

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROCHELLE DANIEL,

Plaintiff,

v.

GOODYEAR TIRE/CBSD, et al.,

Defendants.

Case No. 15-cv-11479

HON. MARK A. GOLDSMITH

ORDER (1) ACCEPTING IN PART THE REPORT AND RECOMMENDATION OF THE MAGISTRATE JUDGE DATED AUGUST 8, 2016 (Dkt. 22), (2) GRANTING DEFENDANT'S MOTION TO DISMISS (Dkt. 12), (3) DENYING PLAINTIFF'S MOTION FOR LEAVE TO FILE A SECOND AMENDED COMPLAINT (Dkt. 15), AND (4) GRANTING PLAINTIFF 14 DAYS TO FILE A SECOND AMENDED COMPLAINT

This matter is before the Court on the Report and Recommendation (“R&R”) of Magistrate Judge Stephanie D. Davis, issued on August 8, 2016 (Dkt. 22). In the R&R, the magistrate judge recommends granting Defendant’s motion to dismiss (Dkt. 12), denying Plaintiff’s motion for leave to file a second amended complaint (Dkt. 15), and granting Plaintiff 30 days to file an amended complaint to address the deficiencies identified by the Court in the R&R.

The parties have not filed objections to the R&R, and the time to do so has expired. See Fed. R. Civ. P. 72(b)(2). The failure to file a timely objection to an R&R constitutes a waiver of the right to further judicial review. See Thomas v. Arn, 474 U.S. 140, 150 (1985) (“It does not appear that Congress intended to require district court review of a magistrate’s factual or legal conclusions, under a de novo or any other standard, when neither party objects to those findings.”); Smith v. Detroit Fed’n of Teachers, 829 F.2d 1370, 1373-1374 (6th Cir. 1987) (failure to file objection to R&R “waived subsequent review of the matter”); Cephas v. Nash,

328 F.3d 98, 1078 (2d Cir. 2003) (“As a rule, a party’s failure to object to any purported error or omission in a magistrate judge’s report waives further judicial review of the point.”); Lardie v. Birkett, 221 F. Supp. 2d 806, 807 (E.D. Mich. 2002) (“As to the parts of the report and recommendation to which no party has objected, the Court need not conduct a review by any standard.”). There is some authority that a district court is required to review the R&R for clear error, see Fed. R. Civ. P. 72 Advisory Committee Note Subdivision (b) (“When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”). Therefore, the Court has reviewed the R&R for clear error. On the face of the record, the Court finds no clear error and accepts the recommendation in part.

Accordingly, the Court grants Defendant’s motion to dismiss (Dkt. 12), denies Plaintiff’s motion for leave to file a second amended complaint (Dkt. 15), and grants Plaintiff leave to file an amended complaint to address the deficiencies identified by the magistrate judge in the R&R. Plaintiff shall file the second amended complaint on or before September 16, 2016. If Plaintiff does not timely file a second amended complaint, this matter will be dismissed with prejudice.

SO ORDERED.

Dated: September 2, 2016
Detroit, Michigan

s/Mark A. Goldsmith
MARK A. GOLDSMITH
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on September 2, 2016.

s/Karri Sandusky
Case Manager