

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

AVERY MCKNIGHT,

Plaintiff,

-vs-

Case No. 3:16-cv-990-J-34JBT

STATE OF FLORIDA, et al.,

Defendants.

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**ORDER**

**THIS CAUSE** is before the Court on the Report and Recommendation (Dkt. No. 13; Report), entered by the Honorable Joel B. Toomey, United States Magistrate Judge, on November 16, 2016. In the Report, Judge Toomey recommends that Plaintiff's Affidavit of Indigency, which the Court construes as a Motion for Leave to Proceed In Forma Pauperis (Dkt. No. 2; Motion), be denied, and that this case be dismissed without prejudice. See Report at 1, 7. On December 2, 2016, Plaintiff filed his Objections to the Report and Recommendation (Dkt. No. 14; Objections), as well as a Motion for Leave to Amend Complaint (Dkt. No. 15; Motion to Amend). Thus, this matter is ripe for review.

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).

Plaintiff initiated this action on August 3, 2016, with the filing of his Complaint (Dkt. No. 1) and Motion. On September 6, 2016, Judge Toomey entered an Order taking the Motion under advisement and directing Plaintiff to file an Amended Complaint consistent with his Order no later than October 6, 2016. See Order (Dkt. No. 6). On October 11, 2016, Plaintiff requested an extension of time, see Motion for Extension of Time (Dkt. No. 7), and on October 13, 2016, the Court granted his request giving him up to and including November 14, 2016, to file an Amended Complaint, see Endorsed Order (Dkt. No. 8). Plaintiff filed his Amended Complaint (Dkt. No. 9) on October 20, 2016, despite the extension of time until November 14, 2016. Plaintiff now seeks leave to amend his complaint again asserting that he had already mailed his Amended Complaint prior to receiving the Order extending the time to file it, and stating that he attempted to amend it properly but additional time would have been helpful. See Objections at 4; Motion to Amend at 1. However, rather than seeking some sort of relief from the Court sooner, Plaintiff waited until after the entry of the Report on November 16, 2016, to file his Motion to Amend along with the Objections. In addition, Plaintiff has failed to satisfy the requirement that “[a] motion for leave to amend should either set forth the substance of the proposed amendment or attach a copy of the proposed amendment.” Long v. Satz, 181 F.3d 1275, 1279 (11th Cir. 1999); see also McGinley v. Fla. Dep’t of Highway Safety and Motor Vehicles, 438 F. App’x 754, 757 (11th Cir. 2011) (affirming denial of leave to amend where plaintiff did not set forth the substance of the proposed amendment); United States ex. rel. Atkins v. McInteer, 470 F. 3d 1350,

1361-62 (11th Cir. 2006) (same).

Upon independent review of the file and for the reasons stated in the Magistrate Judge's Report, the Court will overrule the Objections, deny the Motion to Amend, and accept and adopt the legal and factual conclusions recommended by the Magistrate Judge. Accordingly, it is hereby

**ORDERED:**

1. Plaintiff's Objections to the Report and Recommendation (Dkt. No. 14) are

**OVERRULED.**

2. Plaintiff's Motion for Leave to Amend Complaint (Dkt. No. 15) is **DENIED.**

3. The Magistrate Judge's Report and Recommendation (Dkt. No. 13) is

**ADOPTED** as the opinion of the Court.

4. Plaintiff's Affidavit of Indigency, which the Court construes as a Motion for Leave to Proceed In Forma Pauperis (Dkt. No. 2), is **DENIED.**

5. This case is **DISMISSED without prejudice.**

6. The Clerk of the Court is directed to terminate all pending motions and deadlines as moot and close the file.

**DONE AND ORDERED** at Jacksonville, Florida, this 28th day of March, 2017.

  
MARCIA MORALES HOWARD  
United States District Judge

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Copies to:

Counsel of Record

Pro Se Party