

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

JENNIFER SKYLES,

Plaintiff,

v.

Case No. 6:16-cv-1968-Orl-37TBS

THE CITY OF ALTAMONTE SPRINGS,

Defendant.

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**ORDER**

On July 20, 2016, Plaintiff initiated the instant civil rights and wrongful death action in state court. (Doc. 3 (“**Complaint**”).) After removing the action to this Court (Doc. 1), Defendant moved to dismiss Counts III, V, VI, VII, and VIII of the Complaint (“**Offending Counts**”) with prejudice (Doc. 5 (“**MTD**”).) In an Order dated April 7, 2017, the Court granted Defendant’s MTD in part and dismissed the Offending Counts without prejudice. (Doc. 27 (“**April 7 Order**”).) The April 7 Order also gave Plaintiff leave to amend her Complaint on or before Friday, **April 21, 2017**, and warned her that failure to timely file an amended complaint could result in prejudicial dismissal of the Offending Counts without further notice. (*Id.* at 14–15.) Despite this warning, Plaintiff did not file an amended complaint by the April 21 deadline and never moved for an extension of time in which to do so. Hence the Court finds that the Offending Counts are due to be dismissed with prejudice.

Additionally, the April 7 Order: (1) discussed the confusion created by the Complaint with respect to the capacity in which the defendants were sued in this action (Doc. 27, pp. 8, 14); and (2) directed Plaintiff to clarify the parties that she had served (*id.* at 14, 15). In response, Plaintiff clarified that she only intended to proceed against the previously named individual defendants—officers Michael J. McCoy and Matthew Fowler (“**Former Individual Defendants**”)—in their official capacities. (Doc. 31.) Accordingly, the Court terminated the Former Individual Defendants pursuant to the well-established rule that a suit against a municipal officer in his official capacity is, in actuality, a suit against the entity that he represents. (Doc. 32.) Thus, the City of Altamonte Springs is the only Defendant remaining in this action.

Due to this confusion and Plaintiff’s failure to file an amended complaint, the Court will allow Defendant an opportunity to respond to the allegations in Counts I, II, and IV, which were seemingly alleged against Former Individual Defendant Matthew Fowler in his individual capacity.

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. Counts III, V, VI, VII, and VIII of the Complaint (Doc. 1) are **DISMISSED WITH PREJUDICE**.
2. Due to the confusion over the capacity in which the parties were sued in this action, Defendant is **DIRECTED** to respond to the allegations in Counts I, II, and IV of the Complaint on or before Thursday, **May 11, 2017**.

**DONE AND ORDERED** in Chambers in Orlando, Florida, on April 25, 2017.



  
ROY B. DALTON JR.  
United States District Judge

Copies to:  
Counsel of Record