

**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL CASE NO. 1:18-cv-00166-MR-DSC**

DEBBIE O. ROUNDTREE,)	
)	
Plaintiff,)	
)	
vs.)	<u>ORDER</u>
)	
GIVENS HIGHLAND FARMS, LLC,)	
)	
Defendant.)	
_____)	

THIS MATTER is before the Court on the Defendant’s Motion to Dismiss Pursuant to 12(b)(1) [Doc. 7]; the Defendant’s Motion to Dismiss Pursuant to 12(b)(6) [Doc. 15]; and the Magistrate Judge’s Memorandum and Recommendation [Doc. 21] regarding the disposition of those motions.¹

Pursuant to 28 U.S.C. § 636(b) and the standing Orders of Designation of this Court, the Honorable David S. Cayer, United States Magistrate Judge,

¹ The Court notes that it appears to be the practice of the Defendant’s counsel to file separate motions to dismiss on each ground asserted under Rule 12, even though a single motion would suffice. In this particular case, counsel filed three Rule 12 motions: a motion to dismiss the retaliation count under Rule 12(b)(1), a motion to dismiss the race discrimination and retaliation counts under Rule 12(b)(6); and a motion to dismiss the civil conspiracy count under Rule 12(b)(6) (this latter motion was denied as moot when the Plaintiff withdrew her conspiracy claim). While counsel’s practice is not expressly forbidden under the Rules, the Court notes that such practice results in an excessive number of pleadings being filed on issues which could have easily been addressed in one set of briefs. Counsel is encouraged to consolidate his motions in the future.

was designated to consider the Defendant's motions and to submit a recommendation for their disposition.

On February 8, 2019, the Magistrate Judge filed a Memorandum and Recommendation in this case containing conclusions of law in support of a recommendation regarding the Defendant's motions. [Doc. 21]. The parties were advised that any objections to the Magistrate Judge's Memorandum and Recommendation were to be filed in writing within fourteen (14) days of service. The period within which to file objections has now expired, and no written objections to the Memorandum and Recommendation have been filed.

After a careful review of the Magistrate Judge's Recommendation, the Court finds that the proposed conclusions of law are consistent with current case law. Accordingly, the Court hereby accepts the Magistrate Judge's recommendation that the Defendant's motion to dismiss pursuant to Rule 12(b)(1) be granted and that the Defendant's motion to dismiss pursuant to Rule 12(b)(6) be denied.

IT IS, THEREFORE, ORDERED that the Memorandum and Recommendation [Doc. 21] is **ACCEPTED**.

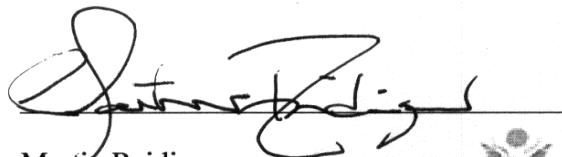
IT IS FURTHER ORDERED that the Defendant's Motion to Dismiss Pursuant to 12(b)(1) [Doc. 7] is **GRANTED**, and the Plaintiff's retaliation

claim as set forth in her Second Cause of Action is **DISMISSED WITH PREJUDICE.**

IT IS FURTHER ORDERED that the Defendant's Motion to Dismiss Pursuant to 12(b)(6) [Doc. 15] is **DENIED.**

IT IS SO ORDERED.

Signed: February 26, 2019


Martin Reidinger
United States District Judge

