

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

**RICHARD PRATHER, as guardian for A.P.,
AND A.P.,**

Plaintiffs,

v.

**FIRST STUDENT INC., d/b/a
FIRST STUDENT MANAGEMENT, LLC**

Defendant.

Case No. 18-CV-2178-CM-GEB

MEMORANDUM AND ORDER

On November 21, 2018, United States Magistrate Judge Gwynne E. Birzer entered a Report and Recommendation (Doc. 41), recommending that this court: (1) grant in part and deny without prejudice in part plaintiffs' Second Motion For Leave To File Plaintiffs' First Amended Complaint (Doc. 17); (2) remand the case to the District Court of Johnson County, Kansas; and (3) deny without prejudice plaintiffs' Motion to Opt Out of Mediation (Doc. 40). The parties had until December 5, 2018, to file written objections to the Report and Recommendation pursuant to Rule 72(b)(2) of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1). Neither party filed any objections. Generally, a failure to timely object to a Report and Recommendation precludes any appellate review of the disposition of the case or motion. *Morales-Fernandez v. INS*, 418 F.3d 1116, 1119 (10th Cir. 2005) ("This court has adopted a firm waiver rule under which a party who fails to make a timely objection to the magistrate judge's findings and recommendations waives appellate review of both factual and legal questions.").

The court has reviewed the Report and Recommendation of Judge Birzer and fully agrees with the analysis and conclusions reached. Because neither party timely objected, and because the court agrees with Judge Birzer's recommendations, the court adopts in full the Report and Recommendation.

Plaintiffs are granted leave to file an amended complaint joining Nelda Piper, a Kansas resident, as a defendant for the purposes of asserting a negligence claim against her. But the court denies without prejudice plaintiffs' additional request to amend the complaint to add a punitive damage claim and to opt out of mediation. Nelda Piper's joinder will destroy complete diversity between the parties, defeat the court's 28 U.S.C. § 1332 subject matter jurisdiction, and require remand to state court. If they so choose, plaintiffs may renew in state court their requests to add a punitive damage claim and to opt out of any required mediation.

IT IS THEREFORE ORDERED that the court adopts in its entirety the Report and Recommendation filed by Judge Birzer (Doc. 41). Plaintiffs' Second Motion For Leave To File Plaintiffs' First Amended Complaint (Doc. 17) is granted in part and denied without prejudice in part. Before filing such amended complaint, plaintiffs are ordered to modify their proposed First Amended Complaint to remove Count II regarding punitive damages. Once the modified First Amended Complaint is filed, the case is remanded to the District Court of Johnson County, Kansas, pursuant to 28 U.S.C. § 1447(e). Further, plaintiffs' Motion to Opt Out of Mediation (Doc. 40) is denied without prejudice.

Dated February 4, 2019, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge