

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

PEDRO SALAS BAUTISTA,

Plaintiff,

v.

Case No. 2:22-cv-362-JES-NPM

WALMART STORES EAST, L.P. AND JOHN DOE,

Defendants.

REPORT AND RECOMMENDATION

The case management and scheduling order set an October 17, 2022, deadline for motions to amend the complaint. Prior to the deadline, plaintiff moved to amend the complaint to name the Doe defendant. (Doc. 26). The motion was denied without prejudice for failure to comply with Local Rule 3.01(g). (Doc. 28). Plaintiff allowed the deadline to expire without moving to amend again.

In federal practice, the use of fictitious defendants is generally not permitted. *See* Fed. R. Civ. P. 10(a); *see also* *Entrepreneur Media, Inc. v. Rugged Entrepreneur, LLC*, No. 3:21-cv-784-MMH-PDB, 2022 WL 1665400, *1 (M.D. Fla. May 25, 2022) (citing *Richardson v. Johnson*, 598 F.3d 734, 738 (11th Cir. 2010)). Given the general prohibition against the use of fictitious defendants and the expiration of the deadline for motions to amend (without any renewal of the motion to name the Doe defendant), the plaintiff should be ordered to amend the complaint

to omit the Doe defendant as a party and the claim against him. *See also* Fed. R. Civ. P. 21 (“[O]n its own, the court may at any time, on just terms, add or drop a party.”).

Respectfully recommended on November 3, 2022.



NICHOLAS P. MIZELL
UNITED STATES MAGISTRATE JUDGE

NOTICE TO PARTIES

A party has fourteen days from this date to file written objections to the Report and Recommendation’s factual findings and legal conclusions. A party’s failure to file written objections “waives the right to challenge on appeal the district court’s order based on unobjected-to factual and legal conclusions.” *See* 11th Cir. R. 3-1. **To expedite resolution, parties may file a joint notice waiving the 14-day objection period.**