

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

**MARIAM MALONE COLETTE
MARTINEZ,**

Plaintiff,

-vs-

Case No. 6:09-cv-802-Orl-22GJK

**CITY OF ORLANDO, ORLANDO POLICE
DEPARTMENT, ASHTIN LEASING INC.
d/b/a Ace Metro Cab & Co & Dispatcher
d/b/a Quick Cab Co. & Dispatcher,
OFFICER YONG C. HALL, OFFICER
ARRIAGE, and BRUISSET PREVALON,**

Defendants.

ORDER

This cause comes before the Court for consideration of the following motions:

1. Pro Se Plaintiff Mariam Malone Colette Martinez's ("Plaintiff") Motion for Leave to Proceed In Forma Pauperis (Doc. No. 3), filed on May 11, 2009; and
2. Plaintiff's Motion for Miscellaneous Relief (Doc. No. 24), filed on September 10, 2009.

The United States Magistrate Judge has submitted a report recommending that the motion for leave to proceed in forma pauperis be granted in part and denied in part and the Second Amended Complaint (Doc. No. 12) be dismissed without prejudice as to all counts other than I-III and as to all Defendants other than Orlando Police Department Officers Yong C. Hall and Arriage.

After an independent *de novo* review of the record in this matter, and noting that no objections were timely filed, the Court agrees entirely with the findings of fact and conclusions in the Report and Recommendation ("R&R") with respect to Plaintiff's federal claims (Counts I-V).

The Court declines to address Plaintiff's state claims (Counts VI-IX) based on its determination that the exercise of supplemental jurisdiction over the state law claims is not appropriate in this case.

In her motion for miscellaneous relief, it appears that Plaintiff requests leave to add on to Counts V and VIII of her Second Amended Complaint. (*See* Doc. No. 24.) However, as stated above, the Court agrees with the Magistrate's determination that Counts V and VIII should be dismissed. Accordingly, Plaintiff's motion for miscellaneous relief will be denied as moot.

After the Magistrate's R&R was entered, and without leave from the Court, Plaintiff filed a Third Amended Complaint. (*See* Doc. No. 23.) It appears that Plaintiff filed her complaint in response to the R&R. This is not proper procedure and is in direct contravention of the Court's June 24, 2009 Order advising Plaintiff that she "shall not file any further amended complaints unless directed to do so by the Court." (Doc. No. 15.) Again, the Court cautions Plaintiff that she will need to seek leave of court to file any further amended complaints. Further, Plaintiff's Third Amended Complaint (Doc. No. 23) will be stricken.

On September 17, 2009, Plaintiff filed a document entitled "Correspondence." (Doc. No. 25.) Such a document is not permitted by the rules. All requests for relief from, or action by, the court must be in the form of a motion. Among other things, all motions must be accompanied by a legal memorandum with citation of authorities in support of the relief requested. *See* Middle District Local Rule 3.01(a). Accordingly, Plaintiff's document entitled "Correspondence" will be stricken.

Lastly, Plaintiff is advised that if she chooses to continue to proceed pro se, she must comply with this Court's Local Rules as well as the Federal Rules of Civil Procedure. *See Moon v. Newsome*, 863 F.2d 835, 837 (11th Cir. 1989). Plaintiff is warned that the failure to comply with

these requirements and obligations can have significant consequences, including sanctions for failure to comply with court orders.

Based on the foregoing, it is ORDERED as follows:

1. That the Report and Recommendation filed August 26, 2009 (Doc. No. 21) is ADOPTED and CONFIRMED and made a part of this Order.

2. Pro Se Plaintiff Mariam Malone Colette Martinez's ("Plaintiff) Motion for Leave to Proceed In Forma Pauperis (Doc. No. 3), filed on May 11, 2009, is GRANTED IN PART and DENIED IN PART. The motion is GRANTED as to Counts I, II, and III against Defendant Orlando Police Department Officers Yong C. Hall and Arriage. The motion is DENIED as to Counts I, II, and III against all Defendants other than Officers Yong C. Hall and Arriage. Further, the motion is DENIED as to Counts IV, V, VI, VII, VII, and IX against all Defendants.

3. The Court, pursuant to 28 U.S.C. 1367(c)(3), declines to exercise supplemental jurisdiction over the claims of intentional infliction of emotional distress (Count VI); state law civil conspiracy (Count VII); respondent superior (Count VIII); and indemnification pursuant to Fla. Stat. § 768.28 (Count IX). 28 U.S.C. 1367(d) provides that the statute of limitations is tolled while state law claims are pending in federal court until thirty days after an order of dismissal. Therefore, Plaintiff may pursue her state claims in state court if she so chooses, as long as she files in a timely manner. Plaintiff's state law claims (Counts VI, VII, VIII, and IX) are hereby DISMISSED without prejudice.

4. The following counts in the Second Amended Complaint are hereby DISMISSED without prejudice: (1) Counts I, II, and III against all Defendants except Officers Yong C. Hall and Arriage; and (2) Counts IV, V, VI, VII, VIII, IX against all Defendants.

5. Pro Se Plaintiff Mariam Malone Colette Martinez shall file a Third Amended Complaint alleging only those counts remaining (Counts I, II, and III against only Officers Yong C. Hall and Arriage) by **Wednesday, October 21, 2009**. If Plaintiff fails to comply with the specific directions given in this Court's order the case will be dismissed without further notice.

6. The Clerk of this Court shall mail summons forms to the Plaintiff for completion. The Plaintiff shall complete and return the summons forms to the Court along with the Third Amended Complaint by **Wednesday, October 21, 2009**. Once the completed summonses are returned to the Court, the Clerk is directed to provide the completed service forms to the United States Marshal. Upon receipt of the completed service forms, the United States Marshal is directed to serve them upon Defendants Officers Yong C. Hall and Arriage without cost to the Plaintiff.

7. Pro Se Plaintiff Mariam Malone Colette Martinez's Motion for Miscellaneous Relief (Doc. No. 24), filed on September 10, 2009, is DENIED AS MOOT.


8. Pro Se Plaintiff Mariam Malone Colette Martinez's Amended Complaint (Doc. No. 23), filed on September 3, 2009, is STRICKEN.

9. Pro Se Plaintiff Mariam Malone Colette Martinez's Notice of Correspondence (Doc. No. 25), filed on September 17, 2009, is STRICKEN.

DONE and ORDERED in Chambers, in Orlando, Florida on September 18, 2009.

Copies furnished to:

Counsel of Record
Unrepresented Party


ANNE C. CONWAY
United States District Judge