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

JANICE BOGARD, Plaintiff, v. HILTON WORLDWIDE, SERVICE MASTER BY STRATOS, SHELIA DUNN, TINA STEEL, and BRUCE SALISBURY, Defendants.	)	Case No. 2:17-cv-02705-JTF-tmp

ORDER ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION; ORDER DIRECTING DISMISSAL OF THE COMPLAINT *SUA SPONTE* AGAINST DEFENDANTS SHELIA DUNN, TINA STEEL, AND BRUCE SALISBURY; AND ORDER DIRECTING PLAINTIFF TO FILE AN AMENDED COMPLAINT AS TO DEFENDANTS HILTON WORLDWIDE AND SERVICE MASTER BY STRATOS

Before the Court is Plaintiff Janice Bogard's *pro se* Complaint against Defendants Hilton Worldwide, ServiceMaster by Stratos, Shelia Dunn, Tina Steel, and Bruce Salisbury that was filed on September 22, 2017, based on claims under the Age Discrimination in Employment Act of 1967 ("ADEA"). (ECF No. 1.) The matter was referred to the Magistrate Judge pursuant to Administrative Order 2013-05. On September 26, 2017, the Magistrate Judge granted Plaintiff leave to proceed *in forma pauperis*. (ECF Nos 2 & 7.) The Magistrate Judge's order also advised Plaintiff to promptly notify the Clerk of Court of any changes in her mailing address and that the Court would direct the Clerk to issue service of process upon the defendants, if

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appropriate, upon completion of the screening process pursuant to 28 U.S.C. § 1915 (d) and Fed. R. Civ. P. 4 (c)(3). (ECF No. 7.)

On October 3, 2017, the Magistrate Judge entered a report and recommendation, recommending that the case be dismissed *sua sponte* against the individually-named Defendants and that Plaintiff file an Amended Complaint within thirty (30) days against Hilton Worldwide and Serve Master by Stratos. (ECF No. 8.) To date, no objections have been filed and the time for doing so has expired.

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). When a magistrate judge "submit[s] to a judge of the [district] court proposed findings of fact and recommendations," "any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court." 28 U.S.C. § 636(b)(1)(B)–(C). After reviewing the evidence, the Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made" by the Chief Magistrate Judge. *Id.* The Court need not, however, review any portion of the recommendation to which Plaintiff did not specifically object, and may adopt the findings and rulings of the Chief Magistrate Judge to which no specific objection is filed. *Thomas v. Arn*, 474 U.S. 140, 149–52 (1985).

III. ANALYSIS

Pursuant to 28 U.S.C. § 1915 (e)(2)(B)(i-iii), the Magistrate Judge determined that although Plaintiff's complaint indicated her claim was based on age discrimination, she had supported her complaint with documents from Hilton Worldwide and Service Master that only

respond to her racial discrimination and retaliation claims. (ECF Nos. 1-2 & 1-4). Therefore, the Magistrate Judge concluded that Plaintiff's age-based discrimination claim lacked sufficient facts to support a claim for relief and as such, was not entitled to a presumption of truth. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The Magistrate Judge recommended that the Court allow Bogard to amend her complaint as to Defendants Hilton Worldwide and Service Master. (ECF No. 8, pp. 4-5.)

In reference to Plaintiff's allegations against Shelia Dunn, Tina Steel and Bruce Salisbury, the Magistrate Judge recommended *sua sponte* dismissal of these claims because Plaintiff had not demonstrated that these parties were her actual employer. Therefore, these individually-named parties could not be subject to liability under the ADEA or Title VII. *Wathen v. General Electric, Co*., 115 F.3d 400, 404-05 n.6 (6th Cir. 1997); *Tennial v. United Parcel Service*, No. 213-cv-2277-JTF-tmp, 2015 WL 13022010, at *3 (W.D. Tenn. Nov. 12, 2015, *aff'd*, 840 F.3d 292 (6th Cir. 2016). (ECF No. 8, pp. 5-6).

Plaintiff has not filed objections to the Magistrate Judge's report and recommendation under Fed. R. Civ. P. 72(b)(2) and West Tenn. L.R. 72.1(g)(2). Therefore, after a review of the Magistrate Judge's Report and Recommendation and the entire record, the Court hereby ADOPTS the Magistrate's Report and Recommendation in its entirety and orders the claims against Shelia Dunn, Tina Steel and Bruce Salisbury Dismissed with prejudice. The Court also directs Plaintiff to file an Amended Complaint as to Defendants Hilton Worldwide and Service Master by Stratos within thirty (30) days.

IT IS SO ORDERED this 24th day of October, 2017.

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