

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

OCTAVIUS DAVIS,

Plaintiff,

v.

Case No: 6:18-cv-269-Orl-41KRS

**JOHN BARBATO, GINA LAMPONE,
RENEE GORTH, RANDY, DANNY,
JOHN DOE, BROWARD FACTORY
SERVICE, CROCKETT HERD,
CHRISTINE WALTON and HERD
ENTERPRISE INC,**

Defendants.

ORDER

THIS CAUSE is before the Court on Defendants' Motion to Dismiss or, in the Alternative, for More Definite Statement (Doc. 3), Plaintiff's Motion for Remand (Doc. 13), and Plaintiff's second Motion for Remand (Doc. 23). United States Magistrate Judge Karla R. Spaulding submitted a Report and Recommendation ("R&R," Doc. 25), recommending that the Court grant in part the Motion for Remand, deny as moot the second Motion for Remand, and grant in part the Motion to Dismiss. Defendants Herd Enterprises, Inc., Crockett Herd, Renee Gorth, Gina Lampone, Christine Walton, Randy Clark, and Danny Christian (collectively, "Defendants") filed Objections (Doc. 28) to the R&R as to Judge Spaulding's recommendation on the Motion for Remand. Plaintiff Subsequently filed a Response (Doc. 31) to Defendants' Objections.

In the R&R, Judge Spaulding found that Plaintiff had not alleged a federal claim under Title VII but rather a "Florida Law Title VII" claim, seeking relief under section 448.103(1)(a)(2) of the Florida Statutes. (Doc. 25 at 2). Therefore, Judge Spaulding concluded that the only federal

claim that Plaintiff alleged was his claim for violations of the Clean Air Act. (*Id.* at 2–3). Additionally, Judge Spaulding found that Plaintiff’s Clean Air Act claim arose from a different set of facts than Plaintiff’s state law claims, and consequently, it would be inappropriate for the Court to exercise supplemental jurisdiction over Plaintiff’s state law claims. (*Id.* at 3). Thus, Judge Spaulding recommended that the Court sever Plaintiff’s state law claims and remand those claims to the state court. (*Id.*).

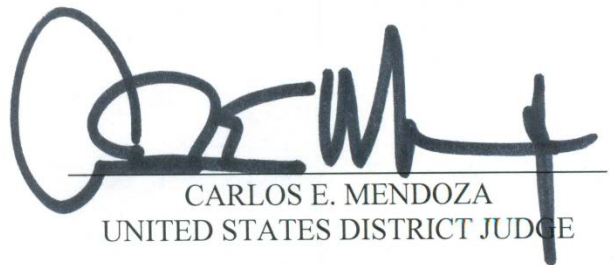
In Defendants’ Objection, they ask the Court to reject Judge Spaulding’s recommendation regarding the remand of the state claims. Specifically, Defendants argue that Judge Spaulding erred in finding that Plaintiff did not allege a federal claim under Title VII. Defendants contend that “Plaintiff has made it clear that he intended to assert a federal cause of action for employment discrimination in his Complaint” and cite various filings for support. (Doc. 28 at 2–3). Accordingly, Defendants request that the Court deny Plaintiff’s Motion for Remand or, alternatively, ask the Court to grant Plaintiff leave to amend his Complaint to clarify his claims so that the Court can avoid speculating about the claims Plaintiff attempted to assert. However, in Plaintiff’s Response to Defendants’ Objection, he makes clear that he has not brought a federal claim under Title VII; rather, he has brought a claim under state law, namely section 448.103(1)(a)(2) of the Florida Statutes. (Doc. 31 at 3).

Given Plaintiff’s unequivocal representation in his Response that he has not brought a federal discrimination claim, and after a *de novo* review of the record, the Court agrees with the analysis set forth in the R&R. Accordingly, it is **ORDERED** and **ADJUDGED** as follows:

1. The Report and Recommendation (Doc. 25) is **ADOPTED** and **CONFIRMED** and made a part of this Order.

2. Plaintiff's Motion for Remand (Doc. 13) is **GRANTED in part**. Plaintiff's state law claims are severed from the Complaint (Doc. 2) and **REMANDED** to the Circuit Court of the Eighteenth Judicial Circuit, in and for Seminole County, Florida, Case No. 2018-CA-110-11-G.
3. Plaintiff's second Motion for Remand (Doc. 23) is **DENIED as moot**.
4. Defendants' Motion to Dismiss (Doc. 3) is **GRANTED in part**. Plaintiff's Clean Air Act claim is **DISMISSED without prejudice**. **On or before September 7, 2018**, Plaintiff may file an amended complaint, alleging only the Clean Air Act claim against only the individuals and entities who Plaintiff previously alleged violated the Clean Air Act. Failure to file an amended complaint by the deadline may result in the dismissal of this case without further notice.

DONE and **ORDERED** in Orlando, Florida on August 17, 2018.



CARLOS E. MENDOZA
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record
Unrepresented Party
Clerk of the Court of the Eighteenth Judicial Circuit, in and for Seminole County, Florida