

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

HEATH VINCENT FULKERSON,

Case No. 3:20-cv-00168-MMD-CLB

Y

Plaintiff

ORDER

GEICO,

Defendant.

11 Pro se Plaintiff Heath Fulkerson filed an amended complaint against Defendant
12 Geico Advantage Insurance Company (“Geico”) under 28 U.S.C. § 1332 for a purported
13 contract dispute. (ECF No. 9 (“Amended Complaint”).) Plaintiff also filed a motion to
14 submit (ECF No. 10 (“Submit Motion”)) and a motion for service and proceed to discovery
15 (ECF No. 10-1 (“Motion”)). Before the Court is the Report and Recommendation (“R&R”)
16 of United States Magistrate Judge Carla L. Baldwin, recommending the Court dismiss the
17 Amended Complaint with prejudice, and deny Plaintiff’s Submit Motion and Motion as
18 moot. (ECF No. 11.) Plaintiff had until October 28, 2020, to file an objection to the R&R,
19 but has not done so. The Court will adopt the R&R in full.

20 This Court “may accept, reject, or modify, in whole or in part, the findings or
21 recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where a party
22 fails to object to a magistrate judge’s recommendation, the Court is not required to
23 conduct “any review at all . . . of any issue that is not the subject of an objection.” Thomas
24 v. Arn, 474 U.S. 140, 149 (1985); see also United States v. Reyna-Tapia, 328 F.3d 1114
25 (9th Cir. 2003) (emphasis in original) (“De novo review of the magistrate judges’ findings
26 and recommendations is required if, but only if, one or both parties file objections to the
27 findings and recommendations.”); Fed. R. Civ. P. 72, Advisory Committee Notes (1983)

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1 (providing that the court “need only satisfy itself that there is no clear error on the face of
2 the record in order to accept the recommendation”).

3 Because there is no objection, the Court need not conduct de novo review, and is
4 satisfied Judge Baldwin did not clearly err. Here, Judge Baldwin recommends dismissing
5 the Amended Complaint with prejudice for failure to state a claim because Plaintiff “does
6 not allege facts that Geico denied coverage with an actual or implied awareness that there
7 was no reasonable basis supporting [Geico’s] decision.” (ECF No. 11 at 4.) The Court
8 agrees with Judge Baldwin. Plaintiff’s Amended Complaint fails to state facts that show
9 Geico acted in bad faith and did not have a reasonable basis for denying Plaintiff’s
10 insurance claim. See *Pioneer Chlor Alkali Co., Inc. v. Nat’l Union Fire Ins. Co.*, 863 F.
11 Supp. 1237 (D. Nev. 1994). Plaintiff’s Complaint is frivolous and must be dismissed with
12 prejudice. See *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995) (affirming a
13 district court’s decision to dismiss both complaints with prejudice was not an abuse of the
14 court’s discretion as amendment would be futile). Having reviewed the R&R and the
15 record in this case, the Court will adopt the R&R in full.

16 It is therefore ordered, adjudged, and decreed that Magistrate Judge Carla L.
17 Baldwin’s Report and Recommendation (ECF No. 11) is accepted and adopted in its
18 entirety.

19 It is further ordered that Plaintiff’s Amended Complaint (ECF No. 9) is dismissed
20 with prejudice.

21 It is further ordered that Plaintiff’s motion to submit (ECF No. 10) and motion for
22 service and proceed to discovery (ECF No. 10-1) are denied as moot.

23 The Clerk of Court is directed to close the case and enter judgement accordingly.

24 DATED THIS 17th Day of November 2020.

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28 MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE