

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE DIVISION**

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**EDWARD LITTLE**

**CIVIL ACTION NO. 6:17-CV-00724**

**VERSUS**

**JUDGE FOOTE**

**THOMAS FREDERICK, ET AL.**

**MAGISTRATE JUDGE HANNA**

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**ORDER**

Pending before the Court is Sheriff Mark Garber's ("the Sheriff") Motion to Dismiss under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) [Record Document 18]. After oral argument, the Magistrate Judge issued a Report and Recommendation [Record Document 59] on the Sheriff's motion. The Report and Recommendation is hereby **ADOPTED IN PART** and **REJECTED IN PART**. This Court adopts the Report and Recommendation to the extent it recommends denying the Sheriff's motion under Rule 12(b)(1). However, after the Sheriff filed his motion and the Magistrate Judge issued the Report and Recommendation, Plaintiff filed a Motion For Leave To File Supplemental Complaint [Record Document 76]. By his motion, Plaintiff seeks to file a supplemental complaint which contains additional allegations concerning the Sheriff, and these allegations implicate the Sheriff's role as a potential policymaker. If Plaintiff's motion were granted, this Court would necessarily consider the additional allegations in determining whether Plaintiff has stated a claim against the Sheriff. Therefore, the Court will deny Defendant's motion under Rule 12(b)(6) at this time. Defendant may re-urge his motion

after the Court rules on Plaintiff's pending Motion For Leave To File Supplemental Complaint [Record Document 76].

Accordingly, for the foregoing reasons, the Court adopts the Report and Recommendation of the Magistrate Judge [Record Document 59] only to the extent it recommends denying the Sheriff's Motion to Dismiss [Record Document 18] under Rule 12(b)(1). The Defendant's motion under Rule 12(b)(1) is **DENIED**. Furthermore, Defendant's Motion to Dismiss [Record Document 18] under Rule 12(b)(6) is **DENIED** at this time, with the right to re-urge after the Court rules on Plaintiff's Motion For Leave To File Supplemental Complaint [Record Document 76].

**THUS DONE AND SIGNED** in Shreveport, Louisiana, this 6<sup>th</sup> day of March, 2018.

  
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ELIZABETH ERNY FOOTE  
UNITED STATES DISTRICT JUDGE