

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:13-CV-732-FL

EMMERLI WILCOXSON)
)
Plaintiff,)
)
v.)
)
THE CITY OF RALEIGH; RALEIGH)
POLICE DEPARTMENT; DIANA)
PAINTER, individually and in her official)
capacity; CHARLES MATTHEWS, II,)
individually and in his official capacity;)
PHILIP D. MATTHEWS, individually and in)
his official capacity; and HARRY DOLAN,)
individually and in his official capacity,)
)
Defendants.)

ORDER

This matter comes before the court on the memorandum and recommendation (“M&R”) of United States Magistrate Judge Robert B. Jones, pursuant to 28 U.S.C. § 636(b)(1)(C) and Federal Rule of Civil Procedure 72(b), wherein it is recommended that the court grant the motion to dismiss filed by defendants City of Raleigh (“Raleigh”) and Raleigh Police Department (“RPD”) (DE 35), grant the motion to dismiss filed by defendant Harry Dolan (“Dolan”) (DE 54), and deny the motion to dismiss filed by defendant Charles Matthews, II (“C. Matthews”). (DE 41). It is also recommended that the court deny without prejudice plaintiff’s requests to amend complaint, which were made in her responses to the motions to dismiss. (DE 40, 6-7; DE 53, 6; DE 59, 7). No objections to the M&R have been filed, and the time within which to make any objection has expired. In this posture, the issues raised are ripe for ruling.

Upon a careful review of the M&R, the court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Because no objections have been filed, the court reviews the magistrate judge’s findings and conclusions only for clear error, and need not give any explanation for adopting the M&R. Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005); Camby v. Davis, 718 F.2d 198, 200 (4th Cir. 1983).

The magistrate judge recommends dismissing plaintiff’s claims against defendants Raleigh and RPD. This recommendation includes a recommendation to dismiss claims against defendants Dolan, Diana Painter, C. Matthews, and Philip D. Matthews in their official capacities because these claims duplicate the claims against defendant Raleigh. The magistrate judge also recommends dismissing all claims against defendant Dolan, and denying defendant C. Matthews’s motion to dismiss. Finally, the magistrate judge recommends denying without prejudice plaintiff’s requests to amend complaint in the event that the court agreed her claims warranted dismissal, as these requests lacked a formal motion to amend properly supported by memoranda and a proposed amended complaint.

Upon careful review of the M&R, the court finds the magistrate judge’s analysis to be thorough, and there is no clear error. The court hereby ADOPTS the recommendation of the magistrate judge as its own, and, for the reasons stated therein, the motion to dismiss filed by defendants Raleigh and RPD (DE 35), and the motion to dismiss of defendant Dolan in his individual capacity (DE 54), are GRANTED. The motion to dismiss of defendant C. Matthews (DE 41) is DENIED. Plaintiff’s requests to amend (DE 40, 53, 59) are DENIED, without prejudice.

SO ORDERED, this the 7th day of August, 2014.

A handwritten signature in black ink, reading "Louise W. Flanagan". The signature is written in a cursive style with a large initial "L".

LOUISE W. FLANAGAN
United States District Court Judge