

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Raymond P. Moore**

Civil Action No. 12-cv-02185-RM-CBS

ABEER HUMOOD,

Plaintiff,

v.

THE CITY OF AURORA, COLORADO, a municipal corporation, District 2 and Police Headquarters 15001 E Alameda Parkway Aurora, CO 80012;
WILKINSON (OFFICER #256460), an individual, District 2 and Police Headquarters 15001 E Alameda Parkway Aurora, CO 80012;
JASON CONDREAY, an individual, District 2 and Police Headquarters 15001 E Alameda Parkway Aurora, CO 80012;
PONICH (OFFICER #301367), an individual, District 2 and Police Headquarters 15001 E Alameda Parkway Aurora, CO 80012;
KEN SULLIVAN, in his official capacity as a member of the Civil Service Commission in the City of Aurora, City of Aurora Colorado 15151 E. Alameda Pkwy Aurora, Co 80012;
DEB WALLACE, in her official capacity as a member of the Civil Service Commission in the City of Aurora, City of Aurora Colorado 15151 E. Alameda Pkwy Aurora, CO 80012;
BERNARD CELESTIN, in his official capacity as a member of the Civil Service Commission in the City of Aurora, City of Aurora Colorado 15151 E. Alameda Pkwy Aurora, CO 80012;
SANDRA SWEENEY, in her official capacity as a member of the Civil Service Commission in the City of Aurora, City of Aurora Colorado 15151 E. Alameda Pkwy Aurora, CO 80012; and
DAVE WILLIAMS, in his official capacity as a member of the Civil Service Commission in the City of Aurora, City of Aurora Colorado 15151 E. Alameda Pkwy Aurora, CO 80012,

Defendants.

**ORDER ACCEPTING RECOMMENDATION
REGARDING DEFENDANTS' MOTIONS TO DISMISS (ECF NO. 52)**

THIS MATTER is before the Court on the United States Magistrate Judge's Recommendation Regarding Defendants' Motions to Dismiss ("Recommendation") (ECF No. 52), recommending the following motions be granted: (1) "Defendants' Motion to Dismiss State Law Claims, the Civil Service Commissioners, and Claims for Exemplary Damages against the

City of Aurora” (ECF No. 28); (2) Defendant Wilkinson’s Motion to Dismiss Pursuant to Fed.R.Civ.P. 12(b)(6) or, in the alternative, Motion for Summary Judgment Pursuant to Fed.R.Civ.P. 56 (ECF No. 31); and (3) “Motion by Defendant Ponich to Dismiss Complaint (Doc. 9) Pursuant to Fed.R.Civ.P. 12(b)(1) and (6)” (ECF No. 32). The Recommendation is incorporated herein by this reference. *See* 28 U.S.C. § 636(b)(1)(B); Fed. R. Civ. P. 72(b).

The Magistrate Judge advised the parties they had fourteen days after the service of a copy of the Recommendation to serve and file written objections to the Recommendation. The time permitted for any objections has expired and no objection to the Recommendation has been filed.

The Court concludes that the Magistrate Judge’s analysis was thorough and sound, and that there is no clear error on the face of the record.¹ *See* Fed. R. Civ. P. 72(b) Advisory Committee’s Notes (“When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”); *see also Summers v. Utah*, 927 F.2d 1165, 1167 (10th Cir. 1991) (“In the absence of timely objection, the district court may review a magistrate’s report under any standard it deems appropriate.”). It is therefore ORDERED as follows:

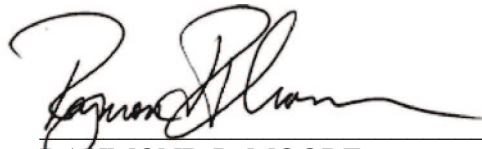
1. The Magistrate Judge’s Recommendation (ECF No. 52) is ACCEPTED and ADOPTED in its entirety;

¹ The Magistrate Judge recommended dismissal on bases raised by Defendants and, as permitted, additional bases as well. *See Phillips v. Public Serv. Co. of New Mexico*, 58 Fed.Appx. 407, 409 (10th Cir. 2003) (affirming *sua sponte* dismissal under Rule 12(b)(6)); 28 U.S.C. § 1915(e)(2)(B) (in proceedings *in forma pauperis*, court shall dismiss case at any time if it determines that it fails to state a claim). In addition, the Magistrate Judge provided Plaintiff with “observations” concerning generalized allegations should he elect to file another amended complaint. Plaintiff did not object to any aspect of the Recommendation.

2. Defendants' Motion to Dismiss State Law Claims, the Civil Service Commissioners, and Claims for Exemplary Damages against the City of Aurora (ECF No. 28) is GRANTED as stated in the Recommendation;
3. Officer Douglas Wilkinson's Motion to Dismiss Pursuant to Fed.R.Civ.P. 12(b)(6) or, in the alternative, Motion for Summary Judgment Pursuant to Fed.R.Civ.P. 56 (ECF No. 31) is GRANTED as stated in the Recommendation;
4. Motion by Defendant Ponich to Dismiss Complaint (Doc. 9) Pursuant to Fed.R.Civ.P. 12(b)(1) and (6) (ECF No. 32) is GRANTED as stated in the Recommendation; and
5. Plaintiff's Amended Complaint is DISMISSED WITHOUT PREJUDICE and Plaintiff may, if he elects to do so, file a Second Amended Complaint within fifteen (15) days of the date of this Order.

DATED this 28th day of August, 2014.

BY THE COURT:



RAYMOND P. MOORE
United States District Judge