

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

LASHONDRA HENDERSON,)	
)	
Plaintiff,)	
)	
v.)	No. 2:17-cv-2599-JTF-dkv
)	
)	
LINCARE/UNITED MEDICAL, INC.,)	
)	
Defendant .)	

**ORDER ADOPTING THE MAGISTRATE JUDGE’S
REPORT AND RECOMMENDATION FOR PARTIAL *SUA SPONTE* DISMISSAL**

On August 17, 2017, Plaintiff Lashondra Henderson, proceeding *pro se*, filed a complaint against her former employer, alleging race and color based discrimination and retaliation claims, in violation of Title VII of the Civil Rights Act pursuant to 42 U.S.C. § 2000e, *et seq.* Plaintiff also filed a motion to proceed *in forma pauperis*. (ECF Nos. 1 & 2.) The matter was referred to the Chief Magistrate Judge for screening pursuant to 28 U.S.C. § 1915 (e)(2)(B) and L.R. 4.1(b)(2). On August 30, 2017, the Chief Magistrate Judge issued an Order Granting Motion for Leave to Appear *In Forma Pauperis* and Report and Recommendation for Partial *Sua Sponte* Dismissal of only the Title VII color discrimination claim. The Chief Magistrate Judge recommended that service of the complaint be made on Lincare in reference to the surviving claims. (ECF No. 12.) The time allowed for Plaintiff to file objections to the report and recommendation pursuant to Fed. R. Civ. P. 72(b)(2) has expired without Plaintiff filing any objections.

II. LEGAL STANDARD

Congress passed 28 U.S.C. § 636(b) “to relieve some of the burden on the federal courts by permitting the assignment of certain district court duties to magistrates.” *See e.g. Baker v. Peterson*, 67 Fed. App’x. 308, 311, 2003 WL 21321184 (6th Cir. 2003) and Fed. R. Civ. P. 72(a). A United States District Judge may refer certain dispositive pretrial motions to a United States Magistrate Judge for submission of proposed findings of fact and conclusions of law, pursuant to 28 U.S.C. § 636(b)(1)(B) and (C); *Brown v. Wesley Quaker Maid, Inc.*, 771 F.2d 952, 957 (6th Cir. 1985). The District Court Judge may accept, reject, or modify in whole or in part, the Magistrate Judge’s proposed findings and recommendations. While most actions by a Magistrate Judge are reviewed for clear error, dispositive recommendations to the District Court Judge are reviewed *de novo*. *Thomas v. Arn*, 474 U.S. 140, 141-42 (1985).

III. FACTUAL HISTORY

The Chief Magistrate Judge’s report and recommendation offers proposed findings of fact to which Plaintiff has not objected. (ECF No. 7, pp. 2-5.) As such, the Court adopts the Chief Magistrate Judge’s proposed findings of fact as the factual summary of this case.

IV. ANALYSIS

The Chief Magistrate Judge conducted an extensive examination of Plaintiff’s complaint along the exhibits filed with the original complaint, Plaintiff’s charge and amended charge of discrimination dated April 27, 2016 and September 9, 2016 that were filed with the Equal Employment Opportunity Commission and the Tennessee Human Rights Commission. (ECF No. 7, fn.3). In the report and recommendation, the Chief Magistrate Judge analyzed whether Plaintiff’s complaint states viable claims of discrimination under 42 U.S.C. § 2000e against the

Defendant. In reference to the federal claims, the Chief Magistrate Judge concluded that Plaintiff has sufficiently alleged facts in her complaint to infer claims of discrimination in employment based on race and retaliation against her former employer. However, the Chief Magistrate Judge recommended that the Court dismiss Plaintiff's claim of color discrimination because Plaintiff had failed to exhaust her administrative remedies by not alleging color discrimination in her THRC charge or alternatively, for Plaintiff's failure to specifically allege that she had actually suffered discrimination based on color instead of race. (ECF No. 7, pp. 8-12). The Court adopts these findings.

Upon a *de novo* review of the *pro se* complaint, the charges of discrimination and the report and recommendations, the Court finds that the Chief Magistrate Judge's legal conclusions are correct and the report and recommendation should be adopted in its entirety. As noted, Plaintiff has not filed any objections to the report and recommendation pursuant to Fed. R. Civ. P. 72(b)(2). The Court agrees that the complaint sufficiently alleges claims of race discrimination and retaliation in employment. As such, these claims should proceed as recommended. *Monell v. Department of Social Services of City of New York*, 436 U.S. 658, 690 (1978); *Leach v. Shelby County Sheriff*, 891 F.2d 1241, 1247 (6th Cir. 1989); and *City of Canton v. Harris*, 489 U.S. 379, 387-88 (1989).

CONCLUSION

Upon a *de novo* review, the Court adopts the Chief Magistrate Judge's report and recommendation and orders that Plaintiff's claim of discrimination in employment based on color be dismissed but that the claims of discrimination based on race and retaliation in violation of 42 U.S.C. § 2000e, *et seq.* survive.

Accordingly, the Clerk of Court is directed to issue process for Lincare and to deliver that process to the U.S. Marshal for service pursuant to Fed. R. Civ. P. 4(h)(1). All costs associated with the service of the complaint on Lincare will be advanced by the United States. Plaintiff Lashondra Henderson is ordered to serve a copy of all of the documents filed in this matter upon counsel for Lincare, make a certificate of service on every document filed, to familiarize herself with the Federal Rules of Civil Procedure as well as the Local Rules of this Court¹ and to notify the Clerk of any change in her mailing address or extended periods of absences.

IT IS SO ORDERED on this 11th day of December, 2017.

s/John T. Fowlkes, Jr.
JOHN T. FOWLKES, JR.
UNITED STATES DISTRICT JUDGE

¹ A copy of the Court's Local Rules are on the website at www.tnwd.uscourts.gov/pdf/content/LocalRules.pdf .