

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

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SCOTT F. ICEBERG,

Plaintiff,

v.

Case No. 11-10336

WHOLE FOODS MARKET GROUP, INC.,

Defendant.

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**ORDER DENYING WITHOUT PREJUDICE DEFENDANT'S MOTION TO DISMISS  
COUNT VII OF PLAINTIFF'S FIRST AMENDED COMPLAINT  
AND SETTING DEADLINE**

Before the court is Defendant's "Motion to Dismiss Count VII of Plaintiff's First Amended Complaint," filed on May 4, 2011. The court held a scheduling conference on May 5, 2011, at which time it was determined that Defendant had not sought concurrence before filing the motion. Consequently, the court will deny the motion without prejudice. See E.D. Mich. LR 7.1(a). At the conference, it appeared that Plaintiff's counsel would be willing to amend the complaint to address the issues raised in the motion to dismiss. The court indicated counsel should confer to attempt to reach an agreement on amending the complaint, and either a stipulation and proposed order (if an agreement can be reached) or a motion to amend (if it cannot) should be filed by May 20, 2011. Accordingly,

IT IS ORDERED that Defendant's "Motion to Dismiss Count VII of Plaintiff's First Amended Complaint" [Dkt. # 12] is DENIED WITHOUT PREJUDICE for failure to seek concurrence as required by Local Rule 7.1(a).

IT IS FURTHER ORDERED that by **May 20, 2011**, either the parties must submit a stipulation and proposed order amending Plaintiff's "First Amended Complaint," or Plaintiff must file a motion to amend, which will be briefed according to the schedule set forth in the Local Rules.

s/Robert H. Cleland  
ROBERT H. CLELAND  
UNITED STATES DISTRICT JUDGE

Dated: May 6, 2011

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, May 6, 2011, by electronic and/or ordinary mail.

s/Lisa Wagner  
Case Manager and Deputy Clerk  
(313) 234-5522