

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DANIEL C. WALLER, JR.,

Plaintiff,

v.

TIAVON MOORE-PATTON, RAMONA
VINCENT, MARIA ROSADO, BENJAMIN
QUANTA MiDOGE, CRINISHA HALL,
ANGELA CALLOWAY, and ROBERT CAIN,

Case Number 15-13305
Honorable David M. Lawson
Magistrate Judge David R. Grand

Defendants.

**ORDER DENYING PLAINTIFF'S MOTION FOR AN EXTENSION OF TIME TO FILE
OBJECTIONS, ADOPTING MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATION, GRANTING DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT, AND DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

Presently before the Court is the report issued on January 18, 2017 by Magistrate Judge David R. Grand pursuant to 28 U.S.C. § 636(b), recommending that the Court grant the motion for summary judgment by defendants Tiavon Moore-Patton, Ramona Vincent, Maria Rosado, Benjamin Quanta MiDodge, Crinisha Hall, Angela Calloway, and Robert Cain, and deny the plaintiff's motion for summary judgment. The report stated that the parties to this action could object to and seek review of the recommendation within fourteen days of service of the report. On February 1, 2017, the plaintiff filed a motion to extend the time to file objections. The Court granted the motion, and extended the time to file objections to February 20, 2017.

Rather than file objections, the plaintiff filed a "motion for pause for plaintiffs response to objection." In his motion, the plaintiff explains that before filing this case, he was provided an attorney through his local union to assist him with filing a grievance against many of the same defendants in this case. According to the plaintiff, an arbitration hearing was held in December

2016. The plaintiff is now asking the Court to extend the time for him to file objections until after the arbitration resolves. Despite engaging in the union grievance process, the plaintiff voluntarily filed the present case. Although the arbitration may concern some of the same issues and parties involved in this case, it is a wholly separate matter. The case before this Court must proceed on its own schedule. The plaintiff has not provided sufficient grounds to allow a further extension of the time to file objections to the magistrate judge's report. The motion therefore will be denied.

No objections were filed to the magistrate judge's report and recommendation. The parties' failure to file objections to the report and recommendation waives any further right to appeal. *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Likewise, the failure to object to the magistrate judge's report releases the Court from its duty to independently review the matter. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). However, the Court agrees with the findings and conclusions of the magistrate judge.

The Court observes that defendants Doug Spicer and Peter Young are listed erroneously as defendants in this case. They were initially added to the docket when the plaintiff filed a second amended complaint, which included them as defendants. However, the magistrate judge struck the second amended complaint because it was filed almost three months after the close of discovery, and the plaintiff did not have written consent by the opposing parties or leave of the Court to do so. See Federal Rule of Civil Procedure 15(a) & (b) (Once 21 days has passed from serving the complaint or the filing of a responsive pleading, "a party may amend its pleading only with the opposing party's written consent or the court's leave."). Therefore, defendants Doug Spicer and Peter Young are not parties to this case.

Accordingly, it is ordered that the plaintiff's motion for pause for plaintiff's response to objection [dkt. #72] is **DENIED**.

It is further **ORDERED** that the magistrate judge's report and recommendation [dkt. #68] is **ADOPTED**.

It is further **ORDERED** that the motion for summary judgment filed by defendants Tiavon Moore-Patton, Ramona Vincent, Maria Rosado, Benjamin Quanta MiDodge, Crinisha Hall, Angela Calloway, and Robert Cain [dkt. #61] is **GRANTED**.

It is further **ORDERED** that the motion for summary judgment filed by plaintiff Daniel C. Waller [dkt. #66] is **DENIED**.

It is further **ORDERED** that the amended complaint is **DISMISSED WITH PREJUDICE**.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: February 23, 2017

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 February 23, 2017.

s/Susan Pinkowski
SUSAN PINKOWSKI