

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ANDRE FELDER, SR.,

Plaintiff,

ORDER

-against-

14-CV-4315 (NGG) (RLM)

PEPSI COLA,

Defendant.

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NICHOLAS G. GARAUFGIS, United States District Judge.

On July 14, 2014, pro se Plaintiff Andre Felder, Sr. commenced this action pursuant to Title I of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12112-17, alleging that his former employer, Defendant Pepsi-Cola Bottling Company of New York, Inc.,¹ wrongfully terminated him and failed to accommodate his disability. (See Compl. (Dkt. 1).) On August 25, 2014, Defendant moved to dismiss the Complaint with prejudice on the grounds that Plaintiff untimely filed his charge with the Equal Employment Opportunity Commission. (See Def.'s Mot. to Dismiss (Dkt. 10).) Plaintiff opposed the motion (Pl.'s Aff. in Opp'n to Def.'s Mot. to Dismiss (Dkt. 11)), and Defendant filed a reply (Def.'s Reply in Supp. of Mot. to Dismiss (Dkt. 12)). On October 15, 2014, the court referred Defendant's motion to Magistrate Judge Roanne L. Mann for a Report and Recommendation ("R&R") pursuant to 28 U.S.C. § 636(b)(1)(B) and Federal Rule of Civil Procedure 72(b)(1). (Order (Dkt. 13).) On May 6, 2015, Judge Mann issued an R&R recommending that the court deny Defendant's motion. (See generally R&R (Dkt. 19).) Judge Mann advised the parties that any objections to the R&R were required to be filed by May 26, 2015, and that failure to file timely objections may waive the right to appeal this court's order. (See id. at 15 (citing 28 U.S.C. § 636(b)(1); Fed. R. Civ.

¹ The caption in the Complaint incorrectly refers to Defendant as "Pepsi Cola."

P. 6(a), 6(d), 72; Small v. Sec’y of Health & Human Servs., 892 F.2d 15, 16 (2d Cir. 1989) (per curiam).)

No party has objected to Judge Mann’s R&R, and the time to do so has passed.

Therefore, the court reviews the R&R for clear error. See Gesualdi v. Mack Excavation &

Trailer Serv., Inc., No. 09-CV-2502 (KAM), 2010 WL 985294, at *1 (E.D.N.Y. Mar. 15, 2010)

(“Where no objection to the [R&R] has been filed, the district court need only satisfy itself that there is no clear error on the face of the record.” (internal quotation marks and citation omitted));

La Torres v. Walker, 216 F. Supp. 2d 157, 159 (S.D.N.Y. 2000); cf. 28 U.S.C. § 636(b)(1).

Finding no clear error, the court adopts the R&R in full. See Porter v. Potter, 219 F. App’x 112 (2d Cir. 2007) (summary order).

Accordingly, the court ADOPTS IN FULL the R&R. Defendant’s motion to dismiss the Complaint as time-barred (Dkt. 10) is DENIED.

SO ORDERED.

Dated: Brooklyn, New York
May 25, 2015

s/ Nicholas G. Garaufis
NICHOLAS G. GARAUFIS
United States District Judge