

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

DEVON A. ROZIER,

Plaintiff,

v.

CASE NO. 4:13cv96-RH/CAS

KEN MILLS et al.,

Defendants.

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ORDER OF DISMISSAL

This case is before the court on the magistrate judge's report and recommendation, ECF No. 10 and the objections, ECF No. 11. I have reviewed *de novo* the issues raised by the objections. The recommendation is for dismissal of the second amended complaint on the court's own motion.

A plaintiff may be entitled to notice and an opportunity to be heard prior to a dismissal on the court's own motion in circumstances like these. *See, e.g., Am. United Life Ins. Co. v. Martinez*, 480 F.3d 1043, 1069 (11th Cir. 2007); *Danow v. Borack*, 197 F. App'x 853, 856, 2006 WL 2671928, at *3 (11th Cir. 2006)

(unpublished); *see also Jefferson Fourteenth Associates v. Wometco de Puerto Rico, Inc.*, 695 F.2d 524 (11th Cir. 1983). Here the report and recommendation gave the plaintiff adequate notice, and he had an opportunity to respond by filing objections.

The report and recommendation correctly concludes that the second amended complaint is deficient. The second amended complaint fails to state a claim under 42 U.S.C. § 1983 on which relief can be granted, because the second amended complaint does not allege that the defendants are state actors, and they plainly are not. The plaintiff apparently has not attempted to state a claim under Title VII or its state-law counterpart, and in any event the second amended complaint fails to state a claim on which relief can be granted under those statutes, in part because the second amended complaint names as defendants only individuals, not the plaintiff's former employer. Moreover, the record affirmatively shows that the plaintiff did not comply with the conditions precedent and time limits for a claim under those statutes.

IT IS ORDERED:

The report and recommendation is **ACCEPTED** and adopted as the court's

further opinion. The clerk must enter judgment stating, “The second amended complaint is dismissed under 28 U.S.C. § 1915(e)(2)(B).” The clerk must close the file.

SO ORDERED on June 27, 2013.

s/Robert L. Hinkle
United States District Judge