UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

CRAIG DELIGDISH, M.D.,

Plaintiff,

v. **Case No. 6:24-cv-1355-CEM-DCI**

NORTH BREVARD COUNTY MEDICAL DISTRICT and NORTH BREVARD MEDICAL SUPPORT, INC.,

Defendants.
_____/

ORDER

THIS CAUSE is before the Court on Defendants' Motion to Dismiss ("Motion," Doc. 26), to which Plaintiff filed a Response (Doc. 28). For the reasons stated herein, the Motion will be granted in part and denied in part.

I. BACKGROUND

This case arises out of Plaintiff reporting Defendants for their alleged money laundering activities. (Doc. 1 at 2). Plaintiff alleges that Defendants engaged in a campaign of retaliatory actions against him beginning in June 2021. (*Id.* at 3). In September 2022, Plaintiff filed a complaint with the Department of Labor pursuant to the requirements of the Anti-Money Laundering Act ("AMLA"). (*Id.*; Doc. 26-1). The complaint was dismissed, (Doc. 26-7), and Plaintiff appealed, (Doc. 26-8).

(Doc. 1 at 3–4). He then filed a complaint with the Office of the Administrative Law Judge ("OALJ") in June 2023, (Doc. 26-9), amending the complaint in January 2024. (Doc. 1 at 4). In February 2024, the "OALJ issued an order denying Defendants' second motion to dismiss and motion to strike [Plaintiff]'s amended complaint as to claims pertaining to post-termination conduct related to [Plaintiff]'s University of Central Florida College of Medicine appointment and efforts and threats to have [Plaintiff] arrested and/or prosecuted . . . . The ALJ dismissed the remaining claims of retaliation as being reported to OSHA outside of the allotted time period." (*Id.*). Plaintiff brings two counts against Defendants for violation of the AMLA, 31 U.S.C. § 5323. Count I addresses Defendants' alleged efforts and threats to have Plaintiff arrested or prosecuted, and Count II addresses Defendants' conduct alleged to have interfered with Plaintiff's relationship with the University of Central Florida ("UCF") College of Medicine. Defendants move to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

II. LEGAL STANDARD

A. Rule 12(b)(1)

A party may move to dismiss the claims against it for "lack of subject-matter jurisdiction." "Attacks on subject matter jurisdiction . . . come in two forms: 'facial attacks' and 'factual attacks.'" *Garcia v. Copenhaver, Bell & Assocs., M.D.'s, P.A.*, 104 F.3d 1256, 1260–61 (11th Cir. 1997) (quoting *Lawrence v. Dunbar*, 919 F.2d

1525, 1528–29 (11th Cir.1990)). "Facial attacks challenge subject matter jurisdiction based on the allegations in the complaint, and the district court takes the allegations as true in deciding whether to grant the motion." *Morrison v. Amway Corp.*, 323 F.3d 920, 925 n.5 (11th Cir. 2003). "However, where a defendant raises a factual attack on subject matter jurisdiction, the district court may consider extrinsic evidence such as deposition testimony and affidavits." *Carmichael v. Kellogg, Brown & Root Servs., Inc.*, 572 F.3d 1271, 1279 (11th Cir. 2009). "When jurisdiction is properly challenged, a plaintiff has the burden of showing jurisdiction exists." *Kruse, Inc. v. Aqua Sun Invs., Inc.*, No. 6:07-cv-1367-Orl-19UAM, 2008 U.S. Dist. LEXIS 7066, at *4 (M.D. Fla. Jan. 31, 2008).

B. Rule 12(b)(6)

"A pleading that states a claim for relief must contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). In determining whether to dismiss under Rule 12(b)(6), a court accepts the factual allegations in the complaint as true and construes them in a light most favorable to the non-moving party. *See United Techs. Corp. v. Mazer*, 556 F.3d 1260, 1269 (11th Cir. 2009).

Nonetheless, "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions," and "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory

statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Furthermore, "[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Id*. (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id*. Generally, in deciding a motion to dismiss, "[t]he scope of the review must be limited to the four corners of the complaint." *St. George v. Pinellas Cnty*., 285 F.3d 1334, 1337 (11th Cir. 2002).

III. ANALYSIS

A. Subject Matter Jurisdiction

The "AMLA provides a private right of action to whistleblowers who have filed a complaint with the Secretary of Labor and not received a final decision within 180 days." *Wegman v. U.S. Specialty Sports Ass'n*, No. 6:23-cv-1637-RBD-RMN, 2024 U.S. Dist. LEXIS 213071, at *15 (M.D. Fla. Nov. 21, 2024) (citing 31 U.S.C. § 5323(g)(2)(B)). Plaintiff alleges that he is a covered whistleblower because Defendants retaliated against him in violation of AMLA and that the Secretary failed to render a final decision 180 days after he filed his OSHA Complaint. However, an OSHA complaint must be filed "not later than 90 days after the date on which such violation occurs." 49 U.S.C. § 42121(b)(1); *see* 31 U.S.C. § 5323(g)(3)(A)(i)

(explaining "the requirements under section 42121(b) of title 49 . . . shall apply with respect to a complaint filed under paragraph (2)(A) by an individual against an employer").

Plaintiff filed his OSHA Complaint on September 6, 2022. (Doc. 26-1 at 2). Thus, only retaliatory actions occurring from June 8, 2022 onward are covered. However, the first alleged retaliatory incident occurred over a year before—on June 2, 2021. (Doc. 1 at 2). Nevertheless, Plaintiff argues that the previous incidents can be considered under the continuing violation doctrine. (Doc. 28 at 12). "The continuing violation doctrine permits a plaintiff to sue on an otherwise time-barred claim when additional violations of the law occur within the statutory period." *Ctr. for Biological Diversity v. Hamilton*, 453 F.3d 1331, 1334 (11th Cir. 2006). The doctrine is limited "to situations in which a reasonably prudent plaintiff would have been unable to determine that a violation had occurred." *Id.* at 1335.

"If a defendant's actions violate a plaintiff's rights on a repeated or ongoing basis, then a cause of action may be timely even if the first violation took place outside the statute of limitations." *Doe as Next Friend of Doe #6 v. Swearingen*, 51 F.4th 1295, 1305 (11th Cir. 2022). The Eleventh Circuit has "held that a plaintiff must identify more than a present harm from a past act to satisfy the continuing violation doctrine. . . . Only ongoing violations satisfy the continuing violation doctrine and remain timely despite accruing outside the statutory limitation period."

Id. "[W]hen a defendant takes separate and discrete acts that repeatedly violate the law, the continuing violation doctrine does not apply." *Id.* at 1306; *see also Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 114–15 (2002) (explaining "acts such as termination, failure to promote, denial of transfer, or refusal to hire" constitute "discrete discriminatory acts").

Here, not only should Plaintiff have known Defendants' alleged conduct was a violation when it occurred but the alleged retaliatory actions were also discrete. Plaintiff alleges that Defendants retaliated against him on several different occasions after he notified them about his concerns related to alleged money laundering activities. (*See* Doc. 1 at 17–21). These acts include preventing Defendants' physicians from receiving emails from Plaintiff, failing to honor a physician lease agreement between Plaintiff's company and Defendants, denying Plaintiff's application to renew his medical staff privileges, helping spread false information about Plaintiff, attempting to have Plaintiff arrested and prosecuted, and interfering with Plaintiff's relationship with the UCF College of Medicine. (*See id.*). Discrete acts are actionable on their own and do not amount to a continuous violation unlike hostile work environment claims. *See Morgan*, 536 U.S. at 115. Therefore, the only possible acts that could be covered were those that transpired after June 8, 2022.

From the Complaint, only two acts could potentially fall within that timeframe. Plaintiff alleges that Defendants attempted to have him arrested and

prosecuted up through March 2023. (*Id.* at 20). He also alleges the Defendants provided the UCF College of Medicine with reports that resulted in the university revoking Plaintiff's volunteer faculty appointment. (*Id.* at 20–21). As detailed below, the latter claim is barred under the claim splitting doctrine. As to the first, Defendants argue the Court lacks subject matter jurisdiction over any allegations that occurred after September 6, 2022, the date of his OSHA Complaint filing, because he could not have exhausted his administrative remedies as to those allegations.

The allegation at issue is that in March 2023, Defendants contacted the Florida State Attorney's office and requested they press charges against Plaintiff. (*Id.* at 20). While there is no Eleventh Circuit precedent on point, the Sarbanes-Oxley Act ("SOX") contains nearly identical language regarding exhaustion of administrative remedies as AMLA. *See Chaleplis v. Karloutsos*, No. 21-1492, 2023 U.S. Dist. LEXIS 67423, at *7 (E.D. Pa. Apr. 18, 2023) (citing *Digit. Realty Tr., Inc. v. Somers*, 583 U.S. 149 (2018)). And other courts have applied the administrative exhaustion analysis under the Americans with Disabilities Act ("ADA") to the same analysis under SOX. *Id.* The Court finds these analyses persuasive.

In general, under these analyses, the Court will not foreclose the possibility of relief to a plaintiff who has attempted to comply with the exhaustion requirement. *See Woodford v. Ngo*, 548 U.S. 81, 90 (2006) (explaining "exhaustion requirements are designed to deal with parties who do not want to exhaust"). In line with the

Eleventh Circuit's ADA retaliation jurisprudence and other courts' application of that concept to SOX, where a "[p]laintiff's additional allegations [we]re encompassed in the scope of the investigation that could reasonably be expected to grow out of [the p]laintiff's administrative complaints," the plaintiff has exhausted his administrative remedies as to those allegations. *Lozada-Leoni v. MoneyGram Int'l, Inc.*, No. 4:20-cv-68-RWS-CMC, 2020 WL 7000874 (E.D. Tex. Oct. 19, 2020); *Sugg v. City of Sunrise*, No. 20-13884, 2022 WL 4296992, at *5 (11th Cir. Sept. 19, 2022) (citing *Batson v. Salvation Army*, 897 F.3d 1320, 1327–28 (11th Cir. 2018)). Therefore, Defendants were adequately put on notice of Plaintiff's allegations against them in the OSHA Complaint complaining of retaliatory action by Defendants relating to the alleged money laundering, and any subsequent allegations of retaliation could be reasonably expected to grow out of that complaint. *See Jones v. Southpeak Interactive Corp. of Del.*, 777 F.3d 658, 670 (4th Cir. 2015) ("We recognize that a primary objective of exhaustion requirements is to put parties on notice of the allegations against them."). Thus, Plaintiff has exhausted his administrative remedies as to the alleged retaliation that occurred in March 2023.

B. Claim Splitting

"[T]he claim-splitting doctrine derives from the doctrine of res judicata. Since res judicata may be raised by way of a Rule 12(b)(6) motion to dismiss, so may the claim-splitting defense." *Vanover v. NCO Fin. Servs., Inc.*, 857 F.3d 833, 836 n.1

(11th Cir. 2017). The Eleventh Circuit has established "a two-factor test whereby the court analyzes (1) whether the case involves the same parties and their privies, and (2) whether separate cases arise from the same transaction or series of transactions." *Id.* at 841–42 (internal quotation marks omitted). "Successive causes of action arise from the same transaction or series of transactions when the two actions are based on the same nucleus of operative facts." *Id.* at 842.

Plaintiff argues that claim splitting does not apply to when a state action has been filed, citing a quote purportedly from *Vanover*.[1] This Court has rejected that argument before and will do so again. "The doctrine against claim-splitting does not become irrelevant simply because a plaintiff attempts to split his or her claims between a state and federal court, rather than two federal courts." *Mohamad v. HSBC Bank N.A.*, No. 6:16-cv-2239-Orl-41DCI, 2018 U.S. Dist. LEXIS 233572, at *14 (M.D. Fla. Mar. 27, 2018). Here, it is plain that the doctrine applies to the allegations involving Plaintiff losing his role at the UCF College of Medicine.

First, the cases involve the same parties and their privies, with Plaintiff there suing North Brevard County Hospital District, allegedly doing business as Parrish Medical Center, which Plaintiff also alleges of North Brevard County Medical District here. (*Compare* Doc. 26-6 at 1, *with* Doc. 1 at 1). Second, the cases are based

[1] The Court was unable to find the quoted language, neither on the page provided in Plaintiff's pincite nor in the entirety of *Vanover*.

on the same nucleus of operative facts. The state complaint details the alleged interference by Parrish in Plaintiff's relationship with the UCF College of Medicine—both specifically reference the Mikitarian letter, which Plaintiff alleges was sent to UCF's general counsel to effectuate this alleged interference. (*Compare* Doc. 26-6 at 5–10, *with* Doc. 1 at 20–21).

Plaintiff nevertheless argues that "the defamation action does not preclude this case because Plaintiff brought these claims to OSHA before the federal action was filed" and because that case "concern[ed] the act of making defamatory statements, rather than the falsity and harm caused by them." (Doc. 28 at 18–19). He also argues that OSHA had exclusive jurisdiction until the 180-day statutory period ended. (*Id.* at 19). While it is true that Plaintiff could not file in a district court until 180 days had elapsed after he filed his OSHA Complaint, he filed the defamation action on May 25, 2023. (Doc. 26-6 at 13). This is well after the 180-day window expired on March 5, 2023. And under the claim-splitting analysis, it does not matter what claims were brought in the prior action. Tellingly, that argument is unsupported. Therefore, Count II will be dismissed because it is barred by the claim splitting doctrine.

C. Failure to State a Claim

The Court turns to the allegations in Count I, which are limited to those that occurred after June 8, 2022. The only remaining allegation falling in that timeframe is Defendants' March 8, 2023 letter requesting the Florida State Attorney's office

pursue criminal charges against Plaintiff. (*See* Doc. 1 at 20). Because there is no allegation that Plaintiff suffered any harm as a result of this letter, Defendants argue that Plaintiff fails to state a claim as to this alleged threat. However, Plaintiff alleges broadly in Count I that Defendants' actions have caused him emotional distress, difficulty entering into new business relationships, and trouble sleeping. (*Id.* at 22–23).

Defendants' rather charitable interpretation of their letter as an attempt to merely confirm that Plaintiff's allegations against them are not being pursued must also be rejected. (Doc. 1-4 at 4 ("Again, there has to be a repercussion for Dr. Deligdish continuing to make false accusations . . . , and we respectfully request that such action be taken against him immediately . . . .")). Furthermore, Defendants provide no legal authority in support of this argument. *See Hamilton v. Southland Christian Sch., Inc.*, 680 F.3d 1316, 1319 (11th Cir. 2012) ("A passing reference to an issue in a brief is not enough, and the failure to make arguments and cite authorities in support of an issue waives it."). Likely because that is not what the law says. 31 USCS § 5323(g)(1) ("No employer may, directly or indirectly, discharge, demote, suspend, threaten, blacklist, harass, or in any other manner discriminate against a whistleblower . . . ."). Defendants have not met their burden at this stage to show that Count I should be dismissed.

IV. CONCLUSION

Accordingly, it is **ORDERED** and **ADJUDGED** as follows:

1. Defendant's Motion to Dismiss (Doc. 26) is **GRANTED in part** and **DENIED in part**.
    a. Count II is **DISMISSED with prejudice**.
    b. Insofar as Count I alleges retaliatory actions by Defendants preceding June 8, 2022, it is **DISMISSED with prejudice**.
    c. The remainder of the Motion is **DENIED**.

DONE and **ORDERED** in Orlando, Florida on April 16, 2025.

CARLOS E. MENDOZA
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record