

**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL CASE NO. 1:16-cv-00104-MR-DLH**

PATRICIA BLOKER MACHNIK,)	
)	
Plaintiff,)	
)	
vs.)	<u>ORDER</u>
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	
_____)	

THIS MATTER is before the Court on the Defendant’s Motion to Dismiss and Alternative Motion for Summary Judgment [Doc. 9]; the Magistrate Judge’s Memorandum and Recommendation [Doc. 14] regarding the disposition of that motion; and the Defendant’s Objections to the Memorandum and Recommendation [Doc. 15].

Pursuant to 28 U.S.C. § 636(b) and the standing Orders of Designation of this Court, the Honorable Dennis L. Howell, United States Magistrate Judge, was designated to consider the Defendant’s motion and to submit a recommendation for its disposition.

On November 28, 2016, the Magistrate Judge filed a Memorandum and Recommendation in this case containing conclusions of law in support

of a recommendation regarding the motion to dismiss. [Doc. 14]. The parties were advised that any objections to the Magistrate Judge's Memorandum and Recommendation were to be filed in writing within fourteen (14) days of service. The Defendant timely filed Objections on November 29, 2016. [Doc. 15]. The Plaintiff filed her Reply to the Defendant's Objections on December 16, 2016. [Doc. 16].

After careful consideration of the Memorandum and Recommendation and the Defendant's Objections thereto, the Court finds that the Magistrate Judge's proposed conclusions of law are correct and consistent with current case law. Particularly, Defendant's arguments are dependent upon supplementing the allegations of the Complaint with facts that are "simple, straightforward and not subject to dispute." [Doc. 15 at 2]. Such supplementation, however, removes this matter from the posture of a Motion to Dismiss. As for the Defendant's alternative Motion for Summary Judgment, such is premature. Accordingly, the Court hereby overrules the Defendant's Objections and accepts the Magistrate Judge's recommendation that the motion to dismiss be denied and the alternative motion for summary judgment be denied as premature.

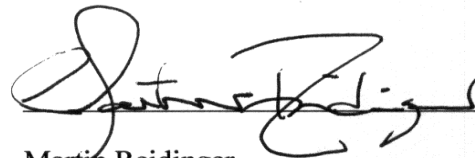
IT IS, THEREFORE, ORDERED that the Defendant's Objections to the Memorandum and Recommendation [Doc. 15] are **OVERRULED**; the

Memorandum and Recommendation [Doc. 14] is **ACCEPTED**; and the Defendant's Motion to Dismiss and Alternative Motion for Summary Judgment [Doc. 9] is **DENIED**.

IT IS FURTHER ORDERED that upon the filing of the Defendant's Answer, the parties shall confer and file a Certificate of Initial Attorneys' Conference. In the exercise of its discretion, the Court declines to refer this matter to the Court's Pro Se Settlement Assistance Program.

IT IS SO ORDERED.

Signed: March 3, 2017


Martin Reidinger
United States District Judge

