

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

JOSEPH W. STAGER JR.,

Plaintiff,

**9:15-cv-1533
(GLS/TWD)**

v.

**NEW BEGINNINGS HOME CARE
INC.,**

Defendant.

ORDER

The above-captioned matter comes to this court following a Report and Recommendation (R&R) by Magistrate Judge Thérèse Wiley Dancks, duly filed on January 29, 2016. (Dkt. No. 7.) Following fourteen days from the service thereof, the Clerk has sent the file, including any and all objections filed by the parties herein.

Instead of objecting to the R&R, plaintiff *pro se* Joseph W. Stager Jr. filed a letter in which he requests that the court take notice of certain documents in support of his claims. (Dkt. No. 8.) It is generally inappropriate to consider new arguments or evidence after an R&R has been filed, see *Smith v. Hulihan*, No. 11 CV 2948, 2012 WL 4928904, at *1 (S.D.N.Y. Oct. 17, 2012) ("[N]ew arguments and factual assertions cannot

properly be raised for the first time in objections to the R & R, and indeed may not be deemed objections at all."), and the court declines to do so here. Having reviewed the R&R for clear error and finding none, it is hereby

ORDERED that the Report and Recommendation (Dkt. No. 8) is **ADOPTED** in its entirety; and it is further

ORDERED that Stager's complaint (Dkt. No. 1) is **DISMISSED** as set forth below; and it is further

ORDERED that Stager's HIPPA claim is **DISMISSED with prejudice**, and his ADA claim is **DISMISSED with leave to amend** in the event he is able to show exhaustion of his administrative remedies and timely filing of his complaint; and it is further

ORDERED that Stager's state law claims are **DISMISSED with leave to refile** in the event he files an amended complaint as set forth above because the court declines to exercise supplemental jurisdiction over them; and it is further

ORDERED that Stager is granted leave to amend the complaint to allege facts to establish diversity of citizenship for his state law claims if any such facts exist; and it is further

ORDERED that, if Stager elects to file an amended complaint, he shall provide a short, plain statements of the relevant facts, in separately numbered paragraphs consisting of the statement of a single set of circumstances, set forth in chronological order and supporting each claim as required by Federal Rules of Civil Procedure 8(a) and 10(b); and it is further

ORDERED that, if Stager wishes to proceed with this action, he must file an amended complaint as directed above **within thirty (30) days** from the filing date of this Order; and it is further

ORDERED that, if Stager fails to timely file an amended complaint as directed above, the Clerk shall enter judgment dismissing this case without further order of this court; and it is further

ORDERED that the Clerk shall provide a copy of this Order to Stager in accordance with the Local Rules of Practice.

IT IS SO ORDERED.

September 26, 2016
Albany, New York

Gary L. Sharpe
Gary L. Sharpe
U.S. District Judge