

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

RAFAEL ANGEL DIAZ NIEVES,

Plaintiff,

v.

Case No.: 6:11-cv-1471-Orl-35KRS

EDNA IRIZARRY, TRACIE PHILLIPS-
MORGAN, FOYE BUCHANNON
WALKER, et al.,

Defendants.

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ORDER

THIS CAUSE comes before the Court for consideration of Plaintiff's Motions to Proceed *in Forma Pauperis* (Dkt. 2; Dkt. 6). United States Magistrate Judge Karla R. Spaulding issued a Report and Recommendation (Dkt. 4) on September 9, 2011, recommending that the first Motion be denied and that the complaint be dismissed. Plaintiff filed an Amended Complaint (Dkt. 5) on September 19, 2011, and a second Motion to Proceed *in Forma Pauperis* (Dkt. 6) on September 21, 2011. Judge Spaulding issued a second Report and Recommendation (Dkt. 7), again recommending that the renewed Motion be denied and that the complaint be dismissed. Neither party has filed an objection to the Report and Recommendation, and the deadline to do so has expired.

After conducting a careful and complete review of the findings and recommendations, a district judge may accept, reject or modify the magistrate judge's

report and recommendation. 28 U.S.C. § 636(b) (1); Williams v. Wainwright, 681 F.2d 732, 732 (11th Cir. 1982), cert. denied, 459 U.S. 1112 (1983). A district judge “shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b) (1) (C). This requires that the district judge “give fresh consideration to those issues to which specific objection has been made by a party.” Jeffrey S. v. State Bd. of Educ., 896 F.2d 507, 512 (11th Cir.1990) (quoting H.R. 1609, 94th Cong. § 2 (1976)). In the absence of specific objections, there is no requirement that a district judge review factual findings *de novo*, Garvey v. Vaughn, 993 F.2d 776, 779 n.9 (11th Cir. 1993), and the court may accept, reject, or modify, in whole or in part, the findings and recommendations. 28 U.S.C. § 636(b) (1) (C). The district judge reviews legal conclusions *de novo*, even in the absence of an objection. See Cooper-Houston v. Southern Ry., 37 F.3d 603, 604 (11th Cir. 1994).

Upon consideration, in conjunction with an independent examination of the file, the Court **ORDERS** that:

1. In light of the Amended Complaint, Plaintiff's first Motion to Proceed *in Forma Pauperis* (Dkt. 2) is **DENIED as moot**, and the **Clerk** is directed to terminate the Report and Recommendation issued thereon (Dkt. 4);
2. The Second Report and Recommendation (Dkt. 7) is **CONFIRMED** and **ADOPTED** as part of this Order;
3. Plaintiff's second Motion to Proceed *in Forma Pauperis* (Dkt. 6) is **DENIED**;
4. The Amended Complaint (Dkt. 5) is **DISMISSED** without prejudice.
5. Plaintiff shall have **fourteen (14)** days within which to file a second

amended complaint that cures the deficiencies identified in the Second Report and Recommendation. Failure to do so will result in dismissal of this action with prejudice without further notice.

DONE and **ORDERED** in Orlando, Florida, this 1st day of November 2011.



MARY S. SCRIVEN
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel of Record
Unrepresented Parties