

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

DONALD W. POWELL, JR.,

Plaintiff,

v.

Case No. 6:16-cv-1630-Orl-37DCI

BROOKE FRAVEL; JEANNE FRAVEL;
MICHAEL JAKUBISIN; LAKE
HIGHLAND PREPARATORY SCHOOL,
INC.; LAKE HIGHLAND
PREPARATORY SCHOOL
FOUNDATION, INC.; and TIMOTHY P.
WALKER,

Defendants.

ORDER

This cause is before on the following matters:

1. Defendant Brooke Fravel's Motion to Dismiss Count Four of the Amended Complaint (Doc. 43), filed December 8, 2016;
2. Defendant Timothy P. Walker's Motion to Dismiss Counts XXI and XXII of the First Amended Complaint (Doc. 47), filed December 15, 2016; and
3. [Donald W. Powell, Jr.'s] Response in Opposition to Defendant Timothy P. Walker's Motion to Dismiss Complaint (Doc. 50), filed January 5, 2107.

BACKGROUND¹

On August 12, 2016, Donald W. Powell, Jr. ("**Plaintiff**") initiated a lawsuit in the Circuit Court of the Ninth Judicial Circuit Court, in and for Orange County, Florida against

¹ These facts are taken from the Complaint, the allegations of which the Court must accept as true when considering a motion to dismiss. *See Linder v. Portocarrero*, 963 F.2d 332, 334 (11th Cir. 1992).

Defendants—Brooke Fravel (“**Student**”), Jean Fravel (“**Parent**”), Michael Jakubisin (“**Jakubisin**”), Lake Highland Preparatory School, Inc. (“**LHPS**”), Lake Highland Preparatory School Foundation, Inc. (“**LHPAF**”), and Timothy P. Walker (“**Officer Walker**”)—based on a series of events that occurred after Student falsely accused Plaintiff of repeated sexual assaults. (Doc. 2 (“**Complaint**”).) On September 19, 2016, Defendants removed the action to this Court based on federal question jurisdiction. (Doc. 1.) Soon thereafter, Officer Walker moved for, and the Court granted, dismissal of all claims against him. (See Docs. 3, 39.) The Court granted Plaintiff leave to file an Amended Complaint. (Doc. 39.)

In an Amended Complaint (Doc. 41), Plaintiff asserts twenty-two claims against Defendants, including a federal claim pursuant to 42 U.S.C. § 1983 against Officer Walker for “denial of due process” (**Count XXII**). (*Id.* ¶¶ 182–191.) The remainder of the claims are brought under state law, including: (1) four defamation claims and a malicious prosecution claim against Student (**Counts I, II, III, IV, & XIX**); (2) two defamation claims and a malicious prosecution claim against Parent (**Counts V, VI, & XX**); (3) four defamation claims against Jakubisin (**Counts VII, X, XIII & XVI**); (4) four defamation claims against LHPS (**Counts VIII, XI, XIV, XVII**); (5) four defamation claims against LHPSF (**Counts IX, XII, XV, XVIII**); and (6) a malicious prosecution claim against Officer Walker (**Count XXI**). (See *id.* ¶¶ 34–181.)

Student moves to dismiss Count IV (see Doc. 43), and Officer Walker moves to dismiss Counts XXI and XXII (see Doc. 47). Plaintiff has only responded to Officer Walker’s motion, and the time to respond to Student’s motion has passed. Therefore, these matters are now ripe for adjudication.

STANDARDS

Federal Rule of Civil Procedure 8(a)(2) requires a claimant to plead “a short and plain statement of the claim showing that the pleader is entitled to relief.” A complaint does not need detailed factual allegations; however, “a plaintiff’s obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007) (alterations and internal quotation marks omitted). When a complaint is challenged under Rule 12(b)(6), a court accepts as true all well-pleaded factual allegations and disregards unsupported conclusions of law. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009). “To 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.* at 678.

DISCUSSION

In response to Officer Walker’s motion, Plaintiff concedes the dismissal of Count XXII—the only claim upon which the subject matter jurisdiction of the Court rests. Specifically, Plaintiff states that he has no “cause of action under 42 U.S.C. § 1983 for a claim of due process.” (See Doc. 50, ¶ 28.) In light of Plaintiff’s concession, Count XXII is due to be dismissed. *See Darnell v. Rivera*, No. 6:15-cv-999-ORL-37TBS, 2016 WL 309050, at *3 (M.D. Fla. Jan. 26, 2016) (dismissing two federal claims where the plaintiff conceded to dismissal).

Having dismissed Count XXII, the Court now lacks original jurisdiction over this action. The Court therefore declines to exercise supplemental jurisdiction over Plaintiffs’ remaining state law claims, which will be remanded to state court. *See* 28 U.S.C.

§ 1367(c)(3).

CONCLUSION

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that:

1. Defendant Timothy P. Walker's Motion to Dismiss Counts XXI and XXII of the First Amended Complaint (Doc. 47) is **GRANTED IN PART**.
2. Count XII is **DISMISSED WITH PREJUDICE**.
3. In all other respects, Defendant Timothy P. Walker's motion is **DENIED AS MOOT**.
4. Defendant Brooke Fravel's Motion to Dismiss Count Four of the Amended Complaint (Doc. 43) is **DENIED AS MOOT**.
5. The Court declines to exercise supplemental jurisdiction over Plaintiffs' state law claims. Thus, Counts I through XXI are **DISMISSED WITHOUT PREJUDICE**.
6. This action is **REMANDED** to the Circuit Court of the Ninth Judicial Circuit Court, in and for Orange County, Florida
7. The Clerk is directed to close this case.

DONE AND ORDERED in Chambers in Orlando, Florida, on February 14, 2017.

Copies:

Counsel of Record

