

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

<b>DONNA FRANKLIN, as Personal</b>	)	
<b>Representative of the Estate of RAY</b>	)	
<b>FRANKLIN, Deceased,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>Case No.: 2:11-CV-2731-VEH</b>
	)	
<b>v.</b>	)	
	)	
<b>DANA COMPANIES, LLC, f/k/a</b>	)	
<b>Dana Corporation, et al.,</b>	)	
	)	
<b>Defendants.</b>	)	
	)	

**ORDER OVERRULING OBJECTIONS AND  
ADOPTING THE REPORT AND RECOMMENDATION  
OF THE MAGISTRATE JUDGE**

This case comes before the Court on Dana Companies, LLC’s (“Dana’s”) motion for summary judgment (doc. 47) and a motion to strike (doc. 48) filed by the Plaintiff, Donna Franklin, regarding Dana's motion. On August 31, 2017, the magistrate entered a Report and Recommendation wherein she stated, in pertinent part:

the undersigned **RECOMMENDS** Dana's motion for summary judgment be **DENIED** as an impermissible renewed motion. (Doc. 47). The undersigned **FURTHER RECOMMENDS** Plaintiff's motion to strike be **DENIED as MOOT**. (Doc. 48).

(Doc. 52 at 8) (bold in original). The deadline for objecting to that recommendation was September 14, 2017. 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(2). Dana timely filed objections to the recommendation on September 14, 2017. (Doc. 54). In that document, Dana requested oral argument. That request is **DENIED**. Dana filed “amended objections” to the recommendation on September 21, 2017. (Doc. 57). Document 57 is **STRICKEN** as untimely filed without leave.

“Neither the Constitution nor the statute requires a district judge to review, *de novo*, findings and recommendations that the parties themselves accept as correct.” *United States v. Woodard*, 387 F.3d 1329, 1334 (11th Cir. 2004) (citation omitted). It is incumbent upon the parties to timely raise any objections that they may have regarding a magistrate judge’s findings contained in a report and recommendation, as the failure to do so subsequently waives or abandons the issue, even if such matter was presented at the magistrate judge level. *See, e.g., U.S. v. Pilati*, 627 F.3d 1360 at 1365 (11th Cir. 2010) (“While Pilati raised the issue of not being convicted of a qualifying offense before the magistrate judge, he did not raise this issue in his appeal to the district court. Thus, this argument has been waived or abandoned by his failure to raise it on appeal to the district court.”). However, the district judge has discretion to consider or to decline to consider arguments that were not raised before the magistrate judge. *Stephens v. Tolbert*, 471 F.3d 1173, 1176 (11th Cir. 2006); *see also*

*Williams v. McNeil*, 557 F. 3d 1287, 1292 (11th Cir. 2009). “Parties filing objections must specifically identify those findings objected to. Frivolous, conclusive or general objections need not be considered by the district court.” *Nettles*, 677 F.2d at 410 n. 8. “This rule facilitates the opportunity for district judges to spend more time on matters actually contested and produces a result compatible with the purposes of the Magistrates Act.” *Id.* at 410. Indeed, a contrary rule “would effectively nullify the magistrate judge's consideration of the matter and would not help to relieve the workload of the district court.” *Id.* (quoting *United States v. Howell*, 231 F.3d 615, 622 (9th Cir. 2000)). **Dana’s objections have failed to meet these standards.**

Furthermore, after reviewing *de novo* the entire file, including the Report and Recommendation, and Dana’s timely objection thereto, the Court is of the opinion that the magistrate’s recommendation is due to be, and hereby is, **ADOPTED** and **ACCEPTED** as the opinion of this Court. The Court **EXPRESSLY FINDS** that Dana's motion for summary judgment (doc. 47) is due to be, and hereby is, **DENIED** as an impermissible renewed motion. The Court further **EXPRESSLY FINDS** that the Plaintiff’s motion to strike (doc. 47) is **DENIED** as **MOOT**.

**DONE** and **ORDERED** this 20th day of October, 2017.



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**VIRGINIA EMERSON HOPKINS**  
United States District Judge