

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MIKE KLOPPEL and
ADAM WILSON,

Plaintiff,

Case # 17-CV-6296-FPG

v.

DECISION AND ORDER

HOMEDELIVERYLINK, INC.,

Defendant.

On September 1, 2022, Plaintiffs filed a Motion to Intervene or, in the Alternative, Amend the Complaint. ECF No. 177. On September 19, 2022, Defendant responded. ECF No. 178. On September 30, 2022, Plaintiffs replied. ECF No. 179-80. On October 10, 2022, Defendant filed a Motion to Strike Plaintiffs' reply. ECF No. 181. On November 29, 2022, Magistrate Judge Pedersen—pursuant to a referral by the undersigned, ECF No. 86—issued a Report & Recommendation (“R&R”) in which he recommended that Plaintiffs' Motion to Intervene or Amend the Complaint be denied and Defendant's Motion to Strike be granted. ECF No. 184. Neither party has objected to Magistrate Judge Pedersen's R&R.¹

As a general matter, a district court reviews portions of an R&R to which a party makes specific objections *de novo*. Fed. R. Civ. P. 72(b)(2); 28 U.S.C. § 636(b)(1)(C). When a party does not object to the R&R, however, the court will review it for clear error. *EEOC v. AZ Metro Distributors, LLC*, 272 F. Supp. 3d 336, 339 (E.D.N.Y. 2017). “When performing such a clear error review, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Boice v. M+W U.S., Inc.*, 130 F. Supp. 3d 677, 686

¹ On December 12, 2022, Plaintiffs filed a response to the R&R stating that Plaintiffs “are not appealing or objecting to” the R&R. ECF No. 185.

(N.D.N.Y. 2015) (internal quotation marks omitted). After conducting the appropriate review, the court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C).

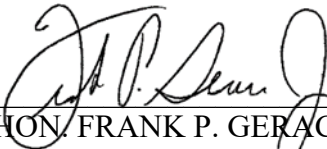
After due consideration, the Court concludes that Magistrate Judge Pedersen’s R&R is free of “clear error.” *Boice*, 130 F. 3d at 686. With respect to Plaintiffs’ motions, Magistrate Judge Pedersen correctly concluded that the motions should be denied because Plaintiffs (i) failed to satisfy the criteria for intervention as of right under Federal Rule of Civil Procedure 24(a), and (ii) amendment of the complaint would be inappropriate at this stage of litigation. ECF No. 184 at 9-10. With respect to Defendant’s motion, Magistrate Judge Pedersen correctly concluded that the motion should be granted because Plaintiffs failed to state an intention to reply in their notice of motion to intervene or amend, in violation of Local Rule 7(a)(1). *Id.* at 5. The Court fully concurs with Magistrate Judge Pedersen’s R&R.

CONCLUSION

For the reasons stated above, the Court ADOPTS Magistrate Judge Pedersen’s R&R (ECF No. 184). Plaintiffs’ Motion to Intervene or Amend the Complaint (ECF No. 177) is DENIED. Defendant’s Motion to Strike (ECF No. 181) is GRANTED.

IT IS SO ORDERED.

Dated: January 26, 2023
Rochester, New York



HON. FRANK P. GERACI, JR.
United States District Judge
Western District of New York