

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION**

JAMES FISHER,

Plaintiff,

vs.

Case No. 3:10-cv-524-J-99MMH-TEM

LINDA SHARPE and TONIA THOMAS,

Defendants.

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**ORDER**<sup>1</sup>

**THIS CAUSE** is before the Court on the Report and Recommendation (Dkt. No. 7; Report), entered by the Honorable Thomas E. Morris, United States Magistrate Judge, on October 28, 2010. In the Report, Magistrate Judge Morris recommends that Plaintiff's Motion to Proceed In Forma Pauperis (Dkt. No. 2) be denied, and the Complaint (Dkt. No. 1) be dismissed without prejudice. See Report at 5. Plaintiff has failed to file objections to the Report, and the time for doing so has now passed.

The Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b). "When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Rule 72(b), Federal Rules of Civil Procedure (Rule(s)), advisory committee's note (1983); see also Macort v. Prem, Inc., 208 Fed. Appx. 781, 784-85 (11th Cir. 2006) (per curiam). Therefore, if no specific objections

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<sup>1</sup> This is a "written opinion" under § 205(a)(5) of the E-Government Act and therefore is available electronically. However, it has been entered only to decide the issues addressed herein and is not intended for official publication or to serve as precedent.

to findings of facts are filed, the district court is not required to conduct a de novo review of those findings. See Garvey v. Vaughn, 993 F.2d 776, 779 n.9 (11th Cir. 1993). However, the district court must review the legal conclusions in the report de novo. See Cooper-Houston v. S. Ry. Co., 37 F.3d 603, 604 (11th Cir. 1994); United States v. Rice, No. 2:07-mc-8-FtM-29SPC, 2007 WL 1428615, at \*1 (M.D. Fla. May 14, 2007); see also 28 U.S.C. § 636(b)(1).

Upon independent review of the file and for the reasons stated in the Magistrate Judge's Report, the Court will accept and adopt the legal and factual conclusions recommended by the Magistrate Judge with the exception of the discussion at the bottom of page four regarding the possible dismissal of Plaintiff's Complaint with prejudice. In light of the fact that Plaintiff, who is proceeding pro se, was not given an opportunity to amend his Complaint, the Court would not be inclined to accept such a recommendation. Indeed, where the recommended resolution of a motion to proceed in forma pauperis is to be a recommendation of dismissal, whether with or without prejudice, the undersigned is of the view that the more prudent course of action, as a general rule, is to permit the plaintiff an opportunity to amend before making such a recommendation.<sup>2</sup> Accordingly, it is hereby

**ORDERED:**

1. The Magistrate Judge's Report and Recommendation (Dkt. No. 7), with the noted exception, is **ADOPTED** as the opinion of the Court.

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<sup>2</sup> While providing a pro se plaintiff with such an opportunity is the undersigned's stated preference, dismissal without prejudice here is not improper. See Quinlan v. Personal Transport Services, Co., LLC, 329 Fed Appx. 246, 249-50 (11th Cir. 2009).

2. Plaintiff's Motion to Proceed In Forma Pauperis (Dkt. No. 2) is **DENIED**.
3. This case is **DISMISSED WITHOUT PREJUDICE**.
4. The Clerk of the Court is directed to enter judgment dismissing the case without prejudice, terminate any pending motions or deadlines as moot, and close this file.

**DONE AND ORDERED** at Jacksonville, Florida, this 29th day of November, 2010.

  
MARCIA MORALES HOWARD  
United States District Judge

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Copies to:  
Counsel of Record  
Pro Se Plaintiff