

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION**

CHARLES LOWMAN, ET AL

CIVIL ACTION NO: 10-1603

VERSUS

JUDGE DONALD E. WALTER

RICKY WHITAKER, ET AL

MAGISTRATE JUDGE HORNSBY

ORDER

The above captioned case was originally filed with this court on October 20, 2010. It has now been pending for over three years. This court has dismissed all defendants with the exception of Ricky Whitaker. Jury trial was previously scheduled to commence on December 17, 2013. A week before trial Plaintiffs filed a Voluntary Motion to Dismiss their claims against Ricky Whitaker without prejudice. Plaintiffs were advised via telephone that Ricky Whitaker's consent would be required before the court would consider the motion. It is the court's understanding that Plaintiffs have been unable to locate Ricky Whitaker.

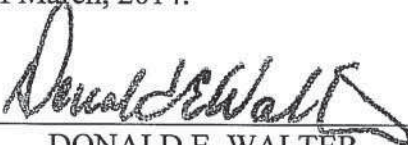
However, it has come to the court's attention that if Plaintiffs wish to have their previously dismissed claims reviewed by the Fifth Circuit Court of Appeals the remaining claims against Ricky Whitaker must be disposed of by a trial on the merits or be dismissed with prejudice. "It is a well settled rule in the Fifth Circuit that appellate jurisdiction over a non-final order cannot be created by dismissing the remaining claims without prejudice." *Swope v. Columbian Chemicals, Co.*, 281 F.3d 185, 192 (5th Cir. 2002).

This matter cannot remain on the court's docket indefinitely without resolution. Accordingly, Plaintiffs are ordered to advise the court whether they are prepared to appear at a jury trial set for **April 21, 2014**, to present their claims against Ricky Whitaker, or whether they will voluntarily

dismiss their claims against Ricky Whitaker with prejudice. Failure to choose either of these options will result in the dismissal of Plaintiffs' claims against Ricky Whitaker with prejudice due to lack of prosecution.

Plaintiffs must advise the court of their decision in writing on or before **Wednesday, March 26, 2014.**

THUS DONE AND SIGNED, this 6th day of March, 2014.



DONALD E. WALTER
UNITED STATES DISTRICT JUDGE