**IN THE UNITED STATES DISTRICT COURT**
**FOR THE MIDDLE DISTRICT OF GEORGIA**
**ALBANY DIVISION**

HAROLD B. MASON,

Plaintiff,

v.

FLINT RIVERQUARIUM, INC., *et al.*,

Defendants.

CASE NO.: 1:16-CV-193 (WLS)

**ORDER**

Before the Court is Plaintiff's Motions for Leave to Proceed *In Forma Pauperis*. (Docs. 3; 4). Upon review of Plaintiff's applications, it appears that Plaintiff meets the requirements of 28 U.S.C. § 1915 for proceeding *in forma pauperis,* and therefore the Motions for Leave to Proceed *In Forma Pauperis* (Docs. 3; 4) are **GRANTED**. Plaintiff is hereby allowed to proceed in this action without prepayment of costs or fees or the necessity of giving security therefor. A copy of the Complaint (Doc. 1) shall be served by the United States Marshal at this time on the Defendants.

Plaintiff is advised that he must serve upon opposing counsel (or Defendants if they are not represented by counsel) copies of all motions, pleadings, discovery material, and any correspondence (including letters to the Clerk or to a judge) that are filed with the Clerk of Court. Fed. R. Civ. P. 5(a). Plaintiff shall include with any paper that is filed with the Clerk of Court a certificate stating the date on which a true and correct copy of that paper was mailed to Defendants or their counsel. Plaintiff is further advised that the Clerk of Court will not serve or forward to Defendants or their counsel copies of any materials filed with the Court.

In addition, the following limitations are imposed on discovery: except with written permission of the Court first obtained, (i) interrogatories may not exceed twenty-five (25) to each party (M.D. Ga. R. 33.1); (ii) requests for production of documents and things under Rule 34 of the Federal Rules of Civil Procedure may not exceed ten (10) requests to each party (M.D. Ga. R. 34); and (iii) requests for admissions under Fed. R. Civ. P. 36 may not exceed fifteen (15) requests to each party (M.D. Ga. R. 36). However, discovery shall not proceed until a discovery and scheduling order is in place.

28 U.S.C. § 636(c)(1) authorizes and empowers full-time Magistrate Judges to conduct any and all proceedings in a jury or non-jury civil matter and to order the entry of judgment in a case upon the written consent of the parties. If the parties desire for the United States Magistrate Judge to hear this case through trial and the entry of judgment, they may complete and return consent forms that will be mailed by the Clerk of Court.

Plaintiff is responsible for the diligent prosecution of his Complaint, and failure to do so will result in the possibility of dismissal under Fed. R. Civ. P. 41(b) for failure to prosecute.

Plaintiff is required to keep the Clerk of Court advised of his current address at all times during the pendency of this action. Failure to promptly advise the Clerk of any change of address may result in the dismissal of Plaintiff's Complaint.

**SO ORDERED**, this 1st day of November, 2016.

**/s/ W. Louis Sands**
**W. LOUIS SANDS, SR. JUDGE**
**UNITED STATES DISTRICT COURT**

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

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| HAROLD B. MASON,<br><br>Plaintiff,<br><br>v.<br><br>CHARLES GEORGE,<br>KATHY BATSON,<br>and FLINT RIVERQUARIUM,<br><br>Defendants. | : | CASE NO.: 1:12-CV-159 (WLS) |

**ORDER**

Presently pending before the Court is Plaintiff's Motion for Leave to Amend Complaint. (Doc. 87.) Therein, Plaintiff seeks leave to amend his current complaint to include two new defendants, Sherrell Lamar and Vickie Churchman, and to allege claims for wrongful termination and retaliation against these individuals arising under federal and state law. (*Id.*; Doc. 87-1.) Defendants responded in opposition to Plaintiff's Motion on January 7, 2014, setting forth various reasons why Plaintiff's request to amend should be denied. (Doc. 92.) Plaintiff submitted a reply in support of his motion on January 10, 2014. (Doc. 94.)

Under Rule 15(a)(2), "a party may amend its pleading only with the opposing party's written consent or the court's leave," which "[t]he court should freely give ... when justice so requires." Fed. R. Civ. P. 15(a)(2). Unless a substantial reason exists to deny the motion, such as undue prejudice or delay, movant's bad faith or dilatory

motive, repeated failure to cure deficiencies, or futility, the interests of justice require that leave to amend be granted. *Forman v. Davis*, 371 U.S. 178, 182 (1962).

Importantly, however, when a motion to amend is filed after a Court has entered its scheduling order, the movant is required to meet the "good cause" requirements under Rule 16(b) before the Court may consider whether the amendment is proper under Rule 15(a). *Sosa v. Airprint Sys., Inc.*, 133 F.3d 1417, 1418 n.2, 1419 (11th Cir. 1998); *Datastrip Int'l, Ltd. v. Intacta Techs., Inc.*, 253 F. Supp. 2d 1308, 1317 (N.D. Ga. 2003) ("Courts evaluating motions to amend under these circumstances must apply the good cause rubric of Rule 16 before considering whether amendments are proper under Rule 15 or 21.") (citing *Sosa*, 133 F.3d at 1419). The "good cause" standard is an important tool for docket management, preclud[ing] modification [of a scheduling order] unless the schedule cannot 'be met despite the diligence of the party seeking the extension.'" *Sosa*, 133 F.3d at 1418. "If a party was not diligent, the (good cause) inquiry should end." *Id.* (additional citations omitted).

Applying these standards, the Court finds that Plaintiff's request to amend should be denied because of his failure to demonstrate "good cause" for the suggested amendments. Plaintiff has merely stated in vague and conclusory terms that granting the amendment will serve the demands of "justice." (Doc. 94 at 2) (Plaintiff states that "[j]ustice demands those parties be named individually and inclusively without it causing undue delay based upon the defendants [sic] actions which would be clear factors of establishing Mason's case beyond the foundational claims established at outset committed by Charles George and Kathy Batson, of discrimination.") As noted

above, however, at this stage, "good cause" is the relevant standard, not the concerns about "justice" that accompany a Rule 15 discretionary decision by the judge. Plaintiff's prejudice arguments are similarly unavailing as prejudice to Defendants does not factor into the Court's analysis under Rule 16.[1] *See E.E.O.C. v. Excel, Inc.*, 259 F.R.D. 652, 656 (N.D. Ga. 2009) ("[T]he Rule 16 inquiry does not turn on issues of prejudice.")

Plaintiff was given until April 1, 2013, to file any motions to join other parties or to amend pleadings. (Doc. 30 at 2.) Although Plaintiff alleges that the new complaint "accounts for the significant factual and procedural developments that have occurred since the original complaint was filed," Plaintiff has not alleged that he was unaware of the alleged "new" facts prior to April 1, 2013, nor has he alleged that the April 1, 2013 deadline could not be met despite his diligence.[2] Specifically, Plaintiff has not identified to what "factual and procedural developments" he is referring, when he learned of these facts, and why he was unable to discover said facts earlier. As such, Plaintiff has failed in his burden to make a specific proffer as to reasons that would support "good cause."

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[1] Plaintiff's Motion also appears to argue that O.C.G.A. § 9-2-61(a) provides him the right to raise the claims decided by the Superior Court of Dougherty County in this Court. O.C.G.A. § 9-2-61(a) governs when a plaintiff may renew a case in state or federal court without running afoul of the applicable statute of limitations. This section of the Georgia code is only applicable, however, when a "plaintiff discontinues or dismisses" his complaint, or the case is "discontinued or dismissed without prejudice for lack of subject matter jurisdiction." Here, Plaintiff's claims for "racial discrimination, harassment, [and] retaliation" against Lamar and Churchman were dismissed with prejudice by the Superior Court of Dougherty County. Therefore, the provisions of O.C.G.A. § 9-2-61(a) are not applicable here. Not to mention the ability to bring another suit without being barred by the statute of limitations, a situation § 9-2-61(a) is intended to remedy, has no bearing on whether Plaintiff can amend his current federal complaint with leave of the Court.

[2] Plaintiff states that the new complaint accounts for factual and procedural developments that have occurred since the original complaint was filed. Plaintiff's original complaint was filed on October 22, 2012. (Doc. 1.) Because the deadline to amend pleadings/add parties was April 1, 2013, to obtain leave to amend, under Rule 16 standards, Plaintiff would have still had to show that the facts he is seeking to add only became known to him after April 1, 2013, despite his diligence. Plaintiff has failed to present any evidence to this effect.

While Plaintiff is proceeding *pro se*, and the Court is sensitive to this status, *pro se* litigants are "subject to the relevant law and rules of court, including the Federal Rules of Civil Procedure." *Moon v. Newsome*, 863 F.2d 835, 837 (11th Cir. 1989). Thus, Plaintiff is not excused from setting forth assertions in support of his motion to amend that satisfy the "good cause" requirement. *Goolsby v. Gain Techs., Inc.*, 362 F. App'x 123, 131-32 (11th Cir. 2010) (concluding that district court did not abuse its discretion when it refused to allow *pro se* plaintiff's amendment for failure to show good cause); *Keeler v. Fla. Dept. of Health*, 324 F. App'x 850, 857-58 (11th Cir. 2009) (affirming district court's denial of motion to amend under Rule 16's "good cause" standard where *pro se* plaintiff offered no explanation as to why amendments were not sought in the time limit prescribed by the scheduling order). Accordingly, Plaintiff's Motion for Leave to Amend Complaint (Doc. 87) is **DENIED**.

**SO ORDERED**, this 13th day of February 2014.

/s/ W. Louis Sands
**W. LOUIS SANDS, JUDGE**
**UNITED STATES DISTRICT COURT**

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

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No. 17-11995
Non-Argument Calendar

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D.C. Docket No. 1:16-cv-00193-WLS

HAROLD B. MASON,

Plaintiff-Appellant,

versus

VICKIE CHURCHMAN,
FLINT RIVERQUARIUM, INC.,

Defendants-Appellees.

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Appeal from the United States District Court
for the Middle District of Georgia

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(January 30, 2018)

Before ED CARNES, Chief Judge, WILLIAM PRYOR, and ANDERSON, Circuit Judges.

PER CURIAM:

Harold B. Mason, proceeding pro se, appeals the district court's grant of summary judgment in favor of his former employer, Flint RiverQuarium, Inc. Mason contends that the district court erred by not considering evidence of alleged spoliation by RiverQuarium and by not granting his motion for sanctions.[1]

I.

RiverQuarium hired Mason in 2010. When the company fired him the following year, Mason brought a series of administrative, state, and federal actions alleging that RiverQuarium and its employees discriminated against him on the basis of his race, gender, and age. This is Mason's second federal case against RiverQuarium for discrimination.[2]

RiverQuarium moved to dismiss on res judicata grounds and for sanctions. In response, Mason responded and also moved for sanctions and to remove RiverQuarium's attorney, Jason Willcox. Before either motion was decided,

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[1] Mason also contends that the court erred when it allowed RiverQuarium to submit evidence, without motion or notice, of an official hearing in state superior court. Mason mentions that argument in passing in his brief but does not discuss the issue or cite supporting authority. For that reason, it is abandoned. Sapuppo v. Allstate Floridian Ins. Co., 739 F.3d 618, 681 (11th Cir. 2014) ("We have long held that an appellant abandons a claim when he either makes only passing references to it or raises it in a perfunctory manner without supporting arguments and authority.").

[2] Mason also asserted claims against two RiverQuarium employees, Sherrell Lamar and Vickie Churchman. He voluntarily dismissed Lamar early in the proceedings, and she is not a party in this appeal. The district court granted Churchman's motion to dismiss. Because Mason does not challenge that decision, he has abandoned that issue. See Timson v. Sampson, 518 F.3d 870, 874 (11th Cir. 2008) ("While the Court of Appeals reads appellate briefs filed by pro se litigants liberally, issues not briefed on appeal by a pro se litigant are abandoned.") (citations and quotation marks omitted).

Mason filed a supplement to his response to RiverQuarium's motion to dismiss, in which he stated that the true target of his complaint is "the destruction of evidence" not discrimination. He filed a number of other motions that were stayed pending resolution of the motion to dismiss.

The district court ruled that the claims brought against RiverQuarium were barred by res judicata because they were litigated and decided in Mason's original federal case. And it refused to consider Mason's assertions that RiverQuarium employees destroyed records because Mason did not include a claim for spoliation in his complaint and failed to properly amend his complaint to add a claim for spoliation. Finally, the court denied the parties' motions for sanctions and dismissed or denied Mason's remaining motions. This is Mason's appeal.[3]

II.

The district court interpreted RiverQuarium's motion to dismiss as a motion

[3] RiverQuarium argues that we lack jurisdiction to consider the merits of Mason's allegations of spoliation or his request for sanctions because those claims relate to alleged misconduct in other lawsuits. We have jurisdiction over an appeal if jurisdiction is both "(1) authorized by statute and (2) within constitutional limits." OFS Fitel, LLC v. Epstein, Becker and Green, P.C., 549 F.3d 1344, 1355 (11th Cir. 2008). Mason's appeal is authorized by statute because he appeals a "final judgment of dismissal with prejudice." Id. at 1355–56 ("Congress authorized by statute appeals from final judgments."). And because that dismissal is adverse to Mason's interests, his appeal satisfies the case or controversy requirement of the Constitution. Id.

RiverQuarium also argues that Mason lacks standing on appeal. We disagree and conclude that the denial of his motion for sanctions and the dismissal of his complaint provide him sufficient standing to appeal both rulings. See Wolff v. Cash 4 Titles, 351 F.3d 1348, 1354 (11th Cir. 2003) ("The primary limitation on a litigant's appellate standing is the adverseness requirement . . . . [A] litigant who is aggrieved by the judgment or order may appeal.") (quotation marks omitted) (alterations accepted).

for summary judgment because with its motion RiverQuarium submitted evidence from outside the complaint. We review de novo the court's grant of summary judgment. Holly v. Clairson Indus., LLC, 492 F.3d 1247, 1255 (11th Cir. 2007). "Summary judgment is appropriate where there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law." Johnson v. Bd. of Regents of the Univ. of Ga., 263 F.3d 1234, 1242 (11th Cir. 2001). We review for abuse of discretion the district court's sanctions determination under Federal Rule of Civil Procedure 11. See Baker v. Alderman, 158 F.3d 516, 521 (11th Cir. 1998).

Mason argues that the district court court erred by granting summary judgment without considering his claim that RiverQuarium employees destroyed records in his personnel file. But Mason did not bring a claim for spoliation in his complaint and never amended his complaint under Federal Rule of Civil Procedure 15(a) to include such a claim. In his supplement in response to RiverQuarium's motion to dismiss, he asserts that "it is the spoliation of records that [he is] addressing," not potential discriminatory statements by RiverQuarium employees. But the only claims included in his complaint and properly before the district court were for discrimination, not destruction of evidence. Because Mason did not properly amend his complaint under Rule 15, the district court did not err by ruling that Mason failed to properly assert a claim for spoliation. See Gilmour v. Gates,

McDonald and Co., 382 F.3d 1312, 1314 (11th Cir. 2004) ("The proper procedure for plaintiffs to assert a new claim is to amend the complaint in accordance with Fed. R. Civ. P. 15(a). A plaintiff may not amend her complaint through argument in a brief opposing summary judgment.").

Mason also argues that the district court wrongly denied his motion for sanctions. Mason asserts that sanctions are warranted under Federal Rule of Civil Procedure 37 and an unrelated Department of Health and Human Services regulation. But Mason didn't raise either of those arguments before the district court, so we do not address them now. Juris v. Inamed Corp., 685 F.3d 1294, 1325 (11th Cir. 2012) ("A federal appellate court will not, as a general rule, consider an issue that is raised for the first time on appeal."). Instead the district court denied Mason's motion for sanctions because he based that motion on Federal Rule of Civil Procedure 11 and the court found that Rule 11 does not apply. Because Mason does not challenge that ruling on appeal, he has abandoned that issue. See Timson, 518 F.3d at 874.

Mason does not contest or discuss the district court's remaining rulings, so any challenges to those rulings are also abandoned. Id.

**AFFIRMED.**

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

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No. 17-11995-AA

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HAROLD B. MASON,

Plaintiff - Appellant,

versus

VICKIE CHURCHMAN,
FLINT RIVERQUARIUM, INC.,

Defendants - Appellees,

SHERRELL LALMAR,

Defendant.

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Appeal from the United States District Court
for the Middle District of Georgia

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BEFORE: ED CARNES, Chief Judge, WILLIAM PRYOR, and ANDERSON, Circuit Judges.

PER CURIAM:

The petition(s) for panel rehearing filed by Appellant Harold B. Mason is DENIED.

ENTERED FOR THE COURT:

CHIEF JUDGE

ORD-41

Additional material from this filing is available in the Clerk's Office.