

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

BRENDA LANDON

CIVIL ACTION

VERSUS

NUMBER 13-261-SCR

PHILIP A. PADGETT, M.D., ET AL.

**NOTICE AND ORDER REGARDING MOTION TO DISMISS**

Defendant Philip A. Padgett, M.D. filed a Motion to Dismiss Pursuant to 12(b)(1), Lack of Subject-Matter Jurisdiction. Record document number 18. Notwithstanding the title of the motion, the defendant has not presented an issue of subject-matter jurisdiction, but rather challenges the merits of the plaintiff's claim based on evidence by outside of the pleadings.<sup>1</sup>

Pursuant to Rule 12(d), Fed.R.Civ.P., the parties are hereby notified that the defendant's Motion to Dismiss Pursuant to 12(b)(1), Lack of Subject-Matter Jurisdiction is converted to a Rule 56 motion for summary judgment.

Therefore;

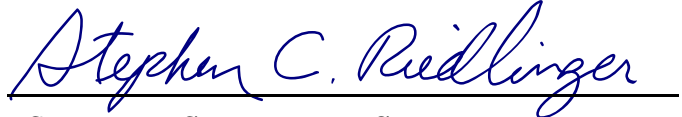
IT IS ORDERED that the parties shall have 14 days from the date of this order to file any additional summary judgment

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<sup>1</sup> See *Stanley v. RBO Custom Home Builders, L.L.C.*, 2006 WL 3366134 (E.D.La. 11/20/06), citing, *Arbaugh v. Y & H Corporation*, 546 U.S. 500, 126 S.Ct. 1235 (2006)(question of employee-numerosity under the ADEA is an element of the claim for relief which must be resolved by a trier of fact, not an issue of subject-matter jurisdiction).

materials as set forth in Rule 56(c) or a supplemental memorandum of law.

Baton Rouge, Louisiana, August 29, 2013.



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STEPHEN C. RIEDLINGER  
UNITED STATES MAGISTRATE JUDGE