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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

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GUY M. DOMAI,

Plaintiff,

v.

DAN AHLEEN, et al.,

Defendants.

**MEMORANDUM DECISION AND  
ORDER ADOPTING REPORT AND  
RECOMMENDATION**

Case No. 2:15-cv-00564-DN-BCW

District Judge David Nuffer

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The Report and Recommendation<sup>1</sup> issued by United States Magistrate Judge Brooke C. Wells on April 13, 2018, recommends that Defendants' Motion for Judgment on the Pleadings<sup>2</sup> be granted and the case be dismissed.

Plaintiff timely objected to the Report and Recommendation on April 30, 2018.<sup>3</sup> De novo review has been completed of those portions of the report, proposed findings, and recommendations to which objection was made, including the record that was before the Magistrate Judge and the reasoning set forth in the Report and Recommendation.<sup>4</sup>

The Report and Recommendation provides two alternative grounds for granting Defendants' Motion for Judgment on the Pleadings: (1) Plaintiff's failure to file a response; and (2) Plaintiff's Amended Complaint fails to state a claim upon which relief may be granted.<sup>5</sup>

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<sup>1</sup> [Docket no. 37](#), filed Apr. 13, 2018.

<sup>2</sup> [Docket no. 31](#), filed Feb. 2, 2018.

<sup>3</sup> Motion to Oppose Justice Brooks [*sic*] Reports and Recommendations ("Objection"), [docket no. 38](#), filed Apr. 30, 2018.

<sup>4</sup> 28 U.S.C. § 636(b).

<sup>5</sup> Report and Recommendation at 4-5.

In his Objection, Plaintiff asserts his failure to respond resulted from his depression and anxiety, and side effects from the medication he is taking.<sup>6</sup> This was the same assertion Plaintiff made when requesting a 15-day extension of time to respond to Defendants' Motion for Judgment on the Pleadings.<sup>7</sup> That request was granted,<sup>8</sup> but Plaintiff still failed to timely file a response. Plaintiff did not seek further extension of the deadline and to date has still not filed a response,<sup>9</sup> despite making other filings after the extended deadline lapsed.<sup>10</sup> The analysis and conclusion of the Magistrate Judge on this issue are correct. It is appropriate that Defendants' Motion for Judgment on the Pleadings be granted for Plaintiff's failure to respond.<sup>11</sup>

As to the Report and Recommendation's alternative ground for granting Defendant's Motion for Judgment on the Pleadings—failure to state a claim—Plaintiff's Objection asserts that the allegations in his amended complaint show he was discriminated against.<sup>12</sup> The Objection does not address the pleading deficiencies Defendants identified in their Motion for Judgment on the Pleadings,<sup>13</sup> nor those stated in the prior report and recommendation on Plaintiff's original complaint.<sup>14</sup> These pleading deficiencies were the basis for the Report and Recommendation's conclusion that Plaintiff's Amended Complaint fails to state a claim.<sup>15</sup>

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<sup>6</sup> Objection at 2, ¶ 1.

<sup>7</sup> Motion for Continuance at 2, [docket no. 32](#), filed Mar. 7, 2018.

<sup>8</sup> Order Granting Motion for Extension of Time, [docket no. 34](#), filed Mar. 9, 2019.

<sup>9</sup> Plaintiff states in his Objection that he attached his response to Defendants' Motion for Judgment on the Pleadings, as well as a second amended complaint to his Objection. Objection at 2, ¶¶ 2-3. However, neither of these documents were attached to or filed with Plaintiff's Objection.

<sup>10</sup> Motion to Oppose Memorandum in Opposition to Plaintiff [*sic*] Motion for Continuance, [docket no. 36](#), filed Mar. 30, 2018.

<sup>11</sup> *See* DUCivR 7-1(d).

<sup>12</sup> Objection at 2-3, ¶ 4.

<sup>13</sup> Motion for Judgment on the Pleadings at 7-9.

<sup>14</sup> Report and Recommendation re: Defendants' Motion to Dismiss, [docket no. 17](#), filed Mar. 27, 2017.

<sup>15</sup> Report and Recommendation at 4-5.

Therefore, Plaintiff's Objection is non-responsive to the Report and Recommendation's alternative ground for granting Defendants' Motion for Judgment on the Pleadings. The analysis and conclusion of the Magistrate Judge on this issue are correct. Plaintiff's Amended Complaint<sup>16</sup> fails to state a claim upon which relief may be granted.

Finally, the Report and Recommendation concludes that because Plaintiff has already been given the opportunity to amend his complaint, there is no reason to allow him an additional opportunity to amend.<sup>17</sup> Plaintiff's Objection does not challenge this portion of the Report and Recommendation. Moreover, given the pleading deficiencies in both Plaintiff's original complaint and his Amended Complaint, further amendment would be futile.<sup>18</sup> The analysis and conclusion of the Magistrate Judge on this issue are correct. It is appropriate that this case be dismissed.

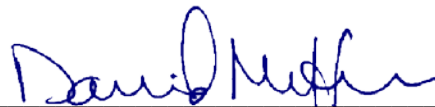
### ORDER

IT IS HEREBY ORDERED that the Report and Recommendation<sup>19</sup> is ADOPTED and this case is DISMISSED with prejudice.

The Clerk is directed to close the case.

Signed May 2, 2018.

BY THE COURT



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District Judge David Nuffer

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<sup>16</sup> [Docket no. 21](#), filed June 5, 2017.

<sup>17</sup> Report and Recommendation at 5.

<sup>18</sup> *Gee v. Pacheco*, 627 F.3d 1178, 1195 (10th Cir. 2010).

<sup>19</sup> [Docket no. 37](#), filed Apr. 13, 2018.