

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

JOHN SCHMIDT,

Plaintiff,

v.

Case Number 09-10744-BC
Honorable Thomas L. Ludington

TERMINIX INTERNATIONAL COMPANY,
L.P.,

Defendant.

_____ /

**ORDER GRANTING MOTION TO DISMISS, DISMISSING COUNT II,
AND CANCELLING HEARING**

On February 26, 2009, Plaintiff John Schmidt filed a complaint alleging that his employer, Defendant Terminix International Company, engaged in age discrimination. The complaint alleges, inter alia, a cause of action for violation of 42 U.S.C. § 1981, which prohibits discrimination on the basis of race. *See Runyon v. McCrary*, 427 U.S. 160, 167 (1976) (section 1981 prohibits racial discrimination in the making and enforcement of contracts). On May 28, 2009, Defendant moved to dismiss that cause of action because the complaint does not allege an act of racial discrimination. Dkt. # 7. On June 17, 2009, Plaintiff's response concurs in the dismissal of the 42 U.S.C. § 1981 claim. Dkt. # 12. Thus, the Court will grant the motion and dismiss Count II of the complaint.

In addition, Plaintiff's counsel indicated that Defendant did not seek concurrence before filing the motion to dismiss and that Plaintiff would have agreed to a stipulated order dismissing the claim. *Id.* The Eastern District of Michigan requires counsel to seek concurrence before filing a motion. E.D. Mich. LR 7.1(a). In the future, counsel are cautioned to seek concurrence before filing a motion and, in the event that concurrence is not obtained, indicate so in the motion. *See id.*

Accordingly, it is **ORDERED** that Defendant's motion to dismiss [Dkt. # 7] is **GRANTED**.

Plaintiff's claim for violation of 42 U.S.C. § 1983 is **DISMISSED WITH PREJUDICE**.

It is further **ORDERED** that the August 10, 2009 hearing is **CANCELLED**.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: July 17, 2009

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on July 17, 2009.

s/Tracy A. Jacobs
TRACY A. JACOBS