

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
DOCKET NO. 3:16-cv-671-FDW-DCK

RICKY EVANS JR.,)
)
Plaintiff,)
)
vs.)
)
SAM’S EAST, INC.,)
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Defendant.)
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_____)

ORDER

THIS MATTER is before the Court on Defendant’s Expedited Motion to Strike Plaintiff’s jury demand as to his ADA retaliation claim. (Doc. No. 39). After careful consideration, and for the reasons stated in Defendant’s brief, the Court GRANTS Defendant’s Motion.

Plaintiff cannot recover compensatory or punitive damages for an alleged violation of the ADA’s anti-retaliation provision because such relief is unavailable. See Rhodes v. F.D.I.C., Fed. App’x 187, 188 (4th Cir. 2004) (unpublished per curium opinion) (citing Kramer v. Banc of America Securities, LLC, 355 F.3d 961, 965 (7th Cir. 2004); Bowles v. Carolina Cargo, Inc., 100 Fed. App’x 889, 890 (4th Cir. 2004) (same). Without such damages, Plaintiff may only seek equitable relief. Id. Consequently, he “has no statutory right to a jury trial.” Kramer, 355 F.3d at 966. Therefore, the Court will strike Plaintiff’s jury demand as to his ADA retaliation claim.

In the interests of time and judicial efficiency, the Court ORDERS Plaintiff’s retaliation-based ADA claim to be tried with an advisory jury pursuant to Rule 39(c)(1) of the Federal Rules of Civil Procedure. Accordingly, all three of Plaintiff’s claims will be tried before a jury, and said jury will act as an advisory jury as to Plaintiff’s retaliation-based ADA claim. The parties are instructed to submit their joint pretrial submissions in accordance with this Order.

THEREFORE, IT IS ORDERED that:

1. Defendant's Motion to Strike (Doc. No. 39) is GRANTED;
2. Plaintiff's jury trial demand as to his ADA retaliation claim is STRICKEN;
3. All three of Plaintiff's claims will be tried before a jury, and said jury will act as an advisory jury as to Plaintiff's retaliation-based ADA claim.

SO ORDERED.

Signed: August 16, 2017

A handwritten signature in black ink, appearing to read "Frank D. Whitney", written over a horizontal line.

Frank D. Whitney
Chief United States District Judge

