

TED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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SALVATORE GUADAGNA, individually and on
behalf of all persons similarly situated,

Plaintiff,

-against-

For Online Publication Only

ORDER

17-CV-03397 (JMA) (AKT)

HOWARD ZUCKER, as Commissioner of the New
York State Department of Health,

Defendant.

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AZRACK, United States District Judge:

On April 28, 2020, the named Plaintiff and class representative, Salvatore Guadagna, passed away. (ECF No. 159.) On October 14, 2020, Robin Cassidy (“Cassidy”), a purported member of the certified class, moved to intervene as the class representative and to compel the Commissioner to produce personally identifying information for 190 individuals who were enrolled in GuildNet as of March 2017 and transferred to a new MLTP, but for whom lead counsel was unable to determine whether they suffered reductions in care based on the discovery produced to date. (ECF No. 170.) Pursuant to the individual rules of Judge Sandra J. Feuerstein, to whom this case was previously assigned, Cassidy’s nondispositive motion was automatically referred to Magistrate Judge A. Kathleen Tomlinson. However, since Cassidy sought to intervene as the class representative, which would implicate maintenance of the class under Fed. R. Civ. P. 23(a), Judge Tomlinson addressed the motion through a Report and Recommendation. On April 21, 2021, this case was reassigned to this Court. On July 9, 2021, Judge Tomlinson issued an R&R recommending that Cassidy’s motion to intervene as class representative be granted, but that her request for discovery be denied. (ECF No. 188.)

In reviewing a magistrate judge's report and recommendation, a court must "make a de novo determination of those portions of the report or . . . recommendations to which objection[s] [are] made." 28 U.S.C. § 636(b)(1)(C); see also Brown v. Ebert, No. 5-CV-5579, 2006 WL 3851152, at *2 (S.D.N.Y. Dec. 29, 2006). 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). Those portions of a report and recommendation to which there is no specific reasoned objection are reviewed for clear error. See Pall Corp. v. Entegris, Inc., 249 F.R.D. 48, 51 (E.D.N.Y. 2008).

To date, no objections have been filed to the R&R and the deadline for filing any such objections has passed. 28 U.S.C. § 636(b)(1)(c).

I have reviewed Judge Tomlinson's R&R for clear error, and finding none, I adopt the R&R in its entirety as the opinion of this Court. Accordingly, Cassidy's motion to intervene as class representative is GRANTED, but her request for discovery is DENIED.

In light of this determination, Cassidy shall file an amended complaint by no later than September 15, 2021 and Defendant shall file an answer to the amended complaint by no later than September 25, 2021. A decision on the pending summary judgment motions, (ECF No. 120 and 131); Judge Tomlinson's R&R thereupon, dated March 19, 2021, (ECF No. 181); and Defendant's objections to that R&R, (ECF No. 183), is deferred until after the amended

complaint is filed. The Court will evaluate the pending summary judgment motions, the March 19, 2021 R&R, and the objections in light of the amended complaint.

SO ORDERED.

/s/ (JMA) #
JOAN M. AZRACK
UNITED STATES DISTRICT JUDGE

Dated: September 10, 2021
Central Islip, New York