

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

ABDULLAH M. AL-RAYES, et al.,

Plaintiff,

v.

Case No. 3:15-cv-107-J-34JBT

ERIKA M. WILLINGHAM, Individually  
and as Trustee of the Erika M.  
Willingham Trust,

Defendant.

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**ORDER**

**THIS CAUSE** is before the Court on the Report and Recommendation (Dkt. No. 144; Report), entered by the Honorable Joel B. Toomey, United States Magistrate Judge, on May 17, 2017. In the Report, Judge Toomey recommends that Defendant Erika M. Willingham's Motion to Dismiss Plaintiffs' Third Amended Complaint With Prejudice (Dkt. No. 106; Motion to Dismiss) be denied. See Report at 1, 12. Neither party has filed 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). 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 legal conclusions de novo. See Cooper-Houston v. Southern 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).

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.

Before doing so, the Court notes that in Defendant's Motion for Summary Judgment (Dkt. No. 128; Motion for Summary Judgment), Defendant incorporates by reference the arguments raised in the Motion to Dismiss. See Motion for Summary Judgment at 8. This is improper, and therefore, the Motion for Summary Judgment is due to be stricken.<sup>1</sup> The Court will allow Defendant the opportunity to file a proper self-contained motion for summary judgment. However, in light of this, the undersigned finds it necessary to continue the final pretrial conference and trial in this matter.

In light of the foregoing, it is hereby

**ORDERED:**

1. The Magistrate Judge's Report and Recommendation (Dkt. No. 144) is **ADOPTED** as the opinion of the Court.
2. Defendant Erika M. Willingham's Motion to Dismiss Plaintiffs' Third Amended Complaint With Prejudice (Dkt. No. 106) is **DENIED**.
3. Defendant's Motion for Summary Judgment (Dkt. No. 128) is **STRICKEN**.
4. Defendant shall have up to and including **June 27, 2017**, to file a proper self-contained motion for summary judgment, which shall not exceed **thirty (30)**

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<sup>1</sup> Counsel, not the Court, bear the obligation of determining which arguments made at the motion to dismiss stage of the proceedings remain viable at summary judgment, and what evidence supports or relates to those arguments. This cannot be accomplished by a blanket incorporation by reference of the prior arguments. Moreover, such an incorporation fails to account for the differing standards of review and the development of facts through discovery. Counsel must review the arguments and the facts as developed, select the appropriate bases for moving for summary judgment and present those in a properly supported motion for summary judgment filed in accordance with the Federal Rules of Civil Procedure and the Local Rules of this Court.

**pages.** Plaintiffs shall have up to and including **July 11, 2017**, to file a response, which shall not exceed **twenty-five (25) pages.** Defendant may file a reply no later than **July 21, 2017**, and Plaintiffs may file a sur-reply no later than **July 31, 2017.** The reply and sur-reply shall not exceed **ten (10) pages** each.

5. The following deadlines shall apply:

All Other Motions Including Motions <u>In Limine</u>	NOVEMBER 27, 2017
Responses to All Other Motions Including Motions <u>In Limine</u>	DECEMBER 11, 2017
Joint Final Pretrial Statement	DECEMBER 11, 2017
Final Pretrial Conference	Date: DECEMBER 18, 2017 Time: 10:00 A.M. Judge: Marcia Morales Howard
Trial Term Begins [Trials Before Magistrate Judges Begin on Date Certain]	JANUARY 2, 2018
Estimated Length of Trial	4-5 days
Jury/Non-Jury	Jury

**DONE AND ORDERED** in Jacksonville, Florida this 7th day of June, 2017.

  
**MARCIA MORALES HOWARD**  
 United States District Judge

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Copies to:

Counsel of Record