

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

DARRYL OLIVER,

Plaintiff,

v.

Case No. 3:16-cv-01490-J-34MCR

LISA LYONAIIS,

Defendant.

_____ /

DARRYL OLIVER,

Plaintiff,

v.

Case. No. 3:16-cv-01491-J-34MCR

MITZI HOVANCIK,

Defendant.

_____ /

DARRYL OLIVER,

Plaintiff,

v.

Case. No. 3:16-cv-01492-J-34MCR

J. SHULMAN,

Defendant.

_____ /

DARRYL OLIVER,

Plaintiff,

v.

Case. No. 3:16-cv-01555-J-34MCR

KATHY HARRIS,

Defendant.

_____ /

ORDER

These consolidated cases are before the Court on the Report and Recommendation (Doc. 33; Report), entered by the Honorable Monte C. Richardson, United States Magistrate Judge, on June 1, 2017. Plaintiff, Darryl Oliver, initiated separate lawsuits in state court against Lisa Lyonais, Mitzi Hovancik, J. Shulman, and Kathy Harris, all agents of the Internal Revenue Service (IRS), based on actions the IRS agents took while investigating Oliver's tax preparation business. Defendants removed the separate actions to this Court. (See Doc. 1 in Oliver v. Lyonais, 3:16-cv-01490-J-34MCR, Doc. 1 in Oliver v. Hovancik, 3:16-cv-01491-J-34MCR, Doc. 1 in Oliver v. Shulman, 3:16-cv-01492-J-34MCR, Doc. 1 in Oliver v. Harris, 3:16-cv-01555-J-34MCR). On February 9, 2017, the Court consolidated the four separate lawsuits into the lead case, Oliver v. Lyonais, 3:16-cv-01490-J-34MCR, and directed Defendants to file a consolidated motion to dismiss and Plaintiff to file a consolidated motion to remand on or before March 3, 2017. See Order (Doc. 15).¹

Defendants filed their Dispositive Motion to Dismiss (Doc. 16; Motion to Dismiss) on February 28, 2017, and Oliver filed his Motion to Remand to State Court (Doc. 28; Motion to Remand) on April 21, 2017. Additionally, Oliver filed motions to strike the Motion to Dismiss (Docs. 19, 21-23),² a motion to strike the Defendants' responses to his motions to

¹ Unless otherwise indicated, documents cited in this Order are filed in the lead case, 3:16-cv-01490-J-34MCR, and referenced by the docket number in that case.

² See Motion to Strike Motion to Dismiss (Doc. 19), Motion to Strike Motion to Dismiss (Doc. 21), Motion to Strike Motion to Dismiss (Doc. 22), Motion to Strike Motion to Dismiss (Doc. 23).

strike (Doc. 26),³ and a corrected motion to strike (Doc. 27; Motion to Clarify),⁴ all of which relate to the resolution of the Motion to Dismiss. On April 25, 2017, and June 1, 2017, respectively the undersigned entered orders referring the Motion to Dismiss and Motion to Remand to the magistrate judge for preparation of a report and recommendation. See Order (Doc. 17), Order (Doc. 30).

In the Report, Judge Richardson recommends that the Court grant the Defendants' Motion to Dismiss and deny the Motion to Remand, the Motions to Strike, and the Motion to Clarify. The Magistrate Judge specifically notified Oliver of his right to object to the Report, and to the consequence of his failure to do so. See Report at 2 n.1. To date, Oliver has filed no objections to the Report, and the time for doing so has passed. Accordingly, this matter is ripe for review.

The Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b). If no specific objections to findings of facts are filed, the district court is not required to conduct a de novo review of those findings. See Garvey v. Vaughn, 993 F.2d 776, 779 n.9 (11th Cir. 1993); see also 28 U.S.C. § 636(b)(1). However, the district court must review legal conclusions de novo. See Cooper-Houston v. S. Ry. Co., 37 F.3d 603, 604 (11th Cir. 1994); United States v. Rice, No. 2:07-mc-8-FtM-29SPC, 2007 WL 1428615, at * 1 (M.D. Fla. May 14, 2007).

³ See Motion to Strike Defendant's Response in Opposition to Plaintiff's Motion to Strike Motion to Dismiss (Doc. 26).

⁴ See The Plaintiff Motions for Leave to File a Corrected Motion to Strike Defendant's Response in Opposition to Plaintiff's Motion to Strike Motion to Dismiss with Corrections to Paragraph Four Listing the Plaintiff and Defendant by Name and Corrections between Plaintiff and Defendant (Doc. 27).

Based upon an independent examination of the record and a de novo review of the legal conclusions, the Court will accept and adopt, in large part, the legal and factual recommendations of Judge Richardson for the reasons stated in the Report. In doing so, the Court declines to adopt only the discussion regarding 28 U.S.C. § 1346(a)(2) as an alternative basis for the exercise of jurisdiction, as it is unnecessary to the resolution of the Motion to Remand given that, for the reasons stated, the Court otherwise has jurisdiction over the action pursuant to 28 U.S.C. § 1442(a)(1). See City of Jacksonville v. Dept. of Navy, 348 F.3d 1307, 1313, 1320 (11th Cir. 2003) (recognizing that § 1442(a)(1) provides federal jurisdiction over causes of action against federal agencies despite the fact that the absence of a waiver of sovereign immunity will ultimately defeat the claim).

Accordingly, it is hereby **ORDERED**:

1. Magistrate Judge Monte C. Richardson's Report and Recommendation (Doc. 33; Report) is **ADOPTED** as the opinion of the Court with the exception of the discussion of 28 U.S.C. § 1346(a)(2).
2. The Motion to Remand to State Court (Doc. 28) is **DENIED**.
3. Plaintiff's Motions to Strike (Docs. 19, 21-23, 26) are **DENIED**.
4. Plaintiff's Motion to Clarify (Doc. 27) is **DENIED**.
5. The Dispositive Motion to Dismiss Consolidated Cases (Doc. 16; Motion to Dismiss) is **GRANTED**, and Plaintiff's Complaints are dismissed.
6. The Clerk of Court is **DIRECTED** to terminate any pending motions and close the following cases: (Oliver v. Lyonais, Case No. 3:16-cv-01490-J-34MCR, Oliver v. Hovancik, Case No. 3:16-cv-01491-J-34MCR, Oliver v. Shulman, Case No. 3:16-cv-01492-J-34MCR, and Oliver v. Harris, Case No. 3:16-cv-01555-J-34MCR).

7. The Clerk of the Court is further directed to enter judgment in favor of Defendant Lyonais in Case No. 3:16-cv-01490-J-34MCR, Defendant Hovancik in Case No. 3:16-cv-01491-J-34MCR, Defendant Shulman in Case No. 3:16-cv-01492-J-34MCR, and Defendant Harris in Case No. 3:16-cv-01555-J-34MCR.

DONE AND ORDERED at Jacksonville, Florida, this 20th day of July, 2017.


MARCIA MORALES HOWARD
United States District Judge

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Copies to:
The Honorable Monte C. Richardson
United States Magistrate Judge

Pro Se Plaintiff

Counsel of Record