

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

PATRICIA J. CURTO,

Plaintiff,

v.

ERIE COUNTY WATER AUTHORITY,
EARL L. JANN, JR.,

Defendants.



DECISION AND ORDER
18-CV-695 (JLS)

On May 24, 2018, *pro se* Plaintiff Patricia J. Curto commenced this action in New York State Supreme Court, Erie County, under the United States Constitution and various federal and state statutes, including 42 U.S.C. § 1983. Docket Item 1, Exh. B. Defendants removed the case to this Court on June 19, 2018. Docket Item 1. On October 3, 2019, this Court referred this case to United States Magistrate Judge Hugh B. Scott for all proceedings under 28 U.S.C. § 636(b)(1)(A) and (B). Docket Item 19.

Judge Scott's Report and Recommendation ("R&R") outlines the complete procedural timeline of this case; this Court will only note the relevant pending motions. On July 19, 2018, Defendants moved to dismiss. Docket Item 8. On July 30, 2018 and August 8, 2018, Plaintiff responded, Docket Items 11 and 12. On September 6, 2018, Plaintiff moved for a default judgment, Docket Item 15.

Plaintiff also filed a letter to this Court¹ on September 17, 2019. Docket Item 18. Following referral to Judge Scott and a text order setting a deadline to respond, on October 9, 2019, Defendants replied, Docket Item 21. On October 25, 2019, Plaintiff filed a reply, Docket Item 22.

On November 26, 2019, Judge Scott issued an R&R recommending that Defendants' motion to dismiss should be granted without prejudice and that Plaintiff be given leave to file an amended complaint,² within 30 days of final adoption of the R&R. Docket Item 23, at 13. Judge Scott also recommended that Plaintiff's motion for default judgment be denied. *Id.*

On December 10, 2019, Plaintiff objected to the R&R. Docket Item 24. On January 6, 2020, Defendants responded to the objections. Docket Item 27.

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a *de novo* review of those portions of a magistrate judge's recommendation to which objection is made. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3).

¹ Plaintiff's letter of September 17, 2019 was addressed to Judge Vilardo. This case was reassigned to Judge John L. Sinatra, Jr. on January 6, 2020.


² Judge Scott noted in his R&R that if Plaintiff wanted to reframe her claims in an amended complaint to be only state-level claims, then the parties may be able to stipulate to a remand. Docket 23, at 13. Plaintiff indicated in one of her earlier replies (Docket Item 11) that a substantial number of her claims against Defendants arose under state law and, thus, the case should be remanded there. Docket 11, at 2.

This Court has carefully reviewed the thorough R&R, the record in this case, the objections and response, and the materials submitted by the parties. Based on that *de novo* review, the Court accepts and adopts Judge Scott's recommendation to grant Defendants' motion to dismiss without prejudice and deny Plaintiff's motion for default judgment. This Court also accepts and adopts Judge Scott's recommendation to give leave to Plaintiff to file an amended complaint within 30 days of adoption of the R&R.

For the reasons stated above and in the Report and Recommendation, Defendants' motion to dismiss, Docket Item 8, is GRANTED without prejudice; the Plaintiff's motion for default judgment, Docket Item 15, is DENIED; it HEREBY ORDERED that Plaintiff is granted leave to file an amended complaint as directed above and in the R&R by no later than **April 3, 2020**; and it is further ORDERED that if Plaintiff does not file an amended complaint as directed above and in the R&R, the complaint shall be dismissed with prejudice; and it is further ORDERED that if the complaint is dismissed because Plaintiff has not filed an amended complaint, the Clerk of Court shall close this case as dismissed with prejudice without further order.

SO ORDERED.

Dated: March 4, 2020
Buffalo, New York



JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE