

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.

---

**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.

---

<sup>1</sup> Disclaimer: Documents filed in CM/ECF may contain hyperlinks to other documents or websites. These hyperlinks are provided only for users' convenience. Users are cautioned that hyperlinked documents in CM/ECF are subject to PACER fees. By allowing hyperlinks to other websites, this Court does not endorse, recommend, approve, or guarantee any third parties or the services or products they provide on their websites. Likewise, the Court has no agreements with any of these third parties or their websites. The Court accepts no responsibility for the availability or functionality of any hyperlink. Thus, the fact that a hyperlink ceases to work or directs the user to some other site does not affect the opinion of the Court.

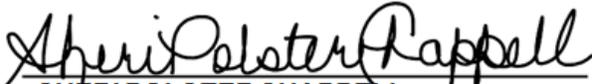
Federal courts have limited jurisdiction, so they are “obligated to inquire into subject matter jurisdiction *sua sponte* whenever it may be lacking.” *Univ. of S. Ala. V. Am. Tobacco Co.*, 168 F.3d 405, 411 (11th Cir. 1999). In an action filed directly in federal court, the plaintiff must plead and 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