injunctive relief. *Id.* at 1089.

---

[1] That portion of the Court's order was not the subject of the subsequent appeal.

The Court therefore analyzed whether, under the case law in effect at the time of its decision, the EEOC was entitled to the injunction it sought. *Id.* at 1089-93. The Court held that, under *Duffield v. Robertson Stephens & Co.*, 144 F.3d 1182 (9th Cir. 1998), an employer may not condition employment on an arbitration agreement. *Luce, Forward*, 122 F. Supp. 2d at 1093. Accordingly, the Court issued an injunction prohibiting LFHS from requiring employees to agree to arbitrate their Title VII claims as a condition of employment, or attempting to enforce any previously executed agreements to arbitrate Title VII claims. *Id.*

On appeal, a three-judge panel of the Ninth Circuit reversed the Court's order with respect to the injunction. The panel held that the Supreme Court's decision in *Circuit City Stores v. Adams*, 532 U.S. 105, 121 S. Ct. 1302 (9th Cir. 1998), implicitly overruled *Duffield*, necessitating reversal of the Court's injunction. 303 F.3d at 997, 1002-03 ("Although *Circuit City* did not repudiate *Duffield* by name, the Supreme Court's language and reasoning decimated *Duffield*'s conclusion that Congress intended to preclude compulsory arbitration of Title VII claims.").

On rehearing *en banc*, the Ninth Circuit withdrew the panel opinion. 345 F.3d at 744-45. The *en banc* court noted its disagreement with the panel decision's conclusion that *Circuit City* implicitly overruled *Duffield*. Nevertheless, the *en banc* court concluded that *Duffield* had been wrongly decided, and therefore explicitly overruled it. *Id.* at 745. The *en banc* court then reversed this Court's injunction. *Id.* at 754.

One issue was remanded to this Court. *Id.* at 753-54. The *en banc* court noted that the EEOC, in its cross-appeal, argued that even if *Duffield* was overruled, employers who condition employment on the applicant's willingness to enter into an arbitration agreement violate the anti-retaliation provisions of Title VII and related federal employment discrimination

statutes. *Id.* The *en banc* court stated that it appeared that, "if an employer can compel its employees to submit all claims arising out of their employment to arbitration, no retaliation would be involved in an employer's exercise of that right." *Id.* at 754. Nevertheless, in considering what it believed to be a "novel theory"[2] of how such a claim could be actionable, the *en banc* court noted that this argument had not been fully developed on appeal, and therefore left it to the district court to address on remand. *Id.*

Upon remand, the EEOC and LFHS entered into a settlement agreement.[3] The settlement agreement first recites the basic facts underlying this action, and its procedural history. The agreement then sets forth certain procedures and notice requirements that must be followed by LFHS with respect to employee arbitration agreements. The agreement also notes the release of all of the EEOC's claims and a dismissal thereof with prejudice. The agreement explicitly acknowledges that Lagatree is not a party to the settlement agreement "and that he may proceed with this action to the extent he is permitted to do so by law." *Id.* at ¶ 6.

II. Standing

Defendant challenges Lagatree's standing to assert any further claims. The Court's order that dismissed Lagatree's claims limited its dismissal to claims that sought monetary relief. 122 F. Supp. 2d at 1086. The Court distinguished between claims made by the EEOC on behalf of Lagatree for monetary relief, and claims made by the EEOC "in its role to protect the

---

[2] The *en banc* court did not elaborate on the substance of this theory. *See id.*

[3] A copy of the settlement agreement is attached as Ex. 1 to Lagatree's Memorandum in Opposition to Defendant's Motion for Summary Judgment.

public interest in preventing employment discrimination." *Id.* at 1088. Because the Court granted the injunction sought by the EEOC, there was no reason for the Court to consider whether Lagatree could independently pursue a claim for injunctive relief. Defendant now frames this issue in terms of standing.

Standing is a threshold requirement in every federal case. *Warth v. Seldin*, 422 U.S. 490, 498, 95 S.Ct. 2197, 2205 (1975). As an aspect of justiciability, the standing question is whether the plaintiff has alleged such a personal stake in the controversy as to warrant his invocation of federal court jurisdiction. *Id.* Standing "is an essential and unchanging part of the case-or-controversy requirement of Article III." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, 112 S. Ct. 2130, 2136 (1992). It is an integral component of subject matter jurisdiction. *Bender v. Williamsport Area School District*, 475 U.S. 534, 541-43, 106 S. Ct. 1326, 1331- 32 (1986).

A plaintiff has standing to seek injunctive relief only when the possibility of future injury is particular and concrete. *O'Shea v. Littleton*, 414 U.S. 488, 496-497, 94 S. Ct. 669, 676-677 (1974). In other words, a plaintiff must demonstrate that a "credible threat" exists that he will again be subjected to the specific injury for which he seeks injunctive or declaratory relief. *Kolender v. Lawson*, 461 U.S. 352, 355 n. 3, 103 S. Ct. 1855 (1983). "Past exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief . . . if unaccompanied by any continuing, present adverse effects." *Id.* at 495-496; *see also City of Los Angeles v. Lyons*, 461 U.S. 95, 103 S. Ct. 1660 (1983) (holding that plaintiff once subject to police stranglehold lacked standing to seek injunctive relief without showing likely future injury from police brutality); *Hodgers-Durgin v. De La Vina*, 199 F.3d 1037 (9th Cir.1999) (holding that motorists who were stopped near the United States/Mexico border allegedly due to their

Hispanic appearance had no standing to pursue injunctive relief against officials of the United States Border Patrol; the fact that the motorists had each been stopped only one time in approximately ten years established that it was unlikely they would be stopped again).

Lagatree has not declared any intention of again seeking employment with LFHS. As such, he has not demonstrated a "credible threat" that he will be subjected to the conduct which he contends is illegal.[4] Therefore, Lagatree lacks standing to pursue a claim for injunctive relief, and any claim for injunctive relief must be dismissed for lack of subject matter jurisdiction.

III. Lagatree Has Not Filed a Complaint-in-Intervention

Perhaps even more fundamental than Lagatree's lack of standing is the absence of any claim asserted by him in the operative Complaint. On behalf of Lagatree, the EEOC asserted a claim in the Complaint seeking "make-whole relief," including the injunctive relief of hiring plaintiff. (*See* Compl. at 4, ¶ C) (seeking an order "to make whole Lagatree by providing appropriate affirmative relief necessary to eradicate the effects of its unlawful employment practices, including but not limited to rightful place employment"). The EEOC also sought an injunction prohibiting LFHS from engaging in unlawful retaliation and from using a mandatory arbitration agreement. (*Id.* at ¶ A-B).

Although this relief would have benefitted Lagatree, but it is unclear if it was sought specifically on his behalf, or solely on behalf of the EEOC in its enforcement role. If it was brought by the EEOC solely on its own behalf,

---

[4] The Court previously held that the EEOC could pursue its claim for injunctive relief notwithstanding the dismissal of Lagatree's claim. As explained more fully below in the next section, this is so because the EEOC has a special role as the governmental agency charged with enforcement of federal antidiscrimination laws.

the Ninth Circuit reversed the Court's issuance of the preliminary injunction in part, and the EEOC settled the remaining part of this claim. Therefore, any claim for injunctive relief has been finally resolved.

Assuming, however, the claim was brought on Lagatree's behalf, it is still significant that it was not asserted by Lagatree himself. The Ninth Circuit permitted Lagatree to intervene in the appeal, but that intervention did not transmute the EEOC's claim for injunctive relief into a claim asserted by Lagatree. *Cf. Benavidez v. Eu*, 34 F.3d 825, 831 (9th Cir. 1994) (permitting intervenors to pursue an action after dismissal of the original plaintiffs but referencing a "complaint-in-intervention"). Lagatree has filed no complaint-in-intervention.

In support of his argument that he should be permitted to pursue the claim for injunctive relief notwithstanding the EEOC's settlement, Lagatree cites a case in which the EEOC was permitted to pursue a claim for injunctive relief after an employee settled her claims with the employer. *See EEOC v. Goodyear Aerospace Corp.*, 813 F.2d 1539, 1542 (9th Cir. 1987). This case is unpersuasive. The EEOC in *Goodyear* was permitted to pursue its claim based on its special status as the agency charged with enforcement of the nation's antidiscrimination laws. *Id.* at 1542-43. The court noted that the EEOC's right of action is independent of the employee's private right of action and that the EEOC sought "class-action type relief" on behalf of the public. *Id.* Lagatree enjoys no such special status.

In short, the preliminary injunction granted in favor of the EEOC was reversed in part, and remanded in part. The portion that was remanded has been settled by the EEOC. There are simply no claims remaining in the operative complaint.

IV. The Proposed Claim is Barred on Res Judicata Grounds

In any event, to the extent that the Complaint could be read to assert (or a complaint-in-intervention could be filed to assert) a claim for injunctive relief by Lagatree as an individual, those claims are barred by *res judicata*. The Court's original order dismissed, on *res judicata* grounds, Lagatree's claims "to the extent the claims asserted in the Complaint seek monetary relief." 122 F. Supp. 2d at 1086. As noted previously, because the Court granted the injunction sought by the EEOC, there was no reason for the Court to consider whether Lagatree could independently pursue a claim for injunctive relief. There is reason to consider that issue now.

As noted at length in the Court's previous order, the Court looks to California law to determine the preclusive effect that must be given to a state-court judgment, and California follows the "primary right" theory of *res judicata*. 122 F. Supp. 2d 1084. Under this theory, courts must consider what "primary right" of the plaintiff is alleged to have been violated, the corresponding "primary duty" of the defendant, and a wrongful act by the defendant constituting a breach of that duty. *Id.* at 1084-85. A violation of a primary right gives rise to but one "cause of action," regardless of the number of legal theories pursuant to which the plaintiff's injury may be actionable. *Id.* at 1085. When a previous action has resulted in a final judgment on the merits, the plaintiff may not then base a second action on the same primary right, even if he advances the claim on different legal theories. *Id* Applying this theory, Lagatree's purported claim for injunctive relief in the present action, like the claims for monetary damages, is also barred on *res judicata* grounds because the primary right alleged to have been violated is the same primary right alleged to have been violated in the state-court action.

Lagatree argues that the Ninth Circuit has resolved the issue of

whether he may assert his claim for injunctive relief. The Ninth Circuit, he argues, granted him the right to intervene notwithstanding the fact that the Court dismissed his claims for monetary relief on *res judicata* grounds.

However, the standard for intervention is not whether the intervenor has a viable claim; rather, the standard is whether the intervenor has an interest in the action. *See* Fed. R. Civ. P. 24(a). At the time the Ninth Circuit granted intervention, the validity of the Court's injunction in favor of the EEOC (which benefitted Lagatree, and which the Court held the EEOC could pursue notwithstanding the dismissal of Lagatree's claims for monetary relief) was still an open question. Lagatree was able to intervene to protect his own interest that was implicated by the EEOC's claim. The granting of his motion to intervene by the Ninth Circuit while the EEOC's claim was still being adjudicated does not in any way imply that Lagatree could pursue his own claim for injunctive relief in the absence of the EEOC's claim.

Unlike the proceedings in the Ninth Circuit, on remand, the EEOC is no longer asserting any claim. Lagatree may not pursue that claim in the EEOC's absence.

V. Conclusion

Lagatree lacks standing to assert a claim for injunctive relief in this action. Moreover, he has not asserted a claim in the operative complaint. Finally, any claim for injunctive relief asserted by him would be barred on *res judicata* grounds.

For all these reasons, the Court denies the Motion for Summary Judgment of Plaintiff-in-Intervention Donald Lagatree (docket #84), and the Court grants the Motion for Summary Judgment of Defendant Luce, Forward, Hamilton & Scripps (docket #77).

The Clerk shall enter the previously lodged proposed judgment.

Dated: August 4, 2004

FLORENCE-MARIE COOPER, JUDGE
UNITED STATES DISTRICT COURT