

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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EDDIE GARCIA,

Plaintiff,

v.

LEWIS TREE SERVICE, INC.,

Defendant.

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**DECISION AND ORDER**

6:21-CV-06393 EAW

Plaintiff Eddie Garcia (“Plaintiff”) has asserted a claim for violation of the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.* against defendant Lewis Tree Service, Inc. (Dkt. 1). On May 4, 2022, Plaintiff filed a motion for an extension of the Scheduling Order (Dkt. 30) and on June 3, 2022, filed a motion for leave to amend his complaint (Dkt. 32). On September 21, 2022, United States Magistrate Judge Mark W. Pedersen issued a thorough Report and Recommendation, recommending that both motions be denied. (Dkt. 41).

Pursuant to 28 U.S.C. § 636(b)(1), the parties had 14 days to file objections to the Report and Recommendation. No objections were filed. The Court is not required to review *de novo* those portions of a report and recommendation to which objections were not filed. *See Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) (“Where parties receive clear notice of the consequences, failure [to timely] object to a magistrate’s

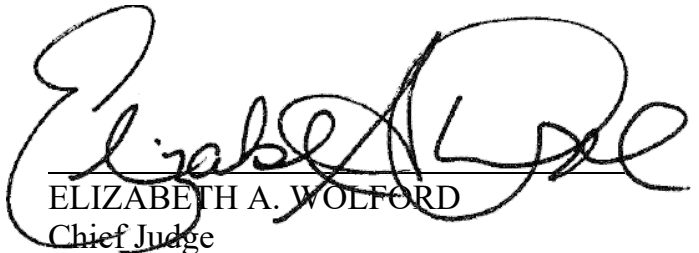
report and recommendation operates as a waiver of further judicial review of the magistrate's decision.”).

Notwithstanding the lack of objections, the Court has conducted a careful review of the Report and Recommendation, as well as the prior proceedings in the case. The Report and Recommendation concludes that Plaintiff has not demonstrated good cause to justify amendment of the Scheduling Order. Notwithstanding the lack of demonstrated good cause, the Report and Recommendation finds that Plaintiff's proposed amendment is futile because it presents the same or similar allegations to those previously dismissed by the Court against another defendant in the case without curing any of the identified deficiencies. Accordingly, the Report and Recommendation recommends that this Court deny Plaintiff's motion to amend the Scheduling Order and for leave to amend his pleading. The Court finds no reason to reject or modify Magistrate Judge Pedersen's Report and Recommendation. For these reasons, the Report and Recommendation is adopted in full.

### **CONCLUSION**

For the foregoing reasons, the Report and Recommendation (Dkt. 41) recommending denial of Plaintiff's motion to amend the Scheduling Order (Dkt. 30) and motion for leave to amend his complaint (Dkt. 32) is adopted in its entirety.

SO ORDERED.



ELIZABETH A. WOLFORD  
Chief Judge  
United States District Court

Dated: October 25, 2022  
Rochester, New York