

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

Joseph D. Dantzler, Jr.,)	
)	Civil Action No.: 3:15-cv-05100-JMC
Plaintiff,)	
)	
v.)	ORDER AND OPINION
)	
Time Warner Cable; Sedgwick Claims)	
Management Services,)	
)	
Defendants.)	
_____)	

Plaintiff Joseph Dantzler (“Plaintiff”), proceeding pro se, filed this action in the Court of Common Pleas for Lexington County, South Carolina, seeking \$415,000.00 in damages for emotional distress caused by Defendants’ alleged failure to properly handle Plaintiff’s claims under his disability insurance policy. (ECF No. 1-1.) On December 31, 2015, Defendants Time Warner Cable and Sedgwick Claims Management Services (collectively “Defendants”) removed the action to this court on the basis of this court’s diversity jurisdiction. (ECF No. 1.) This matter is now before the court on Plaintiff’s Motion to Amend the Amended Complaint (ECF No. 52), and Defendants’ Motion to Dismiss Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6), (ECF No. 37). Plaintiff timely filed a response in opposition to the motion to dismiss. (ECF No. 42.) Subsequently, Defendant filed a response in opposition to Plaintiff’s Motion to Amend. (ECF No. 55.)

In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02, D.S.C., the matter was referred to United States Magistrate Judge Paige Gossett for a Report and Recommendation. On April 15, 2016, the Magistrate Judge issued a Report and Recommendation (“Report”) recommending that the court grant Defendants’ motion to dismiss, unless Plaintiff filed a motion

to amend his complaint and responded to the court's interrogatories. (ECF No. 46.) This court entered an order adopting the Report and remanding the matter to the Magistrate Judge for reconsideration of the motion to dismiss in light of Plaintiff's motion to amend. (ECF No. 59.) Subsequently, the Magistrate Judge issued an Order and Report on August 12, 2016, denying Plaintiff's Motion to Amend and recommending that this court grant Defendants' motion to dismiss because Plaintiff still failed to state a claim under ERISA. (ECF No. 61.) The Report sets forth the relevant facts and legal standards, which this court incorporates herein without a recitation.

The Magistrate Judge's Report is made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 for the District of South Carolina. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this court. *See Matthews v. Weber*, 423 U.S. 261, 270-71 (1976). This court is charged with making a *de novo* determination of those portions of the Report to which specific objections are made, and the court may accept, reject, or modify, in whole or in part, the Magistrate Judge's recommendation, or recommit the matter with instructions. *See* 28 U.S.C. § 636 (b)(1). Objections to a Report and Recommendation must specifically identify portions of the Report and the basis for those objections. Fed. R. Civ. P. 72(b). "[I]n the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 316 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note).

Plaintiff was advised of his right to file objections to the Report. (ECF No. 61 at 7). Plaintiff was required to file objections by August 29, 2016. Although Plaintiff filed objections

on August 23, 2016, those objections were late-filed objections to the Report issued on April 15, 2016, and fail to address the Magistrate Judge's conclusions in the Report (ECF No. 61) regarding Plaintiff's motion to amend. (*See* ECF No. 64.) To date, Plaintiff has not filed any objections to the Report issued on August 12, 2016. Accordingly, this court has reviewed the Report of the Magistrate Judge and does not find clear error.

After a thorough review of the Report and the record in this case, the court finds the Report provides an accurate summary of the facts and law. The court **ADOPTS** the Magistrate Judge's Report and Recommendation (ECF No. 61). Defendants' Motion to Dismiss Amended Complaint (ECF No. 37) is **GRANTED**. Accordingly, Plaintiff's Amended Complaint (ECF No. 33) is **DISMISSED** without prejudice.

IT IS SO ORDERED.

Handwritten signature of J. Michelle Childs in black ink.

United States District Judge

September 6, 2016
Columbia, South Carolina