

MAY 17 2018

TONY R. MOORE, CLERK
BY: MB
DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

WILLIE FRANCISCO

CIV. ACT. NO. 13-0815

-vs-

JUDGE DRELL

COL. MICHAEL EDMONSON,
ET AL.

MAG. JUDGE HANNA

ORDER

Before the court is Plaintiff's "Motion for New Trial/Motion for Amended or Additional Findings" (Doc. 92). Having reviewed Plaintiff's motion, as well as the remainder of the record in this case, the motion is hereby

GRANTED on the basis that the court finds that Plaintiff should be permitted to file any desired opposition to Defendants' Motion for Summary Judgment (Doc. 78) prior to the issuance of any judgment by this court. Fed. R. Civ. P. 56; Leatherman v. Tarrant County Narcotics, Intelligence & Coordination Unit, 28 F.3d 1388 (5th Cir. 1994); Powell v. U.S., 849 F.2d 1576 (5th Cir. 1988). Although we did not enter summary judgment *sua sponte*, we find that traditional notions of fairness weigh in favor of allowing Plaintiff's opposition to be filed and considered. Moreover, the record does not disclose to what extent the parties understood the vacating of prior scheduling order to impact the separate Notice of Motion Setting.¹ (Docs. 74, 81, 85). To that end, we find that the prior Memorandum Ruling and Judgment of this court, issued February 15, 2018 should be and is hereby withdrawn and **VACATED**.

¹ The court notes, however, that Plaintiff's opposition to the subject motion was due to be filed on or before August 16, 2017 according to the Notice of Motion Setting governing the motion and its briefing schedule. Doc. 81. Plaintiff's decision not to file an opposition brief in the record either on August 16th or as a proposed filing with a Motion for Leave of Court in conjunction with the instant motion is generally frowned upon. We allow Plaintiff another opportunity in this instance out of fairness and an abundance of caution only.

It is further

ORDERED that Plaintiff shall file any desired brief in opposition to Defendants' Motion for Summary Judgment, once again pending, within twenty-one days of the issuance of this Order. The court will then take the motion under advisement and again issue an appropriate ruling in due course with notice to all parties.

THUS DONE AND SIGNED in Alexandria, Louisiana this ^{9th} 16 day of May, 2018.



DEE D. DRELL, JUDGE
UNITED STATES DISTRICT COURT