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Accordingly, IT IS HEREBY ORDERED that:

1. The Findings and Recommendation, filed on November 3, 2015, is adopted in full; and
2. Defendant's motion to dismiss the second amended complaint is DENIED; and
3. The matter is referred back to the magistrate judge for further proceedings.

IT IS SO ORDERED.

Dated: January 4, 2016

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE