

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

HERBERT J.T. WILSON, II,

Plaintiff,

vs.

Case No. 3:12-cv-458-J-99MMH-JRK

THE CONSOLIDATED CITY OF  
JACKSONVILLE, et al.,

Defendants.

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**ORDER**

**THIS CAUSE** is before the Court on the Report and Recommendation (Doc. No. 53; Report), entered by the Honorable James R. Klindt, United States Magistrate Judge, on July 18, 2013. In the Report, Magistrate Judge Klindt recommends that Defendants City of Jacksonville, Sheriff John H. Rutherford and Deputy Timothy C. Holochwost's Motion to Dismiss Third Amended Complaint With Prejudice (Doc. No. 49) be granted, in part, and denied, in part. See Report at 40. Additionally, Magistrate Judge Klindt recommends that Defendant Global Tel-Link's Motion to Dismiss Plaintiff's Third Amended Complaint with Prejudice (Doc. No. 50) be granted to the extent that all claims against Defendant Global Tel-Link be dismissed without prejudice. See id. at 41. As of the date of this Order, no objections have been filed to the Magistrate Judge's Report.

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). If no specific objections to findings of fact 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); see also 28 U.S.C. § 636(b)(1). 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 of the availability of monetary damages against Defendant Timothy C. Holochwost in Section V.F.<sup>1</sup> Accordingly, it is hereby

**ORDERED:**

1. The Magistrate Judge's Report and Recommendation (Doc. No. 53) is **ADOPTED** as the opinion of the Court, with the exception of the discussion regarding the availability of money damages against Defendant Timothy C. Holochwost set forth in section V.F.

2. Defendants City of Jacksonville, Sheriff John H. Rutherford, and Deputy Timothy C. Holochwost's Motion to Dismiss Third Amended Complaint (Doc. No. 49) is **GRANTED, in part, and DENIED, in part**, as follows:

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<sup>1</sup> Although the claims for damages against the Defendants City of Jacksonville and Sheriff John H. Rutherford are due to be dismissed for the reasons stated in the Magistrate Judge's Report, the claim to recover monetary damages for mental or emotional injury against Defendant Timothy C. Holochwost based upon alleged retaliation is not barred pursuant to 42 U.S.C. § 1997(e) because Plaintiff is no longer incarcerated. See Report at 1-2, n.3. Thus, Plaintiff may pursue his claim to recover compensatory and nominal damages against Defendant Holochwost to remedy a First Amendment violation.

- a. As to Defendants City of Jacksonville and Sheriff Rutherford, the Motion is **GRANTED**. All claims against Defendants City of Jacksonville and Sheriff Rutherford are **DISMISSED with prejudice**.
- b. As to Defendant Holochwost, the Motion is **GRANTED to the extent** that all claims, except the claim for damages for retaliation, are **DISMISSED with prejudice**, and **DENIED** as to Plaintiff's retaliation claim.

3. Defendant Global Tel-Link's Motion to Dismiss Plaintiff's Third Amended Complaint with Prejudice (Doc. No. 50) is **GRANTED to the extent** that all claims against Defendant Global Tel-Link are **DISMISSED without prejudice**. In all other respects, the Motion is **DENIED**.

4. The Jacksonville Sheriff's Office is **DISMISSED with prejudice**.

5. In the event that Plaintiff desires to file an amended complaint consistent with this Order, he shall do so no later than **September 30, 2013**.

**DONE AND ORDERED** at Jacksonville, Florida, this 23rd day of August, 2013.

  
MARCIA MORALES HOWARD  
United States District Judge

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Copies to:

Honorable James R. Klindt  
United States Magistrate Judge

Counsel of Record  
Pro Se Plaintiff