

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DWAYNE HOOSIER,

Plaintiff,

CASE NO. 16-10688

HON. DENISE PAGE HOOD

v.

WENDY LIU, *et al.*,

Defendants.

**ORDER ACCEPTING REPORT AND RECOMMENDATION
TO GRANT THE CONSTRUED MOTION FOR PARTIAL SUMMARY
JUDGMENT FILED BY DEFENDANTS WENDY LIU, N.P., SHI-YU TAN,
M.D., RICKEY COLEMAN, M.D., AND STEVEN BERGMAN, M.D. (DE 26)
AND TO GRANT IN PART THE MOTION FOR SUMMARY JUDGMENT
FILED BY DEFENDANTS VICKI CARLSON AND RENYU XUE (DE 35)**

This matter is before the Court on a Report and Recommendation (Doc # 40) filed by Magistrate Judge Anthony P. Patti on a Partial Motion for Judgment on the Pleadings filed by Defendants Wendy Liu, Shi-Yu Tan, Rickey Coleman, and Steven Bergman (Doc # 26), and a Motion for Summary Judgment filed by Defendants Vicki Carlson and Renyu Xue (Doc # 35). To date, no objections were filed to the Report and Recommendation and the time to file such has passed.

The standard of review by the district court when examining a Report and Recommendation is set forth in 28 U.S.C. § 636. This Court “shall make a *de novo*

determination of those portions of the report or the specified proposed findings or recommendations to which an objection is made.” 28 U.S.C. § 636(b)(1)(C). The court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” *Id.* In order to preserve the right to appeal the magistrate judge’s recommendation, a party must file objections to the Report and Recommendation within fourteen (14) days of service of the Report and Recommendation. Fed. R. Civ. P. 72(b)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140, 155 (1985); *Howard v. Sec’y of Health & Human Servs.*, 932 F.2d 505, 508-09 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981).

After review of the Magistrate Judge’s Report and Recommendation, the Court finds that his findings and conclusions are correct. The Court agrees with the Magistrate Judge that Defendants’ Motion for Partial Judgment on the Pleadings (Doc # 26) is properly construed as a motion for partial summary judgment to resolve the question of whether Plaintiff failed to exhaust his administrative remedies, an affirmative defense raised by Defendants.

The Court further agrees with the Magistrate Judge that Plaintiff failed to properly exhaust his administrative remedies as to his claims against Shi-Yu Tan, Rickey Coleman, Steven Bergman, and Vicki Carlson, and some of his claims against Wendy Liu. The Court will grant summary judgment in their favor. The

Court will dismiss Shi-Yu Tan, Rickey Coleman, Steven Bergman, and Vicki Carlson from this action.

The Court, however, will not dismiss the claim against Renyu Xue and will deny her motion for summary judgment. The Court agrees with the Magistrate Judge that Plaintiff's grievance against her appears to have been properly exhausted.

Accordingly,

IT IS ORDERED that Magistrate Judge Anthony P. Patti's Report and Recommendation (Doc # 40) is ACCEPTED and ADOPTED as this Court's findings of fact and conclusions of law.

IT IS FURTHER ORDERED that the construed Motion for Partial Summary Judgment filed by Defendants Wendy Liu, Shi-Yu Tan, Rickey Coleman, and Steven Bergman (Doc # 26) is GRANTED for the reasons set forth above.

IT IS FURTHER ORDERED that the Motion for Summary Judgment filed by Defendants Vicki Carlson and Renyu Xue (Doc # 35) is GRANTED IN PART as to Defendant Vicki Carlson, and DENIED IN PART as to Defendant Renyu Xue for the reasons set forth above.

IT IS FURTHER ORDERED that Defendants Shi-Yu Tan, Rickey Coleman, Steven Bergman, and Vicki Carlson are DISMISSED from this action. Defendants

Wendy Liu, Renyu Xue, Karen Rhodes, William Borgerding, Badawi Abdellatif, Kim Farris, and Jane Doe remain.

IT IS FURTHER ORDERED that this matter is referred back to Magistrate Judge Anthony P. Patti as to the remaining Defendants for all pretrial proceedings, including a hearing and determination of all non-dispositive matters pursuant to 28 U.S.C. § 636(b)(1)(A) and/or a report and recommendation on all dispositive matters pursuant to 28 U.S.C. § 636(b)(1)(B).

DATED: February 15, 2017

s/Denise Page Hood
DENISE PAGE HOOD
Chief Judge

I hereby certify that a copy of the foregoing document was served upon counsel of record on February 15, 2017, by electronic and/or ordinary mail.

s/Teresa McGovern
Case Manager Generalist