UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

EDWARD MELBER,

Plaintiff,

v. 21-CV-1079 (JLS) (HKS)

THERMO FISHER SCIENTIFIC,

Defendant.

DECISION AND ORDER

Plaintiff Edward Melber asserts claims against his former employer, Defendant Thermo Fisher Scientific, for unlawful termination under the Age Discrimination in Employment Act ("ADEA"). *See* Dkt. 1. The case has been referred 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.

Defendant moved for summary judgment on January 31, 2024. Dkt. 47. Plaintiff opposed Defendant's motion and cross-moved for summary judgment. Dkt. 49. Defendant then opposed the cross motion and replied in further support of its own motion. Dkt. 53. Plaintiff replied. Dkt. 54.

On July 31, 2024, Judge Schroeder issued a Report, Recommendation and Order ("R&R") recommending that this Court deny both summary judgment motions. Dkt. 55. Defendant objected to the R&R, *see* Dkt. 58, arguing that this Court should reject the R&R's conclusions on the issue of pretext and, accordingly, enter summary

judgment in favor of Defendant. *See id.* at 3.[1] Plaintiff opposed the objections, *see* Dkt. 59, 61, and Defendant replied. Dkt. 60.

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, the objections briefing, and the relevant record. Based on its *de novo* review, the Court accepts and adopts Judge Schroeder's recommendation.

For the reasons stated above and in the R&R, the Court DENIES Defendant's [47] motion for summary judgment and further DENIES Plaintiff's [49] cross motion for summary judgment.

SO ORDERED.

Dated: October 22, 2024
Buffalo, New York

JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE

[1] Defendant does not object to the R&R's conclusion that Plaintiff has established a *prima facie* case of discrimination under the ADEA. *See id.* at 3n.2.