

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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EDWARD MELBER,

Plaintiff,

v.

21-CV-1079 (JLS) (HKS)

THERMO FISHER SCIENTIFIC,

Defendant.

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### DECISION AND ORDER

Plaintiff Edward Melber alleges claims against his former employer, Defendant Thermo Fisher Scientific, for unlawful termination under the Age Discrimination in Employment Act and retaliatory termination under New York Labor Law Section 740(2)(c). *See* Dkt. 1. Defendant moved to dismiss the New York Labor Law claim, arguing that claim was time-barred.<sup>1</sup> *See* Dkts. 7–9. Melber opposed the motion, and Defendant replied. *See* Dkt. 12; Dkt. 13.

On November 9, 2021, the Court referred this case to United States Magistrate Judge H. Kenneth Schroeder, Jr., for all proceedings under 28 U.S.C. §§ 636(b)(1)(A), (B), and (C). Dkt. 10. On April 19, 2022, Judge Schroeder issued a Report and Recommendation and Order (“R&R”), recommending that this Court grant Defendant’s motion and dismiss Plaintiff’s New York Labor Law claim as time-barred. *See* Dkt. 17.

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<sup>1</sup> Defendant did not move to dismiss Melber’s age discrimination claim. *See generally* Dkt. 7.

Melber objected to the R&R, arguing that the R&R did not properly apply *Kronos, Inc. v. AVX Corporation*, 612 N.E.2d 289 (N.Y. 1993), to the facts presented and, therefore, incorrectly applied an accrual date of October 16, 2016 (Melber's termination date) rather than July 29, 2021 (completion of the EEOC's investigation) when analyzing the motion to dismiss. *See* Dkt. 18. Defendant responded in opposition to Melber's objections. Dkt. 20. Melber did not reply.

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a *de novo* review of those portions of a magistrate judge's recommendation to which a party objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). This Court carefully reviewed the R&R and the relevant record. Based on its *de novo* review, the Court accepts and adopts Judge Schroeder's recommendation to grant Defendant's motion to dismiss Melber's New York Labor Law claim.

For the reasons stated above and in the R&R, the Court GRANTS Defendant's motion to dismiss the second claim in Melber's complaint (Dkt. 7). The Court refers the case back to Judge Schroeder for further proceedings, consistent with the referral order at Dkt. 10.

SO ORDERED.

Dated: June 28, 2022  
Buffalo, New York



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JOHN L. SINATRA, JR.  
UNITED STATES DISTRICT JUDGE