

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

REGINA GREENE,	)	
	)	
<b>Plaintiff,</b>	)	
	)	
vs.	)	<b>CIV. ACT. NO. 1:23-cv-302-TFM-B</b>
	)	
TRUIST BANK, <i>et al.</i> ,	)	
	)	
<b>Defendants.</b>	)	

**MEMORANDUM OPINION AND ORDER**

On September 19, 2023, the Magistrate Judge entered a Report and Recommendation which recommends that Defendants’ motions to dismiss (Docs. 4, 10) be denied as moot in light of the amended complaint, that Plaintiff’s motion for summary judgment (Doc. 18) and amended motion for summary judgment (Doc. 24) be denied as premature, and Plaintiff’s motion to consider for judgment (Doc. 17), amended motion to consider for judgment (Doc. 23), and motion for evidentiary hearing (Doc. 34) all be denied. *See* Doc. 42. Plaintiff filed her opposition to the Report and Recommendation on October 2, 2023. *See* Doc. 43. In the same document she requests leave to amend her complaint and for discovery. *Id.* Defendant Truist Bank then filed an opposition to the objections and request for leave to amend and conduct discovery. *See* Doc. 44. Subsequently, and presumably in response to the separate September 19, 2023 order from the Magistrate Judge instructing Plaintiff to amend the complaint (Doc. 41), Plaintiff filed her Second Amended Complaint. *See* Doc. 45. Plaintiff then filed a reply to Truist’s opposition to her objections. *See* Doc. 46.

The Court has reviewed the Report and Recommendation and the related documents identified above and referenced within the Report and Recommendation. The Second Amended

Complaint was timely filed in response to the order to amend. Therefore, the Second Amended is the operative complaint and the Court accepts it as such. Defendants' have also filed their respective motions to dismiss that relate to the Second Amended Complaint for which a briefing schedule has been issued. As a result, it is clear that the Report and Recommendation is correct in that the original motions to dismiss (Docs. 4, 10) have been rendered moot.

The Court also turns to the remainder of the Report and Recommendation. The Court also agrees with the recommendation where in recommends that the Plaintiff's motions related to summary judgment (Docs. 18, 24) are premature especially as the pleading-phase has not yet concluded and a new complaint has been filed. So not only were they premature, but they are also now moot. The same is true for Plaintiff's "Motion to Consider for Judgment" (Doc. 17), "Amended Motion to Consider Judgment" (Doc. 23), and "Motion for Evidentiary Hearing" (Doc. 34). After the Second Amended Complaint and related motions to dismiss have been reviewed and disposed of, should the claims proceed, then a scheduling order would be entered that establishes a discovery plan with dispositive motions deadlines.

Therefore, after due and proper consideration of all portions of this file deemed relevant to the issues raised, and a *de novo* determination of those portions of the Recommendation to which objection is made, the Report and Recommendation of the Magistrate Judge is **ADOPTED** as the opinion of this Court. Accordingly, Defendants' motions to dismiss (Docs. 4, 10) are **DENIED as moot**, Plaintiff's motion for summary judgment and amended motion for summary judgment (Docs. 18, 24) are **DENIED as premature** (and also **DENIED as moot**), and Plaintiff's motion to consider for judgment (Doc. 17), amended motion to consider for judgment (Doc. 23), and motion for evidentiary hearing (Doc. 34) are **DENIED as both premature and moot**.

This case is **REFERRED BACK** to the Magistrate Judge for further proceedings.

**DONE and ORDERED** this 2nd day of November, 2023.

/s/Terry F. Moorer  
TERRY F. MOORER  
UNITED STATES DISTRICT JUDGE