UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

ALEXANDRIA PARROTTA,

Plaintiff,

v.

ISLAND RESORT AND CASINO,

Defendants.
_____/

Case No. 2:24-cv-56

Hon. Robert J. Jonker
U.S. District Judge

REPORT AND RECOMMENDATION

I. Introduction

This Report and Recommendation (R. & R.) addresses the Defendant's motion to dismiss for lack of jurisdiction, the Plaintiff's response in opposition, and the Defendant's reply to the Plaintiff's response. (ECF Nos. 8, 10, 11.)

Plaintiff Alexandria Parrotta filed suit pursuant to the Fair Labor Standards Act of 1938 (FLSA), 29 U.S.C. §§ 201–219, and the Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP Act), 29 U.S.C. § 218d(a)(1). In her complaint, Parrotta alleges that the Hannahville Indian Community d/b/a Island Resort and Casino (HIC) violated her rights under the FLSA and the PUMP Act by refusing to provide her reasonable breaks to nurse her child, misclassifying her as an overtime-exempt employee, depriving her of overtime wages, and forcing her to resign from her position as an Executive Chef at the Casino. (ECF No. 1.)

On May 24, 2024 and June 21, 2024, HIC filed motions to dismiss. (ECF Nos. 6, 8.) HIC argues that the suit should be dismissed because: (1) the court lacks subject matter jurisdiction over the dispute on the basis of tribal sovereign immunity; (2) the court lacks subject matter jurisdiction over state law claims in the suit; (3) Plaintiff's state law claims are not pled with particularity as required by Rule 8(a); (4) the court lacks supplemental jurisdiction over Plaintiff's state law claims under 28 U.S.C. § 1367(b) because Plaintiff's federal question claims should be dismissed; and (5) Plaintiff's first amended complaint should be dismissed under the tribal exhaustion doctrine.

In the opinion of the undersigned, HIC's motion to dismiss for lack of subject matter jurisdiction should be granted on the basis of tribal sovereign immunity. The undersigned recommends that the dismissal be without prejudice, so the Plaintiff may pursue all appropriate remedies.

II. Factual Allegations

Parrotta says she worked as an Executive Chef for the Island Resort and Casino from August 2014 to October 26, 2024. (ECF No. 1, PageID.5.) The Resort and Casino is headquartered in Harris, Michigan, and is owned and operated by the Hannahville Indian Community, a federally recognized tribe headquartered in Harris, Michigan. (*Id.*, PageID.2.) Parrotta is not a member of the Hannahville tribe. (*Id.*, PageID.8.) Parrotta says that during her time as an Executive Chef, she worked a minimum of forty-five hours per week and had a flexible schedule. (*Id.*, PageID.5–6.) Parrotta states that although her title was "Executive Chef," her

duties were that of a Line Cook. (*Id.*, PageID.5.) Parrotta says that these duties were non-managerial in nature and did not require advanced knowledge or the consistent exercise of discretion or judgment. (*Id.*) Parrotta asserts that her duties included "counting inventory, placing orders with vendors, washing dishes, and preparing food," but did not include "any final hiring or firing decisions." (*Id.*)

Parrotta states that she earned a salary of $52,000 for her work at the Resort Casino. (*Id.*) Despite working more than forty hours each, Parrotta says that she never received overtime compensation. (*Id.*) Parrotta asserts that she was unlawfully mis-classified as overtime "exempt," despite her work being that of a non-exempt employee. (*Id.*) Parrotta argues that she is owed a minimum of $87,750 in unpaid overtime compensation. (*Id.*)

In or about 2023, Parrotta states that she told her manager that she was pregnant. (*Id.*, PageID.6.) Parrotta explained that she intended to take maternal leave to care for her child. (*Id.*) The manager granted Parrotta permission to take maternal leave. (*Id.*) In or about July 2023, Parrotta's maternal leave began and she gave birth to her child. (*Id.*) In or about October, Parrotta returned to work following her maternal leave. (*Id.*) At that time, Parrotta says that Steven Gakstatter, the Director of Food and Beverage, told her she would now be required to work shifts from noon to 8:00 p.m., with no opportunity to adjust these times. (*Id.*) The next day, Parrotta says she met with Gakstatter to request a return to the more flexible schedule she had before her maternity leave so she could nurse her child. (*Id.*) Parotta says that Gakstatter refused this request and instead demanded that

she resign. (*Id.*) On October 26, 2023, Parrotta resigned from her position at the Resort and Casino. (*Id.*)

III. Motion to Dismiss Standard

A motion to dismiss based on Federal Rule of Civil Procedure 12(b)(1) addresses whether the court has subject-matter jurisdiction to hear the dispute. *See* Fed. R. Civ. P. 12(b)(1); *see also Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006) (holding that a court "must dismiss the complaint in its entirety" when it lacks subject-matter jurisdiction over a matter). When challenged by a motion filed under Rule 12(b)(1), the plaintiff bears the burden of establishing subject matter jurisdiction. *E.E.O.C. v. Hosanna-Tabor Evangelical Lutheran Church and School*, 597 F.3d 769, 776 (6th Cir. 2010), *rev'd on other grounds*, 565 U.S. 171 (2012). A motion to dismiss for lack of subject matter jurisdiction may take the form of a facial challenge, which tests the sufficiency of the pleading, or a factual challenge, which contests the factual predicate for jurisdiction. *See RMI Titanium Co. v. Westinghouse Elec. Corp.*, 78 F.3d 1125, 1134 (6th Cir. 1996) (quoting *Mortensen v. First Fed. Savings & Loan Ass'n*, 549 F.2d 884, 890–91 (3d Cir. 1977)). In a facial attack, the court accepts as true all the allegations in the complaint, similar to the standard for a Rule 12(b)(6) motion. *Ohio Nat'l Life Ins. Co. v. United States*, 922 F.2d 320, 325 (6th Cir. 1990). In a factual attack, the allegations in the complaint are not afforded a presumption of truthfulness and the district court weighs competing evidence to determine whether subject matter jurisdiction exists. *Id.*

IV. Tribal Sovereignty

"Indian tribes are 'domestic dependent nations' that exercise 'inherent sovereign authority.'" *Michigan v. Bay Mills Indian Comty.*, 572 U.S. 782, 788 (2014) (quoting *Oklahoma Tax Comm'n v. Citizen Band Potawatomi Tribe of Okla.*, 498 U.S. 505, 509 (1991)). Tribes possess "the common-law immunity from suit traditionally enjoyed by sovereign powers." *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978). Thus, even in seemingly unfair situations, it is still "'settled law'" that a tribe is entitled to tribal sovereign immunity unless Congress abrogated the immunity or the tribe waived the immunity. *Bay Mills*, 572 U.S. at 798 (quoting *Kiowa Tribe of Okla. v. Manufacturing Technologies, Inc.*, 523 U.S. 751, 756 (1998)). Congress may abrogate tribal immunity only if its intentions are "unequivocally expressed" and not simply implied. *Santa Clara Pueblo*, 436 U.S. at 58. Similarly, a tribe may waive its immunity only if such a waiver is "clear." *C & L Enters. v. Citizen Band Potawatomi Indian Tribe of Okla.*, 532 U.S. 411, 418 (2001).

Parrotta asserts this Court has subject matter jurisdiction over her lawsuit under the FLSA, 29 U.S.C. § 201, as amended by the PUMP Act, 29 U.S.C. § 218d(a)(1), which she argues is a statute of general applicability that applies to the tribe and allows private suits against the tribe. (ECF No. 1, PageID.2, 7.) As discussed below, tribal sovereignty precludes Parrotta's lawsuit.

a. Federally Recognized Tribe

The 2016 Federal Register recognizes the "Hannahville Indian Community, Michigan." 81 Fed. Reg. 5019, 521 (Jan. 29, 2016). "Inclusion of a tribe on the Federal Register list of recognized tribes is generally sufficient to establish

entitlement to sovereign immunity." *Larimer v. Konocti Vista Casino Resort, Marina & RV Park*, 814 F.Supp.2d 952, 955 (N.D. Cal. 2011) (citing *Ingrassia v. Chicken Ranch Bingo and Casino*, 676 F.Supp.2d 953, 957 (E.D. Cal. 2009)). In addition, Parrotta avers that HIC is a federally recognized tribe. (ECF No. 1, PageID.2.) The undersigned therefore concludes that HIC is a federally recognized tribe.

"Tribal sovereign immunity not only protects tribes themselves, but also extends to arms of the tribe acting on behalf of the tribe." *White v. Univ. of California*, 765 F.3d 1010, 2015 (9th Cir. 2014). When "determining whether an entity is entitled to sovereign immunity as an 'arm of the tribe,'" courts apply several factors: (1) the method of creation of the economic entities; (2) their purpose; (3) their structure, ownership, and management, including the amount of control the tribe has over the entities; (4) the tribe's intent with respect to the sharing of its sovereign immunity; and (5) the financial relationship between the tribe and the entities. *Id.*

HIC asserts that the tribe does business as the Island Resort and Casino and that all of the Resort and Casino's employees are employees of HIC. (ECF. No. 9, PageID.69.) The Michigan Gaming Control Board lists the Island Resort and Casino as a casino associated with HIC.[1] Under *White*, these facts are sufficient to

[1] *See* Michigan Gaming Control Board, Tribal Gaming Annual Report 2023, https://www.michigan.gov/mgcb/-/media/Project/Websites/mgcb/Tribal-Gaming/AnnualReports/2023-Tribal-Gaming-Annual-Report-Final-41524.pdf?rev=81305e7bb2314d96a28a4d9e854a0e5e&hash=7ACCC92D6C398D8A9F8C6B1EC3A4FD48. Although no party requests judicial notice of this website, the Court may, on its own take judicial notice of "[i]nformation taken from government websites." *Oak Ridge Env't Peace All. v. Perry*, 412 F. Supp. 3d 786, 810

recognize the Island Resort and Casino as an arm of the tribe. *See Allen v. Gold Country Casino*, 464 F.3d 1044, 1046–47 (9th Cir.2006) ("In light of the purposes for which the Tribe founded this Casino and the Tribe's ownership and control of its operations, there can be little doubt that the Casino functions as an arm of the Tribe. It accordingly enjoys the Tribe's immunity from suit.").

Accordingly, the undersigned concludes that the Island Resort and Casino is an arm of HIC. If tribal immunity shields HIC from this lawsuit, then it also shields the Resort and Casino.

b. Applicability of the FLSA

The FLSA is a statute of general applicability. *Snyder v. Navajo Nation*, 382 F.3d 892, 894 (9th Cir. 2004) (citing *Rutherford Food Corp. v. McComb*, 331 U.S. 722, 727 (1947)). Such generally applicable statutes typically apply to Indian tribes. *Fed. Power Comm'n v. Tuscarora Indian Nation*, 362 U.S. 99, 116 (1960); *Nat'l Lab. Rels. Bd. v. Little River Band of Ottawa Indians Tribal Gov't*, 788 F.3d 537, 547 (6th Cir. 2015). The Sixth Circuit has found that there is an exemption to applicability, however, where the law would interfere with tribal self-government. *Id.* at 547–50. Adopting the *Coeur d'Alene* framework, the Sixth Circuit acknowledged that where a federal statute of general applicability is silent on the issue of applicability to Indian tribes, it will not apply to them if: "(1) the law touches exclusive rights of self-governance in purely intramural matters; (2) the application of the law to the tribe would abrogate rights guaranteed by Indian treaties; or (3) there is proof by

(E.D. Tenn. 2019); Fed. R. Evid. 902.

legislative history or some other means that Congress intended [the law] not to apply to Indians on their reservations." *Id.* at 548 (citing *Donovan v. Coeur d'Alene Tribal Farm*, 751 F.2d 1113, 1116 (9th Cir. 1985)).

Parrotta and HIC agree that the FLSA is silent as to the tribes. (ECF Nos. 7, 9.) Parrotta argues that the FLSA applies to HIC because none of the *Coeur d'Alene* factors have been met. (ECF No. 7, PageID. 53–56.) Parrotta asserts that: (1) tribal self-governance in purely intra mural matters is unaffected by the FLSA because the Resort and Casino enterprise does not touch on issues of tribal membership, inheritance rules, or domestic relations; (2) the FLSA would not abrogate treaty rights; and (3) there is no proof that Congress intended the FLSA not to apply to tribes on reservation land. (*Id.*) HIC does not contest the applicability of the FLSA to the tribe. (ECF Nos. 9, 11.) The undersigned concludes that the FLSA does apply to HIC. *See Lobo v. Miccosukee Tribe of Indians of Fla.*, 279 F. App'x 926 (11th Cir. 2008) (finding the FLSA applied to the Miccosukee Tribe and did not abrogate tribal sovereign immunity); *Costello v. Seminole Tribe of Fla.*, 763 F. Supp. 2d 1295 (M.D. Fla. 2010) (finding that the FLSA applied to the Seminole Tribe of Florida); *but see Noriega v. Torres Martinez Desert Cahuilla Indian Tribe*, No. CV 10-3776 FFM, 2010 WL 11601191 (C.D. Cal. Sept. 14, 2010) (finding the FLSA did not apply to the Torres Martinez Desert Cahuilla tribe because operating a welfare program for its populace was a quintessential government function).

However, "[t]he analysis does not stop [with a determination that a federal statute applies to Indian tribes], ... for whether an Indian tribe is subject to a statute

and whether the tribe may be sued for violating the statute are two entirely different questions." *See Fla. Paraplegic, Ass'n, Inc. v. Miccosukee Tribe of Indians of Fla.*, 166 F.3d 1126, 1130 (11th Cir. 1999) (emphasis added). "As the Supreme Court [has] bluntly stated ..., '[t]here is a difference between the right to demand compliance with state laws and the means available to enforce them.'" *Id.* (*quoting Kiowa*, 523 U.S. at 755). "This principle, which simply spells out the distinction between a right and a remedy, applies with equal force to federal laws." *Id.* Thus, that a general statute is applicable to tribes *does not* mean that Congress has waived tribal sovereign immunity for the purposes of private actions to enforce that statute. *See Little River*, 788 F.3d at 555 (citing *Santa Clara Pueblo*, 436 U.S. at 65; *Fla. Paraplegic Ass'n*, 166 F.3d at 1134)). As a matter of federal law, tribes are subject to private lawsuits only where Congress has authorized such actions or the tribe has waived its immunity. *Kiowa*, 523 U.S. at 754.

"To abrogate tribal immunity, Congress must 'unequivocally' express that purpose." *C & L Enters.*, 532 U.S. at 418 (2001) (quoting *Santa Clara Pueblo*, 436 U.S. at 58). Courts should "not lightly assume that Congress in fact intends to undermine Indian self-government." *Bay Mills.*, 572 U.S. at 790 (quoting *C & L Enterprises*, 532 U.S. at 418 (2001)). "In interpreting whether Congress intended a particular statute to waive tribal sovereign immunity, other circuits have drawn on a similar doctrine interpreting congressional intent to legislatively abrogate state sovereign immunity." *Larimer*, 814 F. Supp. 2d 952 (N.D. Cal. 2011) (citing *Fla. Paraplegic, Ass'n, Inc.*, 166 F.3d at 1131 (citing *Atascadero State Hosp. v. Scanlon*,

473 U.S. 234, 242 (1985))). The Supreme Court has held that Congress may abrogate tribal sovereign immunity "'only by making its intention unmistakably clear in the language of the statute." *Id.* (quoting *Atascadero State Hosp.*, 473 U.S. at 242).

Parrotta asserts that Congress abrogated tribal sovereign immunity because the FLSA is a statute of general applicability. (ECF No. 10, PageID.97.) Parrotta repeats that sovereign immunity was abrogated because the FLSA is applicable to HIC. (*Id.*, PageID.97–103.)

HIC argues Congress did not abrogate tribal sovereign immunity through the FLSA because the statute is silent with respect to any Congressional authorization of private lawsuits against tribes or tribal agents. (ECF No 9, PageID.71.) HIC asserts that implying a waiver of tribal sovereign immunity would contradict both the Sixth Circuit and the Supreme Court's precedent in *Bay Mills*. (*Id.*, PageID.71–72.) HIC stresses that "[t]he Supreme Court has long recognized that there is a conceptual distinction between the procedural question of whether tribal sovereign immunity bars a lawsuit and the substantive question of whether the federal law underlying the claim applies to a tribe." (ECF No. 11, PageID.123–24.)

Here, the FLSA makes no mention of private enforcement against tribal governments and does not specifically reference tribes anywhere in the statutory scheme. 29 U.S.C. §§ 201–219. In contrast, the statute discusses and defines public agencies, before explicitly abrogating their immunity from private suit under the statute. §§ 203(x), 216(d). That Congress specifically considered the

abrogation issue and did not include tribes among those sovereigns whose immunity was being abrogated is telling evidence of Congress' decision not to abrogate. Thus, the Court concludes that Congress did not abrogate tribal sovereign immunity in the FLSA.

c. Waiver of Tribal Sovereign Immunity

Even if Congress has not abrogated tribal sovereign immunity, a tribe may waive its own immunity. "[T]o relinquish its immunity, a tribe's waiver must be 'clear.'" *C & L Enterprises*, 532 U.S. at 418 (quoting *Oklahoma Tax Comm'n*, 498 U.S. at 509). Tribes may limit the scope of their waiver by placing any conditions or limitations on the waiver. *Missouri River Services, Inc. v. Omaha Tribe of Nebraska*, 267 F.3d 848, 852–53 (8th Cir. 2001). Moreover, tribal immunity waivers should be strictly construed. *Id.*

Parrotta asserts HIC waived its tribal sovereign immunity to employment related lawsuits through Article V § 1 ¶ 12 of the tribe's Constitution and Bylaws. (ECF No. 10, PageID.103.) Parrotta argues that HIC expressed an "'unequivocal . . . and clear' desire to comply with applicable federal law" in its Constitution. (*Id.*) Parrotta says that HIC waived its immunity to private suit by stating that "'[t]he Council shall not exercise any of the foregoing powers so as to conflict with any laws of the United States which apply to the Hannahville Indian Community.'" (*Id.*, PageID.104. (quoting the HIC Constitution and Bylaws))

HIC contends that it has not waived its sovereign immunity to allow private enforcement of the FLSA. (ECF Nos. 9, 11.) HIC argues that waiver by the tribe

must be express and cannot be implied from the tribe's actions. (ECF No. 9, PageID.79.) HIC states that Parrotta failed to argue there was any form of *express waiver* in her complaint and failed to point to one in the provided article of the Constitution. (*Id.*; ECF No. 11, PageID.129.) HIC says that through their Constitution the tribe adopted a sovereign immunity code reaffirming tribal sovereignty and expressing the sovereign immunity defense would be applied to its enterprises and agents unless waived by formal resolution. (*Id.*) HIC argues that there was no such resolution here. (ECF No. 9, PageID.79.) Defendant concludes that to find a waiver written in the tribe's Constitution would require the Court to impermissibly infer one. (ECF No. 11, PageID.129.)

In 2022, HIC adopted a Tribal Sovereign Immunity Code ("the Code") delineating the tribe's sovereign immunity and waivers of that immunity. (ECF No. 11-1.) The Code sets out that its purpose is to "reaffirm the sovereign immunity of the Hannahville Indian Community . . . in all cases and circumstances." (*Id.*, PageID.138.) HIC reaffirms the sovereign immunity of the tribe, its entities, and employees in state, federal, and tribal court except where "such immunity is waived in accordance with Section 7.4.103 and 7.4.105 [of the Code] by express, written resolution." (*Id.*) Section 7.4.103 on Waivers of Sovereign Immunity provides:

> (1) Sovereign immunity shall only be waived by formal, written resolution of the Tribal Council expressly waiving sovereign immunity; provided, that such waiver shall not be general but shall be specific and limited as to the amount of damages which may be awarded, the relief that may be granted, the duration of the waiver, the grantee of the waiver, the transaction upon which the waiver was based, the property or funds of the Tribe subject to the waiver, the court or other administrative body having jurisdiction, and the

> applicable law. Such waiver shall be strictly construed and shall be effective only to the extent expressly provided and shall be subject to all conditions or limitations set forth in the resolution.
>
> (2) No waiver of sovereign immunity shall be deemed a consent to the levy of any judgment, lien or attachment upon property of the Tribe other than property specifically pledged, assigned, or identified in the resolution.
>
> (3) No waiver of sovereign immunity shall be implied or orally given effect in any circumstance for any reason whatsoever.
>
> (4) Employees and others are expressly prohibited from signing contract documents with third parties purporting to waive the sovereign immunity of the Tribe. Such contract shall be deemed unauthorized and invalid by the Tribal Council.
>
> (5) Waivers must meet any further requirements in Section 7.4.105.

(*Id.*, PageID.138.)

And Section 7.3.105 on the "Requirement to Attach Resolution Waiving Sovereign Immunity" provides:

> To file an action in Tribal Court or any state or federal court or administrative body against the Tribe, its entities and employees, Petitioner must attach a copy of the Tribal Council resolution that (1) meets all the conditions in Section 7.4.103, (2) expressly waives sovereign immunity for the benefit of the claimant; and (3) authorizes with specificity the claims alleged and relief requested in the complaint.
>
> The tribal court clerk shall not accept (or allow to be filed) complaints against the Tribe, its entities and employees with no Tribal Council resolution waiving sovereign immunity attached thereto.
>
> If a claimant files a complaint with a resolution attached thereto, the court clerk shall schedule a show hearing within fourteen (14) days for the Tribal Court to make a determination as to whether the resolution attached to the complaint (1) meets all the conditions in Section 7.4.103, (2) expressly waives sovereign immunity for the benefit of the claimant; and (3) authorizes the claims alleged and relief requested in the complaint.

> The Tribal Council Secretary must be present at the show cause hearing to testify about the Tribal Council meeting minutes.
>
> There shall be no appeals from any dismissals from this show cause hearing.

(*Id.*, PageID.139.)

Contrary to Parrotta's assertion, the tribe's statement that it would not "exercise any of the foregoing powers so as to conflict with any of the laws of the United States which apply" to the tribe does not constitute a clear waiver of immunity. *See C & L Enters.*, 532 U.S. at 418 (2001). At most, the tribe implies a willingness to submit to applicable federal laws. However, waivers of tribal sovereignty may not be implied. *Santa Clara Pueblo*, 436 U.S. at 58. HIC's Tribal Sovereignty Code contains no blanket express waiver allowing suit by private parties under the FLSA or the PUMP Act. (ECF No. 11-1.) Instead, the Code sets out that any waiver by the tribe must be set out in a "formal, written resolution of the Tribal Council" and that petitioners seeking to file an action in state, federal, or tribal court must "attach a copy of the Tribal Council resolution that (1) meets all the conditions in Section 7.4.103, (2) expressly waives sovereign immunity for the benefit of the claimant; and (3) authorizes with specificity the claims alleged and relief requested in the complaint." (*Id.*, PageID.138–39.) No such resolution is part of the record in this case. Thus, HIC did not waive tribal sovereign immunity.

The undersigned respectfully recommends the Court grant HIC's motion to dismiss for lack of subject matter jurisdiction based on tribal sovereign immunity (1)

because Congress did not abrogate tribal sovereign immunity explicitly through the FLSA, and (2) because HIC did not explicitly waiver tribal sovereign immunity.

HIC asserts, and Parrotta contests, that the Court should grant dismissal under the tribal exhaustion doctrine, which would compel Parrotta to first file suit in tribal court rather than federal and to permit a tribal court to determine if it has the power to exercise subject matter jurisdiction over the claims. (ECF No. 9, PageID.82.) The undersigned finds it unnecessary to reach this issue because tribal sovereign immunity bars Parrotta's suit at this point.

V. State Law Claims

In her complaint, Parrotta asserted violations of an unspecified state law entitled her to damages. In determining whether to retain supplemental jurisdiction over state law claims, "[a] district court should consider the interests of judicial economy and the avoidance of multiplicity of litigation and balance those interests against needlessly deciding state law issues." *Landefeld v. Marion Gen. Hosp., Inc.*, 994 F.2d 1178, 1182 (6th Cir. 1993). Ordinarily, when a district court has exercised jurisdiction over a state-law claim solely by virtue of supplemental jurisdiction and the federal claims are dismissed prior to trial, the court will dismiss the remaining state-law claims. *Id.* Dismissal, however, remains "purely discretionary." *Carlsbad Tech., Inc. v. HIF Bio, Inc.*, 556 U.S. 635, 639 (2009) (citing 28 U.S.C. § 1367(c)); *Orton v. Johnny's Lunch Franchise, LLC*, 668 F.3d 843, 850 (6th Cir. 2012).

HIC asserts that the Court should dismiss Parrotta's state law claims under Fed. R. Civ. P. 8(a), for failure to plead with particularity. (ECF No. 9, PageID.81–82.) However, for the reasons stated above, it unnecessary to reach this analysis. If the Court adopts the undersigned's recommendation, it will dismiss all of Parrotta's federal claims without prejudice. The balance of the relevant considerations would therefore weigh against the exercise of supplemental jurisdiction. As such, the undersigned respectfully recommends that the Court decline to exercise supplemental jurisdiction over Parrotta's state law claims.

VI. Recommendation

The undersigned respectfully recommends that the Court grant the Defendant's motion to dismiss for lack of subject matter jurisdiction, dismissing the Plaintiff's claims in their entirety without prejudice so that the Plaintiff may pursue all appropriate remedies.

Dated: January 16, 2025

/s/ *Maarten Vermaat*
MAARTEN VERMAAT
U.S. MAGISTRATE JUDGE

NOTICE TO PARTIES

Any objections to this Report and Recommendation must be filed and served within fourteen days of service of this notice on you. 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b). All objections and responses to objections are governed by W.D. Mich. LCivR 72.3(b). Failure to file timely objections may constitute a waiver of any

further right of appeal. *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981); *see Thomas v. Arn*, 474 U.S. 140 (1985).