

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

JIMIL MUHAMMED SHEIKH,

Plaintiff,

v.

Case No: 6:13-cv-1526-Orl-36TBS

**CITY OF DELTONA, THE DELTONA
CITY COMMISSIONERS, MAYOR OF
THE CITY OF DELTONA, CYRUS
BUTTS, DALE BAKER, MICHAEL F.
MOREA, ENVIRONMENTAL LAND
SERVICES OF FLAGLER COUNTY,
INC., KATHY FIDLER and PATRICK
HOAG,**

Defendants.

ORDER

This cause comes before the Court on the Report and Recommendation of Magistrate Judge Thomas B. Smith, filed on October 29, 2013 (Doc. 4). In the Report and Recommendation, the Magistrate Judge recommends that *pro se* Plaintiff Jimil Muhammed Sheikh's ("Plaintiff") Motion for Leave to Proceed *In Forma Pauperis* ("IFP Motion") (Doc. 2) be denied and Plaintiff's Complaint (Doc. 1) and Amended Complaint (Doc. 3) be dismissed without prejudice for failure to properly state a claim upon which relief can be granted. *See* Doc. 4. On November 12, 2013, Plaintiff filed a Notice of Objection to the Report and Recommendation ("Objection") (Doc. 9). As such, this matter is ripe for review.

As a preliminary matter, the Court notes that Plaintiff did not sign his Objection. Federal Rule of Civil Procedure 11(a) requires every document filed with the Court by a *pro se* litigant to be signed by that litigant. Fed. R. Civ. P. 11(a). Rule 11(a) directs the Court to strike an unsigned document unless the omission is promptly corrected after being called to the litigant's attention.

Id. However, as Plaintiff filed a Second Amended Complaint (Doc. 7) concurrently with the Objection, there is no need for the Court to allow Plaintiff an opportunity to correct the deficiency in the Objection. Therefore, the Court will strike the Objection.

After reviewing the Report and Recommendation, the Court is in agreement with the Magistrate Judge that Plaintiff's IFP Motion should be denied and that both the Complaint and the Amended Complaint should be dismissed for failure to properly state a claim upon which relief can be granted. *See* 28 U.S.C. § 1915(e)(2) (in proceedings *in forma pauperis*, the court shall dismiss the case if, among other things, the case is frivolous or fails to state a claim upon which relief may be granted). The Court also agrees that Plaintiff should be given an opportunity to file a Second Amended Complaint. However, Plaintiff has already filed a Second Amended Complaint (Doc. 7), as well as a renewed Motion for Leave to Proceed *In Forma Pauperis* (Doc. 8).¹ Accordingly, the Court need not grant Plaintiff leave to file a Second Amended Complaint, as the Court will accept the Second Amended Complaint as filed. Therefore, after careful consideration of the Report and Recommendation of the Magistrate Judge, in conjunction with an independent examination of the court file, the Court is of the opinion that the Magistrate Judge's Report and Recommendation should be adopted, confirmed, and approved in all respects.

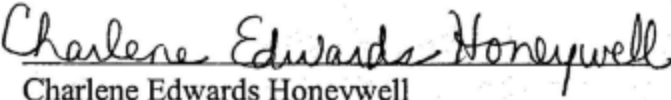
Accordingly, it is hereby **ORDERED and ADJUDGED**:

1. The Report and Recommendation of the Magistrate Judge (Doc. 4) is adopted, confirmed, and approved in all respects and is made a part of this Order for all purposes, including appellate review.

¹ Although the renewed Motion for Leave to Proceed *In Forma Pauperis* is actually entitled "Affidavit of Indigency," it requests leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. Therefore, the Court construes this document as a motion and will direct the Clerk to docket it as such.

2. Plaintiff's Motion for Leave to Proceed *In Forma Pauperis* (Doc. 2) is **DENIED**.
3. Plaintiff's Complaint (Doc. 1) is **DISMISSED without prejudice**.
4. Plaintiff's Amended Complaint (Doc. 3) is **DISMISSED without prejudice**.
5. Plaintiff's Second Amended Complaint (Doc. 7) is accepted as the operative pleading.
6. The Clerk is **DIRECTED** to docket the "Affidavit of Indigency" (Doc. 8) as a Renewed Motion for Leave to Proceed *In Forma Pauperis*.
7. Plaintiff's Notice of Objection to the Report and Recommendation (Doc. 9) is **STRICKEN**.
8. Plaintiff's Motion for Progress Status of Case to Proceed as Filed (Doc. 10) is **DENIED as moot**.

DONE and **ORDERED** in Orlando, Florida on January 16, 2014.


Charlene Edwards Honeywell
United States District Judge

Copies furnished to:

Counsel of Record
Unrepresented Parties
United States Magistrate Judge Thomas B. Smith