

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

WILLIAM GENSHEIMER,

Plaintiff,

v.

Case No: 2:18-cv-422-FtM-38MRM

VISION ACE HARDWARE, LLC,

Defendant.

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**ORDER**<sup>1</sup>

This matter is before the Court on *sua sponte* review of William Gensheimer's Second Amended Complaint filed on December 28, 2018. ([Doc. 47](#)). Gensheimer sued Vision Ace Hardware for Title VII discrimination and violation of the Florida Whistleblower Statute and cited federal question jurisdiction as the basis for this Court's subject matter jurisdiction. ([Doc. 35](#)). The Court dismissed the Title VII claim without prejudice and gave Gensheimer leave to amend. ([Doc. 43](#)). But Gensheimer opted to abandon his Title VII claim and instead filed a Second Amended Complaint asserting only his state law claim. ([Doc. 47](#)). The Second Amended Complaint does not state a basis for this Court's jurisdiction.

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Federal courts have limited jurisdiction, so they are “obligated to inquire into subject matter jurisdiction *sua sponte* whenever it may be lacking.” *Univ. of S. Ala. V. Am. Tobacco Co.*, 168 F.3d 405, 411 (11th Cir. 1999). In an action filed directly in federal court, the plaintiff must plead and prove jurisdiction. See *King v. Cessna Aircraft Co.*, 505 F.3d 1160, 1170 (11th Cir. 2007). Federal “district courts have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. Gensheimer’s only surviving claim arises under Florida law. Because Gensheimer has not pled a basis for jurisdiction, the Second Amended Complaint must be dismissed.

Accordingly, it is now

**ORDERED:**

- (1) Plaintiff William Gensheimer’s Second Amended Complaint (Doc. 47) is **DISMISSED without prejudice.**
- (2) Gensheimer may file a third amended complaint consistent with this Order on or before **January 11, 2019**. Failure to do so will result in the Court closing this case without further notice.

**DONE** and **ORDERED** in Fort Myers, Florida this 3rd day of January, 2019.

  
SHERI POLSTER CHAPPELL  
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record