

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN MORALEZ,

Plaintiff,

v.

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION, et al.,

Defendants.

Case No. 1:19-cv-957

HON. JANET T. NEFF

OPINION AND ORDER

On November 12, 2019, Plaintiff, proceeding pro se, initiated this action against the Equal Employment Opportunity Commission (EEOC). The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R&R), recommending that the action be dismissed upon initial screening pursuant to 28 U.S.C. § 1915(e)(2)(B). The matter is presently before the Court on Plaintiff's objections to the Report and Recommendation. Additionally, Plaintiff has filed various motions. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections, denies the motions, and issues this Opinion and Order.

I. Objections

Although Plaintiff sets forth a number of purported objections in two lengthy filings (ECF Nos. 9 & 11), he presents no coherent, valid challenge to the Magistrate Judge's analysis or conclusion. Plaintiff appears to essentially object to the Magistrate Judge's ultimate determination

that the EEOC's "alleged failure to provide Plaintiff with a Form 5 did not constitute an abuse of discretion," and thus, "Plaintiff has failed to demonstrate entitlement to mandamus" (R&R, ECF No. 8 at PageID.62). Plaintiff references a previously filed case, No. 1:18-cv-634, to support his position that "the Federal District Court must immediately grant the federal Plaintiff the extraordinary mandamus prospective relief remedies" in part because "the Hon. Sally J. Berens's [on] December 19, 2019 stated Defendant EEOC Form 5 Form issuance 'cited legal position' is directly contradicted by both this U.S. District Court and the U.S. Sixth Circuit Court of Appeals' legal holdings in *Williams v. CSX Transportation*" (Pl. Obj., ECF No. 11 at PageID.146-149). However, the Magistrate Judge properly set forth the steps, pursuant to *Williams*, for Plaintiff to amend his discrimination charge without a Form 5 (R&R, ECF No. 8 at PageID.62; citing *Williams v. CSX Transp. Co.*, 643 F.3d 502, 509 (6th Cir. 2011)).

Plaintiff also argues that the Magistrate Judge "is legally forbidden to enter any 'dispositive' order specifically regarding the *pro se in forma pauperis* Plaintiff's December 26, 2019 'dispositive' filed motion" (Pl. Obj., ECF No. 9 at PageID.65). Plaintiff's objection appears to be misplaced. The record does not reflect any such order.

Plaintiff's "objections" to the Report and Recommendation merely reiterate the citations to authority and arguments Plaintiff originally presented in his motion (ECF No. 1), and fail to demonstrate any factual or legal error in the Report and Recommendation. Therefore, the objections are denied.

II. Motions

Plaintiff has filed two Motions to serve the complaint (ECF Nos. 10 & 16) and two Motions for Summary Judgment (ECF Nos. 12 & 14). In light of the denial of Plaintiff's objections and

the Magistrate Judge's recommendation to dismiss Plaintiff's complaint, the motions are denied as moot.

Accordingly, this Court will deny the objections and adopt the Magistrate Judge's Report and Recommendation as the Opinion of this Court. Because this Opinion and Order resolves all pending claims in this case, a Judgment will also be entered. *See* FED. R. CIV. P. 58. Further, because this action was filed *in forma pauperis*, this Court certifies pursuant to 28 U.S.C. § 1915(a)(3), as recommended by the Magistrate Judge, that an appeal of this decision would not be taken in good faith. *See McGore v. Wigglesworth*, 114 F.3d 601, 610 (6th Cir. 1997), overruled on other grounds by *Jones v. Bock*, 549 U.S. 199, 206, 211-12 (2007).

Therefore:

IT IS HEREBY ORDERED that the Objections (ECF Nos. 9 & 11) are DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 8) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that Plaintiff's Motions to serve the complaint (ECF Nos. 10 & 16) are DENIED as moot.

IT IS FURTHER ORDERED that Plaintiff's Motions for Summary Judgment (ECF Nos. 12 & 15) are DENIED as moot.

IT IS FURTHER ORDERED that this Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this decision would not be taken in good faith.

Dated: September 30, 2020

/s/ Janet T. Neff

JANET T. NEFF
United States District Judge