

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

MALIBU MEDIA, LLC,

Plaintiff,

vs.

Case No. 2:12-cv-177-FtM-29SPC

JOHN DOES 1, 3, and 11,

Defendants.

OPINION AND ORDER

This matter is before the Court on consideration of the Magistrate Judge's Reports and Recommendations (Docs. ## 47, 48), issued on August 1, 2012, recommending that John Doe 3's Motion to Dismiss/Sever and for a Protective Order and/or To Quash Subpoena (Doc. #7) and John Doe 11, Special Appearance Motion to Quash Subpoena, or in the Alternative, Motion for Protective Order, Motion to Dismiss or Sever Defendants for Improper Joinder, Motion to Dismiss for Failing to State a Cause of Action: Non-Cumulative Joint and Several Liability; Mixed Law and Equity (Doc. #15) be denied without prejudice. Doe 11 filed an Objection (Doc. #50), Doe 3 filed an Objection (Doc. #51), and plaintiff filed Oppositions (Docs. ## 53, 54).

After conducting a careful and complete review of the findings and recommendations, a district judge may accept, reject or modify the magistrate judge's report and recommendation. 28 U.S.C. § 636(b)(1); Williams v. Wainwright, 681 F.2d 732 (11th Cir. 1982),

cert. denied, 459 U.S. 1112 (1983). A district judge "shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(C). This requires that the district judge "give fresh consideration to those issues to which specific objection has been made by a party." Jeffrey S. v. State Bd. of Educ., 896 F.2d 507, 512 (11th Cir. 1990) (quoting H.R. 1609, 94th Cong. § 2 (1976)). In the absence of specific objections, there is no requirement that a district judge review factual findings *de novo*, Garvey v. Vaughn, 993 F.2d 776, 779 n.9 (11th Cir. 1993), and the court may accept, reject or modify, in whole or in part, the findings and recommendations. 28 U.S.C. § 636(b)(1)(C). The district judge reviews legal conclusions *de novo*, even in the absence of an objection. See Cooper-Houston v. Southern Ry., 37 F.3d 603, 604 (11th Cir. 1994); Castro Bobadilla v. Reno, 826 F. Supp. 1428, 1431-32 (S.D. Fla. 1993), aff'd, 28 F.3d 116 (11th Cir. 1994) (Table).

John Doe 3 objects that the subpoenas at issue exist only because the Court authorized early discovery in this case and therefore this Court has the authority to supervise and modify discovery to protect John Doe 3. The Court declines to reconsider the April 11, 2012, Order (Doc. #4) granting leave to serve third party subpoenas. The only issue here is whether the Report and Recommendation regarding the motion to dismiss/sever, for

protective order, and/or to quash should be granted. The Court agrees that the motion to quash should be filed with the issuing Court, and further agrees that the remaining issues are premature at this time.

The Objection by John Doe 11 reiterates previously raised arguments, including those presented in its pending Motion to Strike Pleadings and Motion to Dismiss Party Due to Improper Tactics and Prejudicial Use of This Court's Report and Recommendation (Doc. #34), without directly objecting to or responding to the Report and Recommendation (Doc. #48).

After conducting an independent examination of the file and upon due consideration of the Reports and Recommendations, the Court agrees with the Reports and Recommendations that the motions to quash must be filed with the issuing court. The Court further agrees with the Reports and Recommendations that the other issues are premature at this time.

Accordingly, it is now

ORDERED:


1. The Reports and Recommendations (Docs. ## 47, 48) are hereby **adopted** and the findings incorporated herein.

2. John Doe 3's Motion to Dismiss/Sever and for a Protective Order and/or To Quash Subpoena (Doc. #7) is **denied without prejudice**. The motion to quash is denied as not properly filed in

this Court, and the motion is otherwise denied as premature at this stage of the proceedings.

3. John Doe 11, Special Appearance Motion to Quash Subpoena, or in the Alternative, Motion for Protective Order, Motion to Dismiss or Sever Defendants for Improper Joinder, Motion to Dismiss for Failing to State a Cause of Action: Non-Cumulative Joint and Several Liability; Mixed Law and Equity (Doc. #15) is **denied without prejudice**. The motion to quash is denied as not properly filed in this Court, and the motion is otherwise denied as premature at this stage of the proceedings.

DONE AND ORDERED at Fort Myers, Florida, this 10th day of September, 2012.



JOHN E. STEELE
United States District Judge

Copies:
Hon. Sheri Polster Chappell
United States Magistrate Judge

Counsel of Record
Unrepresented parties