

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION

No. 7:10-CV-0004-FL

MICHAEL MANUEL and DOROTHY )  
MANUEL, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
JOSEPH A. GEMBALA, III, et al., )  
 )  
Defendants. )

ORDER

This matter is before the court on the Memorandum and Recommendation (“M&R”) of United States Magistrate Judge William A. Webb, regarding defendants’ motions to dismiss [DE # 69; DE #71]. No objections to the M&R have been filed, and the time within which to make any objection has expired. This matter is ripe for ruling.

The court hereby ADOPTS the recommendation of the magistrate judge as its own, and, for the reasons stated therein, the motion to dismiss by defendant Michael Malone [DE #71] is DENIED, and the motion to dismiss by defendants Joseph A. Gembala, III and Joseph A. Gembala, III & Associates [DE #69] is GRANTED and the second amended complaint is DISMISSED without prejudice as to defendants Joseph A. Gembala, III and Joseph A. Gembala, III & Associates.

Where the motion to dismiss by defendant Michael Malone is denied, this case requires scheduling order to be entered. The parties are ordered to hold the rule 26(f) conference on or before twenty-one (21) days from entry of this order. The parties are jointly responsible for

arranging the conference, which shall involve defendant Michael Malone and counsel for plaintiffs, and for attempting in good faith to agree on a proposed plan for completion of discovery, filing of motions, pretrial and trial activities, and other matters addressed in this order. The joint report and plan shall be filed with the court within fourteen (14) days after the conference. The court makes reference to its initial order regarding planning and scheduling, lodged at docket entry 34, with regard to what the joint report and plan must address. Thereafter, upon consideration of the joint report and plan, the court will enter a case management order.

SO ORDERED, this the 7th day of September, 2012.

A handwritten signature in black ink, reading "Louise W. Flanagan". The signature is written in a cursive, flowing style.

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LOUISE W. FLANAGAN  
United States District Judge