

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ARNOLD KUERBITZ,

Plaintiff,

v.

Case No. 2:24-CV-10774

District Judge Matthew F. Leitman

Magistrate Judge Anthony P. Patti

MICHAEL J. BOUCHARD, *et al.*,

Defendants.

**ORDER DENYING PLAINTIFF’S JUNE 21, 2024 “MOTION FOR
OBJECTION AND TO STRIKE” (ECF NO. 25) AND CONSTRUING
PLAINTIFF’S JUNE 21, 2024 “CONTRA MEMORANDUM” (ECF NO. 26)
AS A RESPONSE TO DEFENDANT’S MOTION TO DISMISS**

On March 26, 2024, Plaintiff Arnold Kuerbitz, proceeding *pro se*, initiated this action against Oakland County Sheriff Michael Bouchard, Oakland County Prosecutor Karen McDonald, and various John and Jone Does, listed as unknown Oakland County Sheriff Deputies, unknown Oakland County Health Department workers/RNs, and unknown Assistant Oakland County Prosecutor(s). (ECF No. 1.) On May 6, 2024, Judge Matthew Leitman referred the matter to me 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).” (ECF No. 13.)

On May 16, 2024, Defendant Karen McDonald filed a motion to dismiss (ECF No. 17.) Plaintiff filed a motion for extension of time to file a response, which was granted. (ECF No. 21.) Plaintiff was given until June 28, 2024 to respond to Defendant's motion to dismiss. On June 21, 2024, Plaintiff filed the instant "Motion for Objection and to Strike Defendant's Motion to Dismiss" (ECF No. 25), along with a "Contra Memorandum of Law" (ECF No. 26), and a "Sworn Affidavit in Support" (ECF No. 27). All documents were submitted via the pro se portal, and all three relate to Defendant's motion to dismiss.

First, Plaintiff's "Motion for Objection and to Strike Defendant's Motion to Dismiss" (ECF No. 25) is **DENIED**. Plaintiff has identified no valid reason to *strike* Defendant's motion to dismiss, and it appears more likely he simply wants the Court to *deny* it. The proper manner to oppose a motion to dismiss is not with a motion to strike, however, but with a response brief. *See* E.D. Mich. LR 7.1(c)(1) ("A respondent opposing a motion must file a response, including a brief and supporting documents then available.")

In Plaintiff's "Contra Memorandum of Law" (ECF No. 26), he sets forth the reasons why he wants the Court to deny Defendant's motion to dismiss and the Court accordingly **CONSTRUES** the contra memorandum (ECF No. 26) as Plaintiff's response to Defendant's motion to dismiss. Finally, Plaintiff has also filed an affidavit in apparent support of the response brief. (ECF No. 27.) Plaintiff

is allowed only one response to Defendant’s motion to dismiss. E.D. Mich. LR 7.1(d)(1)(A) (“[E]ach motion and response to a motion must be accompanied by a single brief.”). Having reviewed the affidavit, it appears that Plaintiff was attempting to submit the affidavit as an exhibit to his response brief, and the Court **CONSTRUES** it as such, rather than as an improper second response.

IT IS SO ORDERED.¹

Dated: September 24, 2024

s/ *Anthony P. Patti*

Anthony P. Patti

UNITED STATES MAGISTRATE JUDGE

¹ The attention of the parties is drawn to Fed. R. Civ. P. 72(a), which provides a period of fourteen (14) days after being served with a copy of this order within which to file objections for consideration by the district judge under 28 U.S.C. § 636(b)(1).