

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JACKIE D. MASON,

Plaintiff,

v.

Case No. 22-CV-1316

FRANCIS COLON-ORTEZ, et al.,

Defendants.

ORDER

Jackie D. Mason, who is representing himself, brought this action in Milwaukee County Circuit Court against Francis Colon-Ortez, “VA Medical Center,” and Joan P. Mason. The VA Medical Center, more properly designated as the United States Department of Veterans Affairs (VA), and its employee, Francis Colon-Ortez, removed the action to federal court pursuant to 28 U.S.C. § 1442(a)(1). (ECF No. 1.)

Jackie Mason, in turn, filed a motion to dismiss the VA and Colon-Ortez and remand the action to state court. (ECF No. 3.) Under Fed. R. Civ. P. 41(a)(1)(A), a plaintiff has an absolute right at the early stages of a case to dismiss the action as a whole or individual defendants or claims from the action. *Pedrina v. Chun*, 987 F.2d 608, 610 (9th Cir. 1993); *Madsen v. Park City*, 6 F. Supp. 2d 938, 943 (N.D. Ill. 1998) (following

Pedrina). “The right of voluntary dismissal by notice prior to service of the answer or a motion for summary judgment extends as fully to cases removed from a state court as it does to cases commenced in a federal court.” *Crook v. WMC Mortg. Corp.*, No. 06-cv-535-JPG, 2006 U.S. Dist. LEXIS 72616, at *4 (S.D. Ill. Oct. 5, 2006) (quoting 9 Wright & Miller, *Federal Practice & Procedure* § 2363 (collecting cases)). Therefore, Francis Colon-Ortez and the VA Medical Center are dismissed as defendants.

Having dismissed the federal defendants, no basis for federal jurisdiction remains. Therefore, remand to state court is proper. *See, e.g., Torres v. CBS News*, 879 F. Supp. 309, 321 (S.D.N.Y. 1994).

IT IS THEREFORE ORDERED that Francis Colon-Ortez and VA Medical Center are dismissed as defendants/respondents, and this action is remanded to Milwaukee County Circuit Court.

Dated at Milwaukee, Wisconsin this 17th day of November, 2022.


WILLIAM E. DUFFIN
U.S. Magistrate Judge