

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

YOLDAS ASKAN,

Plaintiff,

v.

Case No: 6:23-cv-920-PGB-DCI

FARO TECHNOLOGIES, INC.,

Defendant.

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ORDER

This cause comes before the Court on the Magistrate Judge’s Report and Recommendation (Doc. 128 (the “**Report**”)) finding Defendant’s Motion to Dismiss (Doc. 111 (the “**Motion to Dismiss**”)) as moot. Defendant filed its objections to the Report (Doc. 129 (the “**Objections**”)), and Plaintiff responded thereto (Doc. 130). Thus, the matter is now ripe for review. Upon consideration, the Report is due to be rejected.

I. BACKGROUND

Plaintiff initiated this action on May 18, 2023. (Doc. 1). Ultimately, Plaintiff filed its Second Amended Complaint on January 12, 2024. (Doc. 101). In response, on February 8, 2024, Defendant filed its Motion to Dismiss (Doc. 111), and on the next day, filed its Answer (Doc. 112 (the “**Answer**”)). Plaintiff timely filed its response in opposition to the Motion to Dismiss on February 21, 2024. (Doc. 116).

Thereafter, the Magistrate Judge issued the Report recommending that the Motion to Dismiss be denied as moot considering Defendant filed its Answer prior to the resolution of the Motion to Dismiss. (*See* Doc. 128). Defendant filed its Objections (Doc. 129), and Plaintiff responded to the Objections (Doc. 130).

II. STANDARD OF REVIEW

A district judge “may accept, reject, or modify in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). The district judge “shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.”¹ *Id.* And “[t]he judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.” *Id.* However, “[f]rivolous, conclusive, or general objections need not be considered by the district court.” *United States v. Schultz*, 565 F.3d 1353, 1361 (11th Cir. 2009) (citation omitted).

III. DISCUSSION

To begin, the Court agrees entirely with the Magistrate Judge’s legal analysis as set forth in the Report. (*See* Doc. 128). However, the Court acknowledges Defendant’s admitted confusion in ensuring that “there would be no timeliness question” regarding Defendant’s Answer to the Second Amended Complaint. (Doc. 129, p. 4). As such, the Court will allow Defendant’s Motion to Dismiss (Doc. 111)

¹ The district court must consider the record and factual issues independent of the magistrate judge’s report, as *de novo* review is essential to the constitutionality of § 636. *Jeffrey S. v. State Bd. of Educ.*, 896 F.2d 507, 513 (11th Cir. 1990).

and strike the Answer (Doc. 112). If necessary, within fourteen (14) days of the Court's resolution of the Motion to Dismiss, Defendant shall file its Answer to Plaintiff's Second Amended Complaint.

IV. CONCLUSION

For the foregoing reasons, the Magistrate Judge's Report and Recommendation (Doc. 128) is **REJECTED**. Defendant's Motion to Dismiss (Doc. 111) remains pending before the Court, and Defendant's Answer (Doc. 112) is hereby **STRICKEN**.

DONE AND ORDERED in Orlando, Florida on April 24, 2024.



PAUL G. BYRON
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record
Unrepresented Parties