

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

CHRISTIAN F. MEISTER,

Plaintiff,

v.

Case No. 2:06-cv-444-FtM-34SPC

MIKE SCOTT, in his official capacity as Sheriff of Lee County, Florida; MIKE SCOTT, in his individual capacity as Sheriff of Lee County, Florida; DON HUNTER, in his official capacity as Sheriff of Collier County, Florida; J.J. CARROLL, RICHARD SNYDER, RYAN JUSTHAM, STEPHAN PIERCE, GENE SIMS, PEDRO J. SOTO, MIKE JOHNSTON, each of the foregoing, jointly and severally,

Defendants.

ORDER¹

THIS CAUSE is before the Court on Plaintiff's Motion to Strike All Defendant(s)' Motions for Summary Judgment, as herein specified[,] Opposed Plaintiff's Motion to Stay this Litigation for a Period of Six Months, as herein specified[,] Opposed Plaintiff's Motion for an Enlargement of Time, as herein specified[,] Plaintiff's Motion to Appoint an Attorney, as herein specified[,] [and] Opposed Plaintiff's Motion to Order All Defendants to Release Any and All Deposition Transcripts at No Charge to the Plaintiff, as herein specified (Doc. No. 171; Motion), filed on May 22, 2008. Defendants Don Hunter in his official capacity, J.J.

¹ This is a "written opinion" under § 205(a)(5) of the E-Government Act and therefore is available electronically. However, it has been entered only to decide the motion addressed herein and is not intended for official publication or to serve as precedent.

Carroll, Pedro J. Soto, Mike Johnston, Mike Scott in his individual and official capacities, Richard Snyder, Ryan Justam, Stephan Pierce, and Gene Sims oppose the Motion. See Defendants J.J. Carroll and Don Hunter's Opposition to Plaintiff's Motion to Strike All Defendants' Motions for Summary Judgment[,] Defendants' J.J. Carroll and Don Hunter's Opposition to Plaintiff's Motion to Stay this Litigation for a Period of Six Months[,] Defendants J.J. Carroll and Don Hunter's Opposition to Plaintiff's Motion for an Enlargement of Time[,] Defendants J.J. Carroll and Don Hunter's Opposition to Plaintiff's Motion to Appoint an Attorney[,] [and] Defendants J.J. Carroll and Don Hunter's Opposition to Plaintiff's Motion to Order All Defendants to Release Any and All Deposition Transcripts at No Charge to the Plaintiff (Doc. No. 173), filed on June 4, 2008; Defendants' Response to Plaintiff's Motion to Strike Defendants' Motions for Summary Judgment[,] Defendants' Response to Plaintiff's Motion to Stay[,] Defendants' Response to Plaintiff's Motion for Enlargement of Time[,] Defendants' Response to Plaintiff's Motion to Appoint an Attorney[,] [and] Defendants' Response to Plaintiff's Motion to Order Defendants to Release Any and All Deposition Transcripts at No Charge to the Plaintiff (Doc. No. 174), filed on June 5, 2008.

In the Motion, Plaintiff requests, inter alia, that the Court strike the following motions for summary judgment (collectively "Motions for Summary Judgment"): (1) Defendants' Snyder, Justham, Pierce, Sims, Soto, and Johnston, Motion to for [sic] Summary Judgment and Memorandum of Law in Support Thereof (Doc. No. 154), filed on April 11, 2008; (2) Defendant Scott's Motion to for [sic] Summary Judgment and Memorandum of Law in Support Thereof (Doc. No. 155), filed on April 11, 2008; and (3) Defendants J.J. Carroll and Don Hunter's Motion for Summary Judgment, Statement of Undisputed Facts and

Supporting Memorandum of Law (Doc. No. 157), filed on April 11, 2008.² See Motion at 3-4. Plaintiff contends that “this Court has not yet adjudicated the Plaintiff’s Opposition to Defendant(s)’ Motion to Dismiss the Plaintiff’s Fifth Amended Complaint and that, as such, the Defendant(s)’ Motions for Summary Judgment are premature.” See id. at 3 (emphasis omitted). Plaintiff further suggests that to require him to respond to the Motions for Summary Judgment would be “oppressive, unduly burdensome, repetitive, time-consuming, and will result in a duplicative work effort.” See id. at 4. Additionally, Plaintiff argues that he “has not yet . . . had an opportunity to file the motions necessary in order to compel the production of the needed documents and/or interrogatories,” and that Defendants “have failed to provide [him] with the deposition transcripts to which [they] have referred to [sic] in their Motions for Summary Judgment.” See id. at 6 (emphasis omitted).

As a preliminary matter, the Court notes that Plaintiff failed to cite any legal authority in support of his motion to strike. Nevertheless, in light of Plaintiff’s status as a pro se litigant, the Court recognizes that Rule 12(f)(2), Federal Rules of Civil Procedure (Rule(s)), provides that, upon motion by a party, the Court “may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.” However, only material found in a “pleading” may be stricken pursuant to Rule 12(f). See Jeter v. Montgomery County, 480 F. Supp. 2d 1293,1296 (M.D. Ala. 2007); Lowery v. Hoffman, 188

² In the instant Motion, Plaintiff also moved the Court (1) to stay this case for a period of six months; (2) to grant him an extension of time in which to respond to the Motions for Summary Judgment; (3) to appoint an attorney to assist him in responding to the Motions for Summary Judgment; and (4) to provide him with deposition transcripts at no charge. See generally Motion. On June 6, 2008, the Honorable Sheri Polster Chappell, United States Magistrate Judge, entered an Order (Doc. No. 175; June 6th Order), in which she resolved these issues, but reserved Plaintiff’s request to strike Defendants’ Motions for Summary Judgment for resolution by the undersigned. See June 6th Order at 6. Accordingly, the sole issue before the Court at this time is whether Defendants’ Motions for Summary Judgment shall be stricken.

F.R.D. 651, 653 (M.D. Ala. 1999); Newsome v. Webster, 843 F. Supp. 1460, 1464-65 (S.D. Ga. 1994). Rule 7(a) defines which documents constitute pleadings.³ See Scarborough v. Principi, 541 U.S. 401, 417 (2004) (noting that Rule 7(a) “enumerat[es] permitted ‘pleadings’”). Motions for summary judgment are not considered pleadings. See Rule 7(a); see also Jeter, 480 F. Supp. 2d at 1296. Plaintiff’s motion to strike is directed at the Motions for Summary Judgment—filings that do not constitute pleadings. See Motion at 3; Rule 7(a). Thus, the remedy provided in Rule 12(f) is not available.

Plaintiff further asserts that the Motions for Summary Judgment are premature, because they were filed before the Court had issued a ruling on Defendants Snyder, Justham, Pierce, Sims, Soto, and Johnston’s Motion to Dismiss Plaintiff’s Fifth Amended Complaint (Doc. No. 127); Defendant Scott’s Motion to Dismiss Plaintiff’s Fifth Amended Complaint (Doc. No. 128); and Defendants J.J. Carroll and Don Hunter’s Motion to Dismiss Plaintiff’s 5th Amended Complaint and Supporting Memorandum of Law (Doc. No. 129) (collectively “Motions to Dismiss”). See Motion at 3. However, pursuant to Rule 56(b), “[a] party against whom relief is sought may move at any time, with or without supporting affidavits, for summary judgment on all or part of the claim.” See Rule 56(b). Moreover, the Motions for Summary Judgment were filed on the deadline set by the Court for filing dispositive motions. See Order (Doc. No. 114). Accordingly, Defendants Motions for

³ Specifically, Rule 7(a) provides that “[o]nly these pleadings are allowed”:

- (1) a complaint;
- (2) an answer to a complaint;
- (3) an answer to a counterclaim designated as a counterclaim;
- (4) an answer to a crossclaim;
- (5) a third-party complaint;
- (6) an answer to a third-party complaint; and
- (7) if the court orders one, a reply to an answer.

Summary Judgment are not premature despite the fact that the Motions to Dismiss are still pending before the Court.

Plaintiff suggests that summary judgment “is not appropriate at this time because genuine issues of material fact can be raised with more discovery.” The Court notes that Plaintiff failed to comply with the requirements of Rule 56(f). A party seeking relief under Rule 56(f) “may not simply rely on vague assertions that additional discovery will produce needed, but unspecified, facts,’ but rather he must specifically demonstrate ‘how postponement of a ruling on the motion will enable him, by discovery or other means, to rebut the movant’s showing of the absence of a genuine issue of fact.’” Reflectone, Inc. v. Farrand Optical Co., 862 F.2d 841, 843-44 (11th Cir. 1989) (per curiam) (quoting Wallace v. Brownell Pontiac-GMC Co., 703 F.2d 525, 527 (11th Cir. 1983)). Plaintiff has not submitted affidavits in support of his request for additional discovery as required by Rule 56(f), nor has he identified the particular discovery he intends to seek. See Rule 56(f). Additionally, the Court notes that the Motions for Summary Judgment were filed on April 11, 2008, nearly four months after the December 14, 2007 discovery deadline established in this case, see Case Management and Scheduling Order (Doc. No. 69), and the Court has already denied Plaintiff’s request for an extension of the discovery period based on a finding that Plaintiff had ample time to conduct discovery in this case, see Order (Doc. No. 114). Nevertheless, Plaintiff has not explained why he requires additional time to conduct discovery, nor has he identified what information he would seek that would enable him to rebut Defendant’s assertion of the absence of a triable issue of fact. Instead, Plaintiff relies solely on a vague assertion that he has not yet “had an opportunity to file the motions

necessary in order to compel the production of the needed documents and/or interrogatories, the motions of which are critical to the favorable and just resolve of the Plaintiff's litigation." See Motion at 6. If Plaintiff failed to file necessary motions during the discovery period, such failure is his own, and falls far short of carrying his burden to delay resolution of the pending motions. In light of the foregoing, the Court concludes that Plaintiff has failed to establish that he is entitled to relief pursuant to Rule 56(f).

Upon review of the record in this action, the Court notes that in the June 6th Order, Magistrate Judge Chappell extended the deadline by which Plaintiff was required to file his responses to the Motions for Summary Judgment until June 26, 2008. See June 6th Order (Doc. No. 175) at 6. However, as of the date of this Order, Plaintiff has not filed responses to the Motions for Summary Judgment. Thus, the Court will grant Plaintiff an extension of time in which to file his responses⁴ to the Motions for Summary Judgment and will set a deadline for those responses by separate order. In light of the foregoing, it is hereby

ORDERED:

Plaintiff's Motion to Strike All Defendant(s)' Motions for Summary Judgment, as herein specified[,] Opposed Plaintiff's Motion to Stay this Litigation for a Period of Six Months, as herein specified[,] Opposed Plaintiff's Motion for an Enlargement of Time, as herein specified[,] Plaintiff's Motion to Appoint an Attorney, as herein specified[,] [and]

⁴ Plaintiff is cautioned that filing a motion to strike does not relieve him of the obligation to respond to a motion.

Opposed Plaintiff's Motion to Order All Defendants to Release Any and All Deposition Transcripts at No Charge to the Plaintiff, as herein specified (Doc. No. 171) is **DENIED**.

DONE AND ORDERED in Chambers, this 24th day of July, 2008.


MARCIA MORALES HOWARD
United States District Judge

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Copies to:
Counsel of Record
Pro Se Plaintiff