

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

MICHAEL GARRISON,

Plaintiff,

CIVIL ACTION NO. 06-CV-13258-DT

vs.

DISTRICT JUDGE NANCY G. EDMUNDS

BETH DAVIS, et al.,

MAGISTRATE JUDGE MONA K. MAJZOUB

Defendants.

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**REPORT AND RECOMMENDATION**

I. **RECOMMENDATION:** The Motion to Dismiss filed by Defendant Correctional Medical Services, Inc. (docket no. 93) should be **DENIED**.

II. **REPORT:**

This matter comes before the Court on the Motion to Dismiss filed by Defendant Correctional Medical Services, Inc. (CMS). (Docket no. 93). Plaintiff has not filed a Response brief but has filed a Motion to Strike Defendant's Motion to Dismiss on the basis that it is premature and frivolous.<sup>1</sup> (Docket no. 100). All pretrial matters have been referred to the undersigned for decision. (Docket no. 26). Defendant's motion is now ready for ruling pursuant to 28 U.S.C. § 636(b)(1)(B). The Court dispenses with oral argument pursuant to E.D. Mich. LR 7.1(e).

This is a civil rights action filed by a state prisoner pursuant to 42 U.S.C. §§ 1983 and 1985. (Docket no. 45 at 8). On May 5, 2009 this Court granted Defendant's Motion to Compel Access to Plaintiff's Complete Medical Records. (Docket nos. 81, 89). This Court ordered Plaintiff to sign

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<sup>1</sup> The Court will rule on Plaintiff's Motion to Strike in a separate order.

a release form for his prison medical records. Plaintiff objected to that Order and did not comply with it. (Docket no. 94). Defendant's Motion to Dismiss is based on Plaintiff's failure to comply with the Order by returning a signed release form to Defendant. However, Defendant has now filed a Notice stating that it has received a signed release form from Plaintiff for his medical records. (Docket no. 103). Defendant has not withdrawn the present Motion to Dismiss, however. Plaintiff's Motion to Strike Defendant's Motion to Dismiss is based on his belief that his objection to the Order compelling him to execute a release form for his medical records stayed his compliance with the Order.

Because Plaintiff has now complied with the Court's Order by signing the release form, dismissal of the action for not complying with the Order is not warranted. Therefore, Defendant's Motion to Dismiss should be denied.

### **III. NOTICE TO PARTIES REGARDING OBJECTIONS:**

The parties to this action may object to and seek review of this Report and Recommendation, but are required to act within ten (10) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1) and E.D. Mich. LR 72.1(d)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Sec'y of Health & Human Servs.*, 932 F.2d 505 (6<sup>th</sup> Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6<sup>th</sup> Cir. 1981). Filing of objections which raise some issues but fail to raise others with specificity, will not preserve all the objections a party might have to this Report and Recommendation. *Willis v. Sec'y of Health & Human Servs.*, 931 F.2d 390, 401 (6<sup>th</sup> Cir. 1991); *Smith v. Detroit Fed'n Of Teachers Local 231*, 829 F.2d 1370, 1373 (6<sup>th</sup> Cir. 1987). Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this Magistrate Judge.

Any objections must be labeled as “Objection #1,” “Objection #2,” etc. Any objection must recite *precisely* the provision of this Report and Recommendation to which it pertains. Not later than ten days after service of an objection, the opposing party must file a concise response proportionate to the objections in length and complexity. The response must specifically address each issue raised in the objections, in the same order and labeled as “Response to Objection #1,” “Response to Objection #2,” etc.

Dated: September 10, 2009

s/ Mona K. Majzoub  
MONA K. MAJZOUB  
UNITED STATES MAGISTRATE JUDGE

#### **PROOF OF SERVICE**

I hereby certify that a copy of this Report and Recommendation was served upon Michael Garrison and Counsel of Record on this date.

Dated: September 10, 2009

s/ Lisa C. Bartlett  
Courtroom Deputy