

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION**

JEAN E. JOSEPH,

Plaintiff,

v.

CASE NO. 4:11-cv-00034-MP-CAS

OFFICER R. GORMAN,

Defendants.

ORDER

This cause comes on for consideration upon the Magistrate Judge's Second Report and Recommendation dated April, 2013, recommending that Defendant's Motion for Summary Judgment (Doc. 86) be granted. (Doc. 100). The parties have been furnished a copy of the Report and Recommendation and have been afforded an opportunity to file objections pursuant to Title 28, United States Code, Section 636(b)(1). Plaintiff has done so. (Doc. 106). Having considered the Report and Recommendation, and Plaintiff's timely objections thereto, I have determined that the Report and Recommendation should be adopted.

After the filing of defendant's motion for summary judgment, the Court repeatedly advised Plaintiff of his obligation to respond to Defendant's Motion for Summary Judgment and explained over nearly three pages Plaintiff's burden as the non-moving party. (Doc. 88). This explanation notified Plaintiff, *inter alia*, that he may "not rely upon the 'mere allegation or denials' in the pleadings," but must present acceptable evidentiary material, including "sworn affidavits, sworn documents, or other evidence indicating the existence of a genuine issue of material fact." (Doc. 88). Plaintiff, in the order at Doc. 99, was even given additional time to file a response in opposition due to his failure to keep his mailing address updated. (*See Docs.*

94, 96 and 97). Plaintiff failed to respond with the time constraints set out by the Magistrate Judge, and when he did respond 21 days past the deadline, he filed a "Request for Trial", Doc. 102, which did not provide the evidentiary support necessary to oppose summary judgment, as described by the Magistrate Judge.

Thus, as the Magistrate Judge correctly notes, Defendant's Motion for Summary Judgment (Doc. 86) is essentially unopposed, since Plaintiff failed to file a response in opposition thereto before the March 1, 2013, deadline established by the Court. To date, Plaintiff has failed to file a proper response in opposition and has not established or plead excusable neglect as to such failure. Even if Plaintiff's Request for Trial (Doc. 102) and Response to the Report and Recommendation (Doc. 106) could be considered a response in opposition to Defendant's Motion for Summary Judgment, several factors militate against consideration thereof. First, these documents would be untimely since they were filed well after the March 1, 2013, deadline established by the Court for Plaintiff to file his response in opposition. Second, the documents fail to include acceptable evidentiary material to indicate the existence of a genuine issue of material fact. This Court has painstakingly reviewed Plaintiff's handwritten argument, comments and margin notes in both the Request for Trial (Doc. 102) and the Response to the Report and Recommendation (Doc. 106), but such efforts could not – and do not – serve as an adequate response to a properly supported motion for summary judgment. This was made clear to Plaintiff in the Court's order dated January 10, 2013. (Doc. 88).

As the Magistrate Judge warned in the order at Doc. 99, in light of the numerous chances afforded to Plaintiff as a *pro se* litigant thus far in this case, this Court declines to extend further leniency. Defendant's Motion for Summary Judgment (Doc. 86) is procedurally unopposed, and even granting liberal consideration of Plaintiff's attempted responses thereto, this Court must

grant Defendant's motion for summary judgment.

Accordingly, it is hereby **ORDERED AND ADJUDGED:**

1. The Magistrate Judge's Report and Recommendation (Doc. 100) is adopted and incorporated by reference in this order.
2. Defendant's Motion for Summary Judgment (Doc. 86) is GRANTED.
3. Plaintiff's Request for Trial (Doc. 102) is DENIED as moot.

DONE AND ORDERED this 27th day of September, 2013

s/Maurice M. Paul
Maurice M. Paul, Senior District Judge