

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

DIMITRI PATTERSON,

Plaintiff,

v.

Case No: 6:18-cv-950-Orl-41GJK

ORLANDO-ORANGE COUNTY,

Defendant.

ORDER

THIS CAUSE is before the Court on Defendant, Orange County, Florida's Motion to Dismiss (Doc. 108). United States Magistrate Judge Gregory J. Kelly issued a Report and Recommendation (Doc. 132), recommending that the Motion be granted in part. Specifically, Judge Kelly recommended that Counts I, IV, V, VII, VIII, and IX of the Amended Complaint (Doc. 83) be dismissed with prejudice, the remainder of the Amended Complaint be dismissed without prejudice, and Plaintiff be given leave to file a Second Amended Complaint against Orange County. (Doc. 132 at 14).

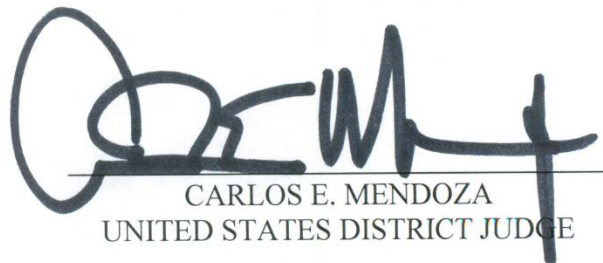
Defendant filed an Objection to the Report and Recommendation (Doc. 134). Therein, Defendant argues that all of Plaintiff's claims should be dismissed with prejudice because Plaintiff's Amended Complaint fails to state a claim. With respect to Plaintiff's Fifth Amendment claim, the Court agrees. Plaintiff cannot assert a claim against Defendant under the Fifth Amendment because Defendant is a state entity. *See Riley v. Camp*, 130 F.3d 958, 972 n.19 (11th Cir. 1997) ("The Fifth Amendment obviously does not apply here—the acts complained of were committed by state rather than federal officials."). Therefore, Plaintiff's Fifth Amendment claim, Count III, will be dismissed with prejudice. *See Bryant v. Dupree*, 252 F.3d 1161, 1163 (11th Cir.

2001) (“A district court need not, however, allow an amendment [of the complaint] . . . where amendment would be futile.”).

As for Plaintiff’s remaining claims against Defendant, Counts II and VI, the Court does not find that amendment would to be futile. Plaintiff will be granted an opportunity to amend his Complaint as Counts II and VI. After a *de novo* review, the Court agrees with the analysis in the Report and Recommendation, with the exception of granting Plaintiff leave to amend Count III. Accordingly, it is **ORDERED** and **ADJUDGED** as follows:

1. To the extent that it is consistent with this Order, the Report and Recommendation (Doc. 132) is **ADOPTED** and **CONFIRMED** and made a part of this Order.
2. Defendant, Orange County, Florida’s Motion to Dismiss (Doc. 108) is **GRANTED in part**.
3. Counts I, III, IV, V, VII, VIII, and IX of the Amended Complaint (Doc. 83) are **DISMISSED with prejudice**.
4. Counts II and VI of the Amended Complaint (Doc. 83) are **DISMISSED without prejudice**.
5. **On or before June 18, 2019**, Plaintiff may file a Second Amended Complaint addressing only Counts II and VI against Defendant Orange County. Failure to do so may result in the dismissal of this case without further notice.

DONE and **ORDERED** in Orlando, Florida on May 30, 2019.



CARLOS E. MENDOZA
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record
Unrepresented Party