

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

ANDREW BRYANT SHEETS,

Plaintiff,

v.

Case No: 2:24-cv-495-JLB-KCD

JERRY PRESSELLER, et. al.,

Defendants.

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ORDER

The Magistrate Judge has entered a Report and Recommendation, recommending that Defendant Punta Gorda Downtown Merchants Association Inc.'s Motion to Quash, Strike, and Dismiss (Doc. 63) be **GRANTED in part and DENIED in part.** (Doc. 73). No party has objected, and the time to do so has expired.

A district judge may accept, reject, or modify the magistrate judge's report and recommendation. 28 U.S.C. § 636(b)(1). The district judge must "make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.*

Here, after an independent review of the entire record and noting that no objection has been filed, the Court finds that the thorough and well-reasoned Report and Recommendation is due to be adopted.

Additionally, the Court addresses Defendant Punta Gorda Downtown Merchants Association Inc.'s Motion to Strike Plaintiff's Second Amended


Complaint (Doc. 88). Here, Plaintiff filed a Second Amended Complaint on December 21, 2024. (Doc. 82). But, Plaintiff failed to comply with Federal Rule of Civil Procedure 15(a)(2) because he did not seek leave of Court nor did he obtain written consent from the opposing parties before filing his Second Amended Complaint. *See* Fed. R. Civ. P. 15(a). Accordingly, the Court **GRANTS** Defendant's Motion to Strike (Doc. 88). That said, the Court will allow Plaintiff an opportunity to file a third amended Complaint on or before January 28, 2025.

Accordingly, it is **ORDERED** that:

- (1) The Report and Recommendation (Doc. 73) is **ADOPTED** and made a part of this Order for all purposes.
- (2) Defendant Punta Gorda Downtown Merchants Association Inc.'s Motion to Quash, Strike, and Dismiss (Doc. 63) is **GRANTED in part and DENIED in part**.
- (3) Plaintiff's amended Complaint (Doc. 18) is **DISMISSED** for the reasons stated in the Report and Recommendation (Doc. 73).
- (4) Defendant Punta Gorda Downtown Merchants Association Inc.'s Motion to Strike Plaintiff's Second Amended Complaint (Doc. 88) is **GRANTED**. The Clerk of Court is **DIRECTED** to strike Plaintiff's Second Amended Complaint (Doc. 82).
- (5) The Court grants Plaintiff an opportunity to file a third amended Complaint on or before January 28, 2025, that corrects the deficiencies outlined in the Report and Recommendation (Doc. 73). Failure to file a

complaint within the requisite time period will result in the dismissal of this case without further notice.

ORDERED in Fort Myers, Florida, on January 6, 2025.



JOHN L. BADALAMENTI
UNITED STATES DISTRICT JUDGE