

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

JERALD E. WILSON

PLAINTIFF

v.

Case No. 2:11-CV-02062

JAYSON PEPPAS, Individually and in his
Official Capacity; and THE CITY OF ALMA

DEFENDANTS

ORDER

On this 26th day of August 2011, there comes on for consideration the Report and Recommendations (Doc. 10) filed in this case on June 3, 2011, by the Honorable James R. Marschewski, United States Magistrate for the Western District of Arkansas. More than fourteen (14) days have passed without objections being filed by the parties.

The Court has reviewed this case and, being well and sufficiently advised, finds as follows: the Report and Recommendation is proper and should be and hereby is **ADOPTED IN ITS ENTIRETY**. Accordingly, for the reasons stated in the Magistrate Judge's Report and Recommendations, Defendants' Motion to Dismiss (Doc. 6) is **GRANTED IN PART** and **DENIED IN PART**. The Motion is **DENIED** as to Plaintiff's claims against Separate Defendant Jayson Peppas in his individual capacity. However, Plaintiff has failed to allege any custom or policy through which the City of Alma, or Peppas acting in his official capacity, has violated his constitutional rights. Based on these findings, the Court directs Plaintiff to file an Amended Complaint pursuant to Federal Rule of Civil Procedure 15(a)(2) on or before September 9, 2011. In the event Plaintiff does not timely file an amended complaint in line with this Order and the findings of the magistrate judge as set forth in the Report and Recommendations, Defendants' Motion to Dismiss will be **GRANTED IN PART** insofar as Plaintiff's claims against Jayson Peppas in his official capacity, as well as

Plaintiff's claims against the City of Alma, will be dismissed without prejudice.

IT IS SO ORDERED this 26th day of August 2011.

/s/ P. K. Holmes, III

P.K. HOLMES, III
UNITED STATES DISTRICT JUDGE