

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION

**FILED**

JAN 11 2019

Clerk, U S District Court  
District Of Montana  
Billings

CHARLES M. BUTLER, III and  
CHOLE BUTLER

Plaintiffs,

vs.

UNIFIED LIFE INSURANCE  
COMPANY; HEALTH PLANS  
INTERMEDIARIES HOLDINGS,  
LLC, doing business as Health  
Insurance Innovations, Inc.; ALLIED  
NATIONAL, INC.; NATIONAL  
BROKERS OF AMERICA, INC.;  
THE NATIONAL CONGRESS OF  
EMPLOYERS, INC.; and DOES 1-10

Defendants.

CV 17-50-BLG-SPW

ORDER

Before the Court is Defendant Unified Life Insurance Company's objection (Doc. 182) to Judge Cavan's order granting the plaintiffs leave to amend the complaint to add a class action count.

Under 28 U.S.C. § 636(b)(1)(A) and Federal Rule of Civil Procedure 72(a), a district court may refer any non-dispositive matter to the magistrate for resolution. A party may object to the magistrate's order and the district court may modify or set aside the order if it is clearly erroneous or contrary to law. 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a). Under 28 U.S.C. § 636(b)(1)(B) and Federal

Rule of Civil Procedure 72(b)(1), a district court may refer dispositive matters and other select motions to the magistrate for resolution. The magistrate is required to propose findings and recommendations for adoption by the district court, which may be objected to by either party. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P.

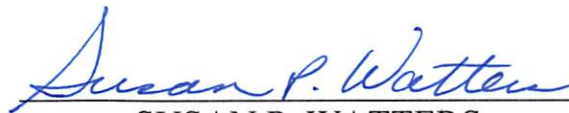
72(b)(2). A district court must review objections to findings and recommendations de novo. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3).

Among the motions which require findings and recommendations and de novo review of objections are motions to dismiss or permit maintenance of a class action. 28 U.S.C. § 636(b)(1)(A-B). Unified Life argues an order granting leave to amend to add a class action count is “analytically akin” to an order to “permit maintenance of a class action,” and its objection should therefore be reviewed de novo. But a motion to amend the complaint and a motion to certify a class are not “analytically akin” because they require different standards. *Compare* Fed. R. Civ. P. 15(a) and 16(b) *with* Fed. R. Civ. P. 23(b). It is quite possible for a plaintiff to satisfy the first standard only to fail the second. *See Patton v. Thomson Corp.*, 364 F.Supp.2d 263, 265 (E.D.N.Y. 2005) (order granting discovery of putative class members was not an order certifying the class); *Barrus v. Dick’s Sporting Goods, Inc.*, 465 F.Supp.2d 224, 228-229 n.1 (W.D.N.Y. 2006) (noting magistrate had authority to enter conditional class certification because it was not a final

certification). The proper standard to review Judge Cavan's order is clearly erroneous or contrary to law.

The Court has read the parties' briefs, Judge Cavan's order, and Unified Life's objection, and concludes Judge Cavan's order granting leave to amend to add a class action count is not clearly erroneous or contrary to law. The objection (Doc. 182) is overruled.

DATED this 10<sup>th</sup> day of January, 2019.



---

SUSAN P. WATTERS  
United States District Judge