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ADDENUM 78-81a

United States Court of Appeals
For The Eighth Circuit
Thomas F. Eagleton U.S. Courthouse
111 South 10th Street, Room 24.329
St. Louis, Missouri 63102

VOICE (314) 244-2400
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Maureen W. Gornik
Acting Clerk of Court

November 26, 2024

Anthony E. Ntamere
Anthony Ntamere
Suite 309
179 McKnight Road, N.
Saint Paul, MN 55119

RE: 24-2771 Anthony Ntamere v. Amerihealth Admin., Inc., et al

Dear Anthony E. Ntamere:

Enclosed is a copy of the dispositive order entered today in the referenced case.

Please review Federal Rules of Appellate Procedure and the Eighth Circuit Rules on post-submission procedure to ensure that any contemplated filing is timely and in compliance with the rules. Note particularly that petitions for rehearing must be received by the clerk's office within the time set by FRAP 40 in cases where the United States or an officer or agency thereof is a party (within 45 days of entry of judgment). Counsel-filed petitions must be filed electronically in CM/ECF. Paper copies are not required. Except as provided by Rule 25(a)(2)(iii) of the Federal Rules of Appellate Procedure, pro se petitions for rehearing are not afforded a grace period for mailing and are subject to being denied if not timely received.

Maureen W. Gornik
Acting Clerk of Court

CRJ

Enclosure(s)

cc: Michael T. Burke
Clerk, U.S. District Court, District of Minnesota
Paul William Fling

District Court/Agency Case Number(s): 0:22-cv-02682-KMM

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 24-2771

Anthony E. Ntamere

Plaintiff - Appellant

v.

Amerihealth Administrators, Inc.; Jane Doe, in her individual and official capacity, also known as AHA-000252; Michele Schumacher, in her individual and official capacity; Minnesota Department of Human Rights; U.S. Equal Employment Opportunity Commission; Charlotte Czarnecki, in her individual and official capacity; Independence Blue Cross of P.A.; John Clayton, in his individual and official capacity; Jeffrey Kearns, in his individual and official capacity; Tashima Waller, in her individual and official capacity; Equal Employment Opportunity Commission; Keith M. Ellison, Minnesota Attorney General; Rebecca Lucero, MDHR Commissioner; Tom Bernette, MDHR Lead Investigator

Defendants - Appellees

Appeal from U.S. District Court for the District of Minnesota
(0:22-cv-02682-KMM)

JUDGMENT

Before SMITH, SHEPHERD, and STRAS, Circuit Judges.

This court has reviewed the original file of the United States District Court. It is ordered by the court that the judgment of the district court is affirmed. See Eighth Circuit Rule 47A(a).

November 26, 2024

Order Entered at the Direction of the Court:
Acting Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Maureen W. Gornik

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 24-2771

Anthony E. Ntamere

Appellant

v.

Amerihealth Administrators, Inc., et al.

Appellees

Appeal from U.S. District Court for the District of Minnesota
(0:22-cv-02682-KMM)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

April 02, 2025

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Susan E. Bindler

UNITED STATES DISTRICT COURT

District of Minnesota

Anthony E Ntamere,

Plaintiff,

v.

Amerihealth Adminstrators Inc, Jane Doe, Independence Blue Cross of PA, Jeffrey Kearns, Equal Employment Opportunity Commission, Keith Ellison, Rebecca Lucero, Tom Bernette,

Defendants.

JUDGMENT IN A CIVIL CASE

Case Number: 22-cv-2682 KMM/JFD

☐ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED THAT:

1. The Report and Recommendation dated January 17, 2024, ECF 85, is ACCEPTED;
2. Plaintiff's Objections, ECF 87, are OVERRULED;
3. Defendants' Motion to Dismiss Plaintiff's Second Amended Complaint, ECF 74, is GRANTED for the same reasons and on the same terms the Court stated in its November 14, 2023 Order of dismissal, ECF 59, with one modification included below;
4. The Second Amended Complaint is DISMISSED as follows:

a. Plaintiff's claims against Ms. Czarnecki and the EEOC are dismissed without prejudice (see ECF 58);
b. Plaintiff's claims against John Clayton, Tashima Waller, and Michele Schumacher are dismissed without prejudice for lack of personal jurisdiction (see ECF 59);
c. Plaintiff's § 1983 claims against Amerihealth Administrators Inc. are dismissed with prejudice for failure to state a claim;
d. Plaintiff's § 1981 discrimination claims against IBC, AHA, and Jeffrey Kearns are dismissed with prejudice for failure to state a claim;
e. Plaintiff's § 1981 retaliation claims against IBC and AHA are dismissed with prejudice for

failure to state a claim;

f. Plaintiff's § 1983 claim against the MDHR is dismissed without prejudice;
g. Plaintiff's § 1983 official-capacity claims for damages against Defendants Attorney General Keith Ellison, MDHR Commissioner Rebecca Lucero, and MDHR Lead Investigator Tom Bernette in their official capacities are dismissed without prejudice because they are barred by the Eleventh Amendment;
h. Plaintiff's § 1983 official-capacity claims for injunctive and declaratory relief against Defendants Attorney General Keith Ellison, MDHR Commissioner Rebecca Lucero, and MDHR Lead Investigator Tom Bernette are dismissed without prejudice for failure to state a claim; and
i. Plaintiff's state law claims are dismissed without prejudice pursuant to 28 U.S.C. § 1367(c).

Date: 7/31/2024

KATE M. FOGARTY, CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Warren E. Burger Federal Building and U.S. Courthouse
316 North Robert Street
Room 100
St. Paul, MN 55101

Diana E. Murphy U.S. Courthouse
300 South Fourth Street
Room 202
Minneapolis, MN 55415

Gerald W. Heaney Federal Building and U.S. Courthouse and Customhouse
515 West First Street
Duluth, MN 55802

Edward J. Devitt U.S. Courthouse and Federal Building
118 South Mill Street
Fergus Falls, MN 56537

CIVIL NOTICE

The appeal filing fee is $605.00. If you are indigent, you can apply for leave to proceed in forma pauperis, ("IFP").

The purpose of this notice is to summarize the time limits for filing with the District Court Clerk's Office a Notice of Appeal to the Eighth Circuit Court of Appeals or the Federal Circuit Court of Appeals (when applicable) from a final decision of the District Court in a civil case.

This is a summary only. For specific information on the time limits for filing a Notice of Appeal, review the applicable federal civil and appellate procedure rules and statutes.

Rule 4(a) of the Federal Rules of Appellate Procedure (Fed. R. App. P.) requires that a Notice of Appeal be filed within:

1. Thirty days (60 days if the United States is a party) after the date of "entry of the judgment or order appealed from;" or
2. Thirty days (60 days if the United States is a party) after the date of entry of an order denying a timely motion for a new trial under Fed. R. Civ. P. 59; or
3. Thirty days (60 days if the United States is a party) after the date of entry of an order granting or denying a timely motion for judgment under Fed. R. Civ. P. 50(b), to amend or make additional findings of fact under Fed. R. Civ. P. 52(b), and/or to alter or amend the judgment under Fed. R. Civ. P. 59; or
4. Fourteen days after the date on which a previously timely Notice of Appeal was filed.

If a Notice of Appeal is not timely filed, a party in a civil case can move the District Court pursuant to Fed. R. App. P. 4(a)(5) to extend the time for filing a Notice of Appeal. This motion must be filed no later than 30 days after the period for filing a Notice of Appeal expires. If the motion is filed after the period for filing a Notice of Appeal expires, the party bringing the motion must give the opposing parties notice of it. The District Court may grant the motion, but only if excusable neglect or good cause is shown for failing to file a timely Notice of Appeal.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Anthony E. Ntamere,

Plaintiff,

v.

Amerihealth Administrators Inc., et al.,

Defendants.

No. 22-cv-2682 (KMM/JFD)

ORDER

This matter is before the Court on the Motion to Dismiss filed by Defendants Amerihealth Administrators, Inc., International Blue Cross of PA, John Clayton, Jeffrey Kearns, Michele Schumacher, and Tashima Waller, ECF 74, and the January 17, 2024 Report and Recommendation ("January 17th R&R") issued by United States Magistrate Judge John F. Docherty, ECF 85. In the January 17th R&R, Judge Docherty recommends that Plaintiff Anthony E. Ntamere's Second Amended Complaint be dismissed because it fails to state a plausible claim upon which relief may be granted. ECF 85. The Court assumes familiarity with the substantive nature of the allegations in Mr. Ntamere's pleadings.

I. Procedural History

Mr. Ntamere filed his initial complaint on October 25, 2022 and sought leave to proceed *in forma pauperis* ("IFP"). On November 15, 2022, Mr. Ntamere filed a First

Amended Complaint.[1] Judge Docherty granted Mr. Ntamere leave to proceed IFP, but on February 9, 2023, Judge Docherty issued a Report and Recommendation recommending dismissal of Plaintiff's claims against the following Defendants: Minnesota Department of Human Rights ("MDHR"), the Equal Employment Opportunity Commission ("EEOC"), and Charlotte Czarnecki, EEOC Investigator. ECF 8. The remaining defendants—Amerihealth Administrators, Inc., International Blue Cross of PA, John Clayton, Jeffrey Kearns, Michele Schumacher, and Tashima Waller—waived service, and on May 5, 2023, they moved to dismiss the claims against them. ECF 14. The parties completed briefing on the May 5th motion to dismiss in July 2023.

On November 14, 2023, the Court entered two Orders. ECF 58; ECF 59. In the first, the Court accepted Judge Docherty's February 9, 2023 Report and Recommendation and dismissed Ntamere's claims against Ms. Czarnecki and the EEOC without prejudice. ECF 58 at 6 ¶ 3. The Court granted Mr. Ntamere's request to remove MDHR as a defendant. *Id.* at 6. Finally, the Court granted Plaintiff's request to file a Second Amended Complaint adding Minnesota Attorney General Keith Ellison, MDHR Commissioner Rebecca Lucero, and MDHR Lead Investigator Tom Bernette as defendants. *Id.* at 6 ¶ 4.

In the second Order, the Court granted the motion to dismiss filed by AmeriHealth Administrators, Inc. ("AHA") and Independence Blue Cross, LLC ("IBC"), Michele

[1] Mr. Ntamere was permitted to amend once as a matter of course pursuant to Fed. R. Civ. P. 15(a)(1)(B). The First Amended Complaint, therefore, became the operative pleading on November 15, 2022. On December 13, 2023, Mr. Ntamere filed a Second Amended Complaint after the Court gave him leave to amend. At that time, the Second Amended Complaint became the operative pleading.

Schumacher, John Clayton, Jeffrey Kearns, and Tashima Waller. ECF 59. The Court found that Plaintiff failed to adequately plead facts establishing personal jurisdiction over Waller, Clayton, and Schumacher and dismissed them from this case. However, the Court found Plaintiff alleged facts showing personal jurisdiction over Kearns. Turning to the merits of the remaining claims, the Court dismissed Mr. Ntamere's claims under 42 U.S.C. § 1983 because he failed to allege that Defendants are state actors. The Court also dismissed Ntamere's claims under 42 U.S.C. § 1981 because he did not plausibly allege interference with contractual activity based on race. Further, the Court found that Mr. Ntamere failed to plausibly allege a prima facie case of retaliation under § 1981. And the Court declined to exercise supplemental jurisdiction over the remaining state law claims pursuant to 28 U.S.C. § 1367. Accordingly, the claims against Clayton, Waller, and Schumacher and the state law claims were dismissed without prejudice; and Plaintiff's §§ 1983 claims against IBC, AHA, and Kearns were dismissed with prejudice.[2] Based on the Court's instructions, the Clerk of Court entered Judgment on November 16, 2023.

[2] The Order stated that the § 1981 claims against Clayton and Waller were dismissed with prejudice for failure to state a claim. However, because the Court found that it lacked personal jurisdiction over Clayton and Waller and dismissed the claims against them without prejudice on that basis, the Court should not have addressed the merits of any claim against Clayton and Waller. *Falkirk Min. Co. v. Japan Steel Works, Ltd.*, 906 F.2d 369, 372 (8th Cir. 1990) ("Before a district court can reach the merits of a dispute and enter legally binding orders, it must determine as a threshold matter whether it possesses personal jurisdiction over the defendants."); *Cortec Corp. v. Corpac GmbH & Co. KG*, No. 22-cv-476 (KMM/ECW), 2023 WL 171791, at *4 (D. Minn. Jan. 12, 2023) ("Absent personal jurisdiction, it would be improper to consider the motion to dismiss for failure to state a claim; the absence of personal jurisdiction means the absence of judicial power to reach the merits of a case.") (cleaned up). Accordingly, this Order will modify the November 14, 2023 Order of dismissal to make clear that all claims against Clayton and Waller are dismissed without prejudice for lack of personal jurisdiction. This change does not affect the Court's ultimate conclusion that all claims in this litigation are subject to dismissal.

Following the November 14th Orders, Mr. Ntamere filed a motion for leave to file a Second Amended Complaint. ECF 59. On December 13, 2023, the Court vacated the Judgment as premature because the Court had allowed Mr. Ntamere to file a Second Amended Complaint. ECF 63. In that Order, the Court explained that in vacating the Judgment, it did not "alter any of the Court's findings or conclusions in the November 14th Order granting the Motion to Dismiss and [did] not revive any of the claims against the Defendants that have already been dismissed." *Id.* at 2 n.1. In addition, the Court granted Plaintiff's motion to amend, noting that Mr. Ntamere substantially complied with the Court's instructions in submitting his amended pleading, though he had not removed MDHR as a defendant. *Id.* at 2 & n.2. Finally, the Court found that because Plaintiff is proceeding IFP, his Second Amended Complaint should be screened pursuant to 28 U.S.C. § 1915(e)(2)(B).

On December 15, 2023, Defendants AHA, IBC, Schumacher, Clayton, Kearns, and Waller filed a letter seeking clarification concerning the effect of the Court's December 13th Order. Specifically, Defendants were concerned that Plaintiff's submission of a Second Amended Complaint that was essentially the same pleading he had previously filed and included claims against them indicated that Plaintiff "may mistakenly believe that he is pursuing claims against already dismissed parties." ECF 68. On December 26, 2023, these same Defendants protectively filed a motion to dismiss Plaintiff's Second Amended Complaint. ECF 74. These Defendants repeated the same arguments they had raised in their earlier motion to dismiss, but also argued that Plaintiff's claims against them in the Second

Amended Complaint should be dismissed because they had been dismissed and because they were contrary to the law of the case. ECF 76 at 9–13.

II. January 17, 2024 R&R and Plaintiff's Objections

In the January 17th R&R, Judge Docherty conducted a preservice review of the Second Amended Complaint pursuant to § 1915(e)(2)(B), carefully analyzed the procedural history of this litigation, and recommended dismissal of the Second Amended Complaint.

First, Judge Docherty noted that Mr. Ntamere's Second Amended Complaint includes a § 1983 claim against the MDHR. Consistent with the February 9, 2023 Report and Recommendation, Judge Docherty again recommended that this claim be dismissed because the MDHR is not a "person" within the meaning of § 1983.

Second, Judge Docherty found that the Second Amended Complaint adds Minnesota Attorney General Keith Ellison, MDHR Commissioner Rebecca Lucero, and MDHR Lead Investigator Tom Bernette as defendants in the official capacities. Judge Docherty concluded that Ntamere's official-capacity claims for money damages against these defendants should be dismissed based on Eleventh Amendment immunity. Judge Docherty then turned to Mr. Ntamere's request for declaratory and injunctive relief, finding that Ntamere was required to allege that these officials took action pursuant to an unconstitutional governmental policy or custom. In the Second Amended Complaint, Plaintiff alleges that he was denied due process when Czarnecki erred by cross-filing his initial EEOC claim with the PHRC instead of the MDHR, thereby depriving him of local review of his discrimination claim in violation of his due process rights. January 17th R&R

at 9–10. Judge Docherty recommended that Ntamere's due process claim should be dismissed because he failed to assert an interest protected by the Fourteenth Amendment in having his complaint handled in a particular way by the MDHR. In particular, the January 17th R&R concludes that the Minnesota Human Rights Act ("MHRA") does not create a protected property interest in how Mr. Ntamere's complaint was handled and that Ntamere failed to allege any facts to suggest the decision by the MDHR to decline to review his July 2019 discrimination complaint deprived him of further review. *Id.* at 11–12.

Further, Judge Docherty liberally construed Ntamere's complaint as alleging that MDHR Lead Investigator Tom Bernette denied him equal protection by declining to review his July 2019 charge. *Id.* at 13. However, Judge Docherty recommended dismissal of such a claim because Plaintiff failed to state facts suggesting that Bernette or MDHR declined to consider his complaint but considered the complaints of similarly-situated persons.

Next, Judge Docherty noted that although the Eleventh Amendment does not bar claims for damages against state officials sued in their personal capacities, Mr. Ntamere had not made a clear statement that he was suing Attorney General Ellison, Commissioner Lucero, and Investigator Bernette in their individual capacities. *Id.* at 14. "But even if there were, Mr. Ntamere's claims against the State Defendants in their individual capacities would fail because Mr. Ntamere has not identified any plausible violation of a constitutional or federal right." *Id.*

Finally, Judge Docherty recommended that the Court decline to exercise supplemental jurisdiction over Mr. Ntamere's state law claims.

Plaintiff's Objections

Mr. Ntamere filed timely objections to the January 17th R&R. ECF 87. When a party files specific objections to a magistrate judge's report and recommendation, the District Court "must determine de novo any part of the [R&R] that has been properly objected to." Fed. R. Civ. P. 72(b)(3). "'The objections should specify the portions of the magistrate judge's report and recommendation to which objections are made and provide a basis for those objections.'" *United States v. Cain*, No. CR 23-346 (JRT/DTS), 2024 WL 2091999, at *1 (D. Minn. May 9, 2024) (quoting *Mayer v. Walvatne*, No. 07-1958, 2008 WL 4527774, at *2 (D. Minn. Sept. 28, 2008)). "'Objections which are not specific but merely repeat arguments presented to and considered by a magistrate judge are not entitled to *de novo* review, but rather are reviewed for clear error.'" *Id.* (quoting *Montgomery v. Compass Airlines*, LLC, 98 F. Supp. 3d 1012, 1017 (D. Minn. 2015).

First, Mr. Ntamere refers the Court to the objections he filed in response to the December 9, 2022 Report and Recommendation. These are not specific objections to the January 17th R&R because they do not specify the portions that decision Ntamere objects to and does not provide a basis for any objection to the January 17th R&R. Moreover, the Court has already accepted the December 9, 2022 Report and Recommendation and overruled Ntamere's objections. The Court finds that Mr. Ntamere's incorporation by reference of the previous objections does not provide any basis to disagree with the January 17th R&R's recommended disposition of Ntamere's claims.

Second, Mr. Ntamere raises concerns with the January 17th R&R's observation that "Defendant Jane Doe has not been served with the summons and complaint," ECF 85 at 2

n.1, indicating that he "does not know what to make of [that] statement," ECF 87 at 1–2. The Second Amended Complaint identifies one Defendant as a "Jane Doe" employee and asserts a defamation claim against that employee. According to the pleading, Jane Doe is an anonymous witness listed on a human resources document as "AHA-000252," and they are the individual who purportedly stated that they did not hear Defendant Kearns use a racial used slur and that if Kearns the offensive term, it would have been in the context of the training. ECF 65 ¶¶ 15, 145. Because the individual is unidentified in Mr. Ntamere's complaint, there is no way for the United States Marshal Service to serve that individual, and that individual is not subject to the jurisdiction of this Court. Moreover, the only claim Plaintiff has alleged against this individual is a state law defamation claim, which the January 17th R&R concludes should be dismissed without prejudice pursuant to 28 U.S.C. § 1367(c). The Court agrees that the state law claims should be dismissed pursuant to § 1367(c), and nothing in the objections to the R&R undermines that conclusion.

Next, Mr. Ntamere asserts that the Court should revisit its prior conclusion that his claims against Ms. Czarnecki, a federal official, should be dismissed as a matter of law. He asserts that the R&R incorrectly characterized his allegations as asserting that Czarnecki made an "error" in cross-filing his complaint with the PHRC because he alleged that Czarnecki intentionally prevented him from accessing local review and did not do so unilaterally. ECF 87 at 3–5. The Court previsouly found that Mr. Ntamere's pleadings fail to state a claim against Ms. Czarnecki under 42 U.S.C. § 1983 because she is not a *state* actor and Plaintiff failed to allege facts that would support a claim pursuant to *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971). Nothing in Mr. Ntamere's objections, nor

in his December 18, 2023 letter to the Court, ECF 71, supports reconsideration of the Court's earlier ruling because Plaintiff still does not allege that she is a state actor and there is still no viability to a claim under *Bivens*. This objection is overruled and provides no basis to reject the January 17th R&R.

Next, Plaintiff objects to the January 17th R&R's determination that he failed to allege deprivation of any protected liberty or property interest under the Due Process Clause of the Fourteenth Amendment. In his objections, Ntamere writes:

> Plaintiff disagrees with the Report and Recommendation's interpretation of the [MHRA]. The [MDHR] Commissioner's decision is limited only to the processing of the charging document and not to Minnesota citizens' right to file an intake form, be interviewed by MDHR employees, or complete the charging document. The Commissioner's discretion comes into play only after the document has been completed and not before that.

ECF 87 at 6 (citing Minn. Stat. § 363A.28, subd. 6(b)(1), (2), and (5)). In other words, Mr. Ntamere argues that the January 17th R&R erred in concluding that the MHRA does not create a protected property interest in local review of his administrative employment complaint.

Judge Docherty found that the MHRA did not give rise to a protected property interest because Minn. Stat. § 363A.28, subd. 6(h) expressly gives the MDHR Commissioner discretion in determining how to process complaints. January 17th R&R at 12. The Court agrees. Most notably, subdivision 6(h) states that the Commissioner "may adopt policies to determine which charges are processed...." This language supports Judge Docherty's conclusion that state law grants the Commissioner significant discretion and,

therefore the MHRA does not create a protected property interest for Mr. Ntamere in having his complaint handled in a particular way. The subparagraphs cited by Mr. Ntamere in his objections—Minn. Stat. § 363A.28, subd. 6(b)(1), (2), and (5)—do not change this conclusion. Subdivision 6(b) tells the Commissioner the order in which to "give priority to investigating and processing ... charges," but leaves it to the Commissioner to "determine[]" which charges have the relevant characteristics, including "evidence of irreparable harm," evidence of "reprisal," and when "there is potential for broadly promoting the policies of this chapter." § 323A.28, subd. 6(b)(1), (2), and (5). These provisions are fully consistent with subdivision 6(h)'s language establishing the discretionary nature of the Commissioner's determination regarding which charges to process and how to process them. Therefore, Mr. Ntamere's objection is overruled.

Finally, Mr. Ntamere appears to seek leave to amend his complaint. He seeks to (1) remove MDHR from the caption; (2) add Attorney General Ellison, Commissioner Lucero, and Investigator Bernette as defendants; (3) add the director of the EEOC Minneapolis Area Office as a defendant; (4) add new counts under 42 U.S.C. §§ 1985, 1986 against Ellison, Lucero, and Bernette; (5) add a cause of action for injunctive and declaratory relief; (6) clean up pagination errors and allegations concerning money damages in Count 1; (7) formally plead the elements of due process violations under the United States and Minnesota Constitutions; (8) make unspecified "corrections on pleading against the State and Federal Defendant[s] with more concise and detailed information"; and (9) make any other necessary amendments relevant to the remaining defendants. ECF 87 at 9. Although the Court should give leave to amend "freely ... when justice ...

requires," in this case, Mr. Ntamere has already amended his complaint twice and neither pleading has withstood prescreening review and a motion to dismiss. The Court finds that further amendment is unwarranted.

Mr. Ntamere does not object to Judge Docherty's conclusion that the Second Amended Complaint fails to state a plausible equal protection claim against Investigator Bernette. The Court finds no clear error in the January 17th R&R's recommendation that such a claim should be dismissed for failure to state a claim.

For these reasons, the January 17th R&R, ECF 85, is accepted and Mr. Ntamere's objections are overruled. Accordingly, the Court dismisses the Second Amended Complaint without prejudice as stated below.

III. Motion to Dismiss

The Motion to Dismiss the Second Amended Complaint filed by Defendants AHA, IBC, Clayton, Kearns, Schumacher, and Waller, ECF 74, is also before the Court. As noted above, these Defendants raised the same arguments they made in their earlier motion to dismiss the First Amended Complaint. In addition, they argue that Plaintiff's claims against them in the Second Amended Complaint should be dismissed because they had been dismissed and because they were contrary to the law of the case. ECF 76 at 9–13.

Mr. Ntamere filed an opposition to Defendants' motion. ECF 82. Although Mr. Ntamere broadly argues that the motion to dismiss was brought in "bad faith," his response makes clear that he is not attempting to have this Court reconsider the conclusions it reached with respect to the claims against them in the Court's November 14th Order of dismissal. *Id.* at 4–5.

Because the Court permitted Mr. Ntamere leave to file the Second Amended Complaint, that document is the operative pleading in this matter. As a result, the Court finds no bad faith in the Defendants' filing of their motion to dismiss the Second Amended Complaint. When the Court gave Mr. Ntamere leave to file, it provided that allowing him to do so did not revive any of the claims the Court had previously dismissed. The purpose of allowing the amendment was to permit Mr. Ntamere to remove the MDHR as a defendant, which he did not do, and seek to bring claims against the State Defendants Ellison, Lucero, and Bernette, which he did. In retrospect, the Court may have been able to avoid the need for these Defendants to file their motion to dismiss the Second Amended Complaint if it had responded to their letter seeking clarification before they made the motion. In any event, nothing about the claims against these Defendants changed when Plaintiff filed his Second Amended Complaint, so they are subject to dismissal for the same reasons articulated in the Court's November 14, 2023 Order granting the motion to dismiss the First Amended Complaint. Accordingly, the Court grants these Defendants' motion to dismiss the Second Amended Complaint on the same terms and for the same reasons stated in the Court's November 14th Order. ECF 59. Therefore, the Court includes the dismissal language from its prior dismissals in this Order and directs entry of final judgment. But because all claims against Clayton and Waller are dismissed for lack of personal jurisdiction, and the Court does not reach the merits of the claims against them, the Court amends its dismissal with prejudice of Plaintiff's § 1981 discrimination claims to reflect that the Court does not reach the merits of those claims as to Clayton and Waller. *See* ECF 59 at 23 ¶ 1.d; *see also*, note 2, *supra*, p. 3.

ORDER

Based on the discussion above, and on the entire record and the proceedings herein, the Court enters the following ORDER.

1. The Report and Recommendation dated January 17, 2024, ECF 85, is **ACCEPTED**;
2. Plaintiff's Objections, ECF 87, are **OVERRULED**;
3. Defendants' Motion to Dismiss Plaintiff's Second Amended Complaint, ECF 74, is **GRANTED** for the same reasons and on the same terms the Court stated in its November 14, 2023 Order of dismissal, ECF 59, with one modification included below;
4. The Second Amended Complaint is **DISMISSED** as follows:
    a. Plaintiff's claims against Ms. Czarnecki and the EEOC are dismissed without prejudice (*see* ECF 58);
    b. Plaintiff's claims against John Clayton, Tashima Waller, and Michele Schumacher are dismissed without prejudice for lack of personal jurisdiction (*see* ECF 59);
    c. Plaintiff's § 1983 claims against Amerihealth Administrators Inc. are dismissed with prejudice for failure to state a claim;
    d. Plaintiff's § 1981 discrimination claims against IBC, AHA, and Jeffrey Kearns are dismissed with prejudice for failure to state a claim;
    e. Plaintiff's § 1981 retaliation claims against IBC and AHA are dismissed with prejudice for failure to state a claim;

f. Plaintiff's § 1983 claim against the MDHR is dismissed without prejudice;

g. Plaintiff's § 1983 official-capacity claims for damages against Defendants Attorney General Keith Ellison, MDHR Commissioner Rebecca Lucero, and MDHR Lead Investigator Tom Bernette in their official capacities are dismissed without prejudice because they are barred by the Eleventh Amendment;

h. Plaintiff's § 1983 official-capacity claims for injunctive and declaratory relief against Defendants Attorney General Keith Ellison, MDHR Commissioner Rebecca Lucero, and MDHR Lead Investigator Tom Bernette are dismissed without prejudice for failure to state a claim; and

i. Plaintiff's state law claims are dismissed without prejudice pursuant to 28 U.S.C. § 1367(c).

Let Judgment be entered accordingly.

Date: July 30, 2024

s/Katherine Menendez
Katherine Menendez
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

ANTHONY E. NTAMERE,

Plaintiff,

v.

AMERIHEALTH ADMINISTRATORS, INC.; JANE DOE, in her individual and official capacity; INDEPENDENCE BLUE CROSS OF PA; JEFFREY KEARNS, in his individual and official capacity; EQUAL EMPLOYMENT OPPORTUNITY COMMISSION; KEITH ELLISON, Minnesota Attorney General; REBECCA LUCERO, MDHR Commissioner; and TOM BERNETTE, MDHR Lead Investigator,

Defendants.

Case No. 22-CV-2682 (KMM/JFD)

REPORT AND RECOMMENDATION

Plaintiff Anthony E. Ntamere's *in forma pauperis* (IFP) application is before the Court for preservice review of his Second Amended Complaint (Dkt. No. 61-1), pursuant to the Order (Dkt. No. 63) of the Honorable Katherine M. Menendez, United States District Judge, and 28 U.S.C. § 1915(e)(2)(B). The Court finds that Mr. Ntamere still qualifies financially for IFP status but also finds that the Second Amended Complaint fails to state a plausible claim upon which relief may be granted. Accordingly, the Court recommends that this matter be dismissed.

PROCEDURAL BACKGROUND

Upon preservice review of Mr. Ntamere's First Amended Complaint, pursuant to 28 U.S.C. § 1915(e)(2)(B), this Court recommended that Defendants Minnesota Department of Human Rights (MDHR), the Equal Opportunity Employment Commission (EEOC), and Charlotte Czarnecki be dismissed from this action because Mr. Ntamere failed to state a plausible claim against them. (Dkt. No. 8). This Court granted Plaintiff's IFP application and also ordered that the First Amended Complaint be served on the remaining Defendants: AmeriHealth Administrators, Inc. (AHA); Jane Doe, a/k/a AHA-000252; Independence Blue Cross of PA (IBC); Michele Schumacher; John Clayton; Jeffrey Kearns; and Tashima Waller (collectively, the AHA Individuals). (Dkt. No. 7.) Mr. Ntamere filed objections to the Court's recommendation. (Dkt. No. 10). AHA, IBC, and the AHA Individuals filed a motion to dismiss the Amended Complaint.[1] (Dkt. No. 14).

Judge Menendez accepted this Court's recommendation over Mr. Ntamere's objections, dismissed Mr. Ntamere's claims against Ms. Czarnecki and the EEOC without prejudice, and allowed Mr. Ntamere to "add Attorney General Keith Ellison, MDHR commissioner Rebecca Lucero, and MDHR Lead Investigator to his Amended Complaint, remove MDHR as a defendant, and correct typos to his Amended Complaint." (Dkt. No. 58). Judge Menendez explicitly advised Mr. Ntamere that he "may not make other revisions." (*Id.*)

[1] Defendant Jane Doe has not been served with the summons and complaint.

In a separate Order, Judge Menendez granted the Motion to Dismiss brought by AHA, IBC, and the AHA Individuals. (Dkt. No. 59.) Specifically, Judge Menendez ordered that Mr. Ntamere's claims against John Clayton, Tashima Waller, and Michele Schumacher be dismissed for lack of personal jurisdiction; that Mr. Ntamere's claims against AHA under 42 U.S.C. § 1983 be dismissed with prejudice for failure to state a claim; that Mr. Ntamere's § 1981 claims against IBC, AHA, Jeffrey Kearns, John Clayton, and Tashima Waller be dismissed with prejudice for failure to state a claim; that Mr. Ntamere's § 1981 retaliation claims against IBC and AHA be dismissed with prejudice for failure to state a claim; and that Mr. Ntamere's state law claims be dismissed without prejudice for lack of subject matter jurisdiction. Judge Menendez ordered entry of judgment consistent with that order, and judgment was entered.

Assumably consistent with Judge Menendez's Order granting Mr. Ntamere leave to make specific amendments to his Amended Complaint, Mr. Ntamere subsequently filed an "Unopposed Motion to Amend Complaint" (Dkt. No. 61), the Second Amended Complaint (SAC) (Dkt. No. 61-1), and a redlined version of the proposed SAC (Dkt. No. 61-2). The SAC added Attorney General Keith Ellison, MDHR Commissioner Rebecca Lucero, and MDHR Lead Investigator Tom Bernette ("State Defendants") as defendants to the action and made no other substantive revisions. Mr. Ntamere also wrote a letter to Judge Menendez seeking clarification of her Order on the Motion to Dismiss. (Dkt. No. 62).

Judge Menendez then ordered that the entry of judgment be vacated as premature, granted Mr. Ntamere's Motion to Amend the Complaint, and ordered that the SAC be treated as the operative pleading in this proceeding. (Dkt. No. 63.) Judge Menendez

directed the Clerk's Office to add Defendants Minnesota Attorney General Keith Ellison, MDHR Commissioner Rebecca Lucero, and MDHR Lead Investigator Tom Bernette to the case caption and to identify MDHR as "terminated effective November 14, 2023. (*Id.*) By its express terms, that Order did not vacate the Order on the Motion to Dismiss or in any way revive the claims or defendants that had been dismissed pursuant to the Order on the Motion to Dismiss. Most pertinent here, that Order directed this Court to conduct a preservice review of the SAC, consistent with 28 U.S.C. § 1915(e). This Court now turns to this task.[2]

FACTUAL BACKGROUND

Mr. Ntamere alleges that he "is a second-generation African American male." (SAC ¶ 20.) When AHA hired him as a claim payment adjuster in April 2018 after acquiring his previous employer, Mr. Ntamere's benefits reflected his years of service with the previous company. (*Id.* ¶¶ 22–23.) But Mr. Ntamere's relationship with AHA soon soured. Relevant here, in July 2019, he was required to attend in-person a three-day training workshop entitled "Diversity & Inclusion Awareness: It's All About Respect and Unconscious Bias"

[2] The docket shows that Mr. Ntamere has filed notices of appeal of the Order on the Report and Recommendation and of the Order on the Motion to Dismiss. (Dkt. No. 64). Mr. Ntamere has also filed another amended complaint, which appears to be his third. (Dkt. No. 65). Both Mr. Ntamere and Defendants AHA, IBC, and AHA Individuals have written letters to the District Court. (Dkt. Nos. 68, 71.) Defendants AHA, IBC, and AHA Individuals have filed a second Motion to Dismiss and Memorandum in Support. (Dkt. Nos. 74, 76.) This motion to dismiss appears to be substantively identical to its first. (*See* Dkt. No. 14). This motion, however, is not before this Court. Further, although Mr. Ntamere has filed yet another amended complaint, he neither requested nor received leave to do so. *See* Fed. R. Civ. P. 15(a). Accordingly, the SAC remains the operative pleading for the purposes of preservice review.

presented by three visiting IBC human resources representations from Philadelphia, Pennsylvania. (*Id.* ¶ 54.) Mr. Ntamere alleges that on the last day of this workshop, one of the presenters, Jeffrey Kearns, used a racial slur, the "N-word." (*Id.* ¶ 57.) Mr. Ntamere asserts that he captured Mr. Kearns's use of the racial slur on his recording of the training. (*See id.* ¶ 69.)

After the training, Mr. Ntamere filed a complaint with human resources. (*Id.* ¶ 67.) When Mr. Ntamere followed up regarding the status of his complaint, he learned that the complaint was closed but that a probation warning had been placed in his personnel file for recording the workshop in violation of company policy. (*Id.* ¶ 69.) Mr. Ntamere then lodged a complaint with the EEOC ("July 2019 Complaint"). (*Id.* ¶ 70.) Mr. Ntamere alleges that the EEOC representative, Ms. Czarnecki, "cross-filed" his complaint with the Pennsylvania Human Relations Commission ("PHRC") instead of the MDHR in error and that this error was intentional and deprived him of his "right to a local review." (*Id.* ¶ 72.) Mr. Ntamere says that he contacted MDHR directly in January 2020 to resolve this error, but MDHR Lead Investigator Tom Bernette told him that MDHR would not be able to assist him because the complaint had been filed with the PHRC and directed him to contact that agency. (*Id.* ¶¶ 83-84.)

After this incident, Mr. Ntamere's relationship with AHA continued to deteriorate. In June 2020, Mr. Ntamere criticized AHA management on the company's "iWay" forum, in violation of his probation notice and he received a second probation notice. (*Id.* ¶ 95.) Mr. Ntamere responded to the second probation notice by again posting statements critical

of AHA on the company's "iWay" forum. (*Id.* ¶ 96.) Mr. Ntamere's employment with AHA was terminated on June 24, 2020. (*Id.* ¶ 97.)

The documents attached to the SAC show that Mr. Ntamere filed a discrimination charge with MDHR exactly one year later, on June 24, 2021 ("June 2021 Complaint"). (SAC at 27.)[3] Upon investigation, MDHR determined there was "no probable cause" to believe that unfair discriminatory practice occurred. (*Id.* at 41–44.) Mr. Ntamere appealed. (*Id.* at 50, 54.) On appeal, MDHR affirmed, explaining that MDHR is subject to a 1-year limitations period and that Mr. Ntamere filed a discrimination charge exactly one year after his termination, meaning that MDHR's investigation was limited to the basis for his termination and did not (and could not) include his allegation that he was discriminated against during the three-day training in July 2019. (*Id.* at 56, ¶ 20.)

The SAC asserts the following seven claims: (1) that Defendants MDHR, AHA, and Czarnecki deprived Mr. Ntamere of due process by cross-filing his 2019 EEOC complaint with the PHRC instead of the MDHR, in violation of 42 U.S.C. § 1983; (2) that Defendants IBC, AHA, Kearns, Clayton, and Waller discriminated against him based on race, in violation of 42 U.S.C. § 1981; (3) that Defendants IBC and AHA retaliated against him by terminating his employment for engaging in a protected activity, in violation of 42 U.S.C. § 1981; (4) that Defendants IBC and AHA engaged in unlawful retaliatory practices, in violation of Minn. Stat. § 363A.15 of the Minnesota Human Rights Act

[3] It appears that Plaintiff resubmitted the same documents that he had previously filed in this case. Thus, the CM/ECF pagination is difficult to read because the CM/ECF-generated header has been imposed directly on top of the CM/ECF-generated header on the earlier filings.

(MHRA); (5) that Defendants IBC, AHA, Kearns, Clayton, and Waller discriminated against him based on race, in violation of Minn. Stat. § 363A.08, subd. 2, of the MHRA; (6) that Defendants IBC, AHA, Clayton, and Schumacher violated Minn. Stat. § 181.932 of the Minnesota Whistleblower Act; and (7) that Defendants Schumacher, Clayton, and Jane Doe intentionally made false statements against him in violation of state defamation law. These claims are substantively identical to the claims asserted in the First Amended Complaint.

LEGAL STANDARD

Pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii), an action will be dismissed when an IFP applicant has filed a complaint that fails to state a claim on which relief may be granted. *See Atkinson v. Bohn*, 91 F.3d 1127, 1128 (8th Cir. 1996) (per curiam). In reviewing whether a complaint states a claim for which relief may be granted, this Court must accept the complaint's factual allegations as true and draw all reasonable inferences in the plaintiff's favor. *Varga v. U.S. Nat'l Bank Ass'n*, 764 F.3d 833, 838 (8th Cir. 2014). The factual allegations need not be detailed, but they must be sufficient "to raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). The complaint must "state a claim to relief that is plausible on its face." *Id.* at 570. Pro se complaints are to be construed liberally, but they must still allege enough facts to support the claims advanced. *Stone v. Harry*, 364 F.3d 912, 914 (8th Cir. 2004) (citing cases).

LEGAL ANALYSIS

Although Mr. Ntamere brings seven claims in the SAC, most of those claims and defendants have already been dismissed from this action. The law of the case doctrine

requires this Court to adhere to those rulings. *See Popp Telecom, Inc. v. Am. Sharecom, Inc.*, 361 F.3d 482, 490 (8th Cir. 2004). Upon close review of the Order on the Report and Recommendation (Dkt. No. 58), the Order on the Motion to Dismiss (Dkt. No. 59), and the SAC, this Court finds that only the following claims remain subject to preservice review:

Claim 1: That MDHR violated Mr. Ntamere's due process rights and engaged in a discriminatory process, in violation of his constitutional rights pursuant to 42 U.S.C. § 1983;

Claim 4: That Defendants IBC and AHA violated Minn. Stat. § 363A.15 of the MHRA;

Claim 5: That Defendants IBC, AHA, and Kearns violated Minn. Stat. § 363A.08, subd. 2, of the MHRA;

Claim 6: That Defendants IBC and AHA violated Minn. Stat. § 181.932 of the Minnesota Whistleblower Act; and

Claim 7: That Defendant Jane Doe intentionally made false statements against him, in violation of Minnesota state defamation laws.[4]

The Court first addresses Mr. Ntamere's § 1983 claim against the MDHR. To state a claim under § 1983, "a plaintiff must allege a violation of a constitutional right committed

[4] Judge Menendez dismissed claims 4–7 (state law claims) without prejudice, declining to exercise supplemental jurisdiction over those claims after having dismissed all the claims over which the Court had original jurisdiction. Because Judge Menendez did not reach the merits of these claims, the law of the case doctrine does not preclude this Court from analyzing them in its preservice review under 28 U.S.C. § 1915(e).

by *a person* acting under color of state law." *Andrews v. City of West Branch*, 454 F.3d 914, 918 (8th Cir. 2006) (emphasis added). The MDHR, as an agency of the state of Minnesota, is not a "person" within the meaning of § 1983. *See Will v. Mich. Dep't of State Police*, 491 U.S. 58, 70 (1989). Accordingly, consistent with the Court's previous recommendation, Mr. Ntamere's § 1983 claim against the MDHR should be dismissed.

The SAC adds Minnesota Attorney General Keith Ellison, MDHR Commissioner Rebecca Lucero, and MDHR Lead Investigator Tom Bernette as defendants in their official capacities only. "State officials acting in their official capacities are § 1983 'persons' when sued for prospective injunctive relief, and the Eleventh Amendment does not bar such relief." *Murphy v. State of Ark.*, 127 F.3d 750, 754 (8th Cir. 1997).

For relief, Mr. Ntamere requests "judgment against Defendants in a reasonable amount in excess of $50,000" (SAC ¶ 108), declaratory judgment, and "a court injunction that would force the charging party's local government agency to take on the responsibility of fixing such cross-filing violation/issues should they arise again in the future" (*see id.* at (a.) & (g.).) The Eleventh Amendment plainly bars the claim for money damages but does not preclude the requests for injunctive and declarative relief. *See Murphy*, 127 F.3d at 750 (dismissing claims for money damages against state defendants acting in their official capacity as barred by the Eleventh Amendment). Mr. Ntamere's claim for money damages should therefore be dismissed.

Turning to Mr. Ntamere's request for injunctive and declaratory relief, while such claims against state officials acting in their official capacity are not barred, "to establish liability in an official-capacity suit under § 1983, a plaintiff must show either that the

official named in the suit took an action pursuant to an unconstitutional governmental policy or custom [. . .] or that he or she possessed final authority over the subject matter at issue and used that authority in an unconstitutional manner." *Nix v. Norman*, 879 F.2d 429, 433 (8th Cir. 1989).

In this case, Mr. Ntamere's core complaint is that he was denied due process when Defendant Czarnecki erred by cross-filing his initial EEOC claim in July 2019 with the PHRC rather than the MDHR, and then MDHR Lead Investigator Tom Bernette declined to "remedy" this error by considering his complaint. (SAC ¶¶ 81, 83, 84.) Mr. Ntamere asserts that he has a "right" to local review of his discrimination claim. (*Id.* ¶ 103.)

Recognizing that pro se complaints are to be liberally construed, this Court assumes that MDHR Investigator Bernette was acting pursuant to policy in declining to review Mr. Ntamere's July 2019 complaint and that MDHR Commissioner Rebecca Lucero is the final decisionmaker of such policies. Even so, however, Mr. Ntamere has failed to allege a plausible *constitutional* violation.

"The Fourteenth Amendment prohibits state action that deprives 'any person of life, liberty or property without due process of law." U.S. Const. amend. XIV, § 1. Review of a due-process claim such as this one proceeds in two steps. First, the Court must determine whether Mr. Ntamere was deprived of a protected life, liberty, or property interest. *See Singleton v. Cecil*, 176 F.3d 419, 424 (8th Cir. 1999) (en banc) ("'The possession of a protected life, liberty, or property interest is a condition precedent' to any due process claim.") (quoting *Movers Warehouse, Inc. v. City of Little Canada*, 71 F.3d 716, 718 (8th Cir. 1995)). Second, if a protected interest is at issue, the Court must determine whether

the procedures employed were sufficient to safeguard that interest. *See, e.g.*, *Wolff v. McDonnell*, 418 U.S. 539, 564–70 (1974) (setting procedural requirements for prison disciplinary proceedings).

As a threshold matter, the Court notes that Mr. Ntamere's claims against Defendant Czarnecki and the EEOC have been dismissed, and the only claim remaining is Mr. Ntamere's assertion that the State Defendants deprived him of the "right" to local review of his July 2019 EEOC complaint. But Mr. Ntamere has not asserted a protected interest in having his complaint handled in a particular way by the MDHR (and if he had it would have been futile, for the reasons set out in the following paragraph, as there is no "right to local review"). *See Carlson v. Ameriprise Financial*, No. 08-CV-5303 (MJD/JJK), 2009 WL 10678283, at *16 (D. Minn. May 21, 2009) (citing *Albert v. Dungarvin Minn., Inc.*, Case No. A07-2436, 2009 WL 511015, at *3 (Minn. Ct. App. Mar. 3, 2009)). Mr. Ntamere's due process claim should therefore be dismissed.

Mr. Ntamere's asserted right to local review of an employment discrimination charge plainly does not implicate any life or liberty interest. Thus, the Court considers whether it implicates a property interest. "Property interests . . . are not created by the Constitution." *Board of Regents of the State Colleges v. Roth*, 408 U.S. 564, 576–77 (1972). "A statute, regulation, or official policy pronouncement will give rise to a protected property interest only where (1) it contains particularized substantive standards or criteria that guide the decisionmakers, and (2) it uses mandatory language requiring the decisionmakers to act in a certain way, thus limiting the official's discretion." *Jennings v.*

Lombardi, 70 F.3d 994, 996 (8th Cir. 1995) (citing *Craft v. Wipf*, 836 F.2d 412, 417 (8th Cir. 1987)).

Pursuant to Minn. Stat. § 363A.28, subdivision 1, of the MHRA, any person alleging a violation of the MHRA can file a charge with the MDHR Commissioner. By its express terms, however, Minn. Stat. § 363A.28 authorizes the Commissioner of the MDHR to "adopt policies to determine which charges are processed and the order in which charges are processed based on their particular social or legal significance, administrative convenience, difficulty of resolution, or other standard consistent with the provisions of this chapter." *See* Minn. Stat. § 363A.28 subd. 6(h). Because state law grants the Commissioner discretion in determining which complaints to process and how to process them, the MHRA does not create a protected property interest. *Jennings*, 70 F.3d at 996 ("Where the statute or policy is only procedural, or where it grants the decisionmaker discretionary authority in implementing it, a protected property interest is not created.").

Further, Mr. Ntamere fails to allege any facts to suggest that the decision by the MDHR to decline to review his July 2019 discrimination complaint deprived him of further review of that claim. Rather, the EEOC "Right to Sue" letter issued after the agency determined it would take no further action on Mr. Ntamere's claim advises him of his right to initiate a federal lawsuit based on the charge within 90 days of receipt of that notice. (SAC at 49.) The letter is dated January 16, 2020, but there is no indication that Mr. Ntamere pursued federal judicial review of his claims. Certainly, there are no allegations that failure to first file the claim with the MDHR deprived him of federal review. Accordingly, because Mr. Ntamere has failed to establish a protected property interest in

having his employment discrimination charge handled by the MDHR, his due process claim should fail.

As the Court understands it, Mr. Ntamere also claims that the process was "discriminatory." (SAC ¶ 102.) Recognizing that pro se complaints are to be afforded liberal construction and that Defendants Czarnecki and the EEOC have already been dismissed from this action, this Court views Mr. Ntamere's claim as alleging that MDHR Lead Investigator Tom Bernette discriminated against him in declining to review his July 2019 charge. (*Id.*)

"The Equal Protection Clause generally requires the government to treat similarly situated people alike." *Klinger v. Dep't of Corr.*, 31 F.3d 727, 731 (8th Cir. 1994) (citing *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 439 (1985)). "Dissimilar treatment of dissimilarly situated persons does not violate equal protection" *Id.* Thus, in determining whether a plaintiff has established an equal protection claim, the first step is to consider whether the plaintiff "has demonstrated that she was treated differently than others who were similarly situated to her." *Id.* Absent such a showing, the plaintiff does not have a viable equal protection claim. *Id.*

Here, there are no allegations that MDHR declined to consider Mr. Ntamere's complaint but considered the complaints of similarly-situated persons—persons who filed a charge with the EEOC and then had that charge erroneously cross-filed in the wrong state. Thus, Plaintiff has failed to state a plausible equal protection claim, and this claim should likewise be dismissed.

Finally, although "the Eleventh Amendment does not bar damage claims against state officials acting in their personal capacities," *Murphy*, 127 F.3d at 754, the Eighth Circuit requires a "clear statement" that officials are being sued in their personal capacities for individual liability to attach, *id.* Here, there is no such statement. But even if there were, Mr. Ntamere's claims against the State Defendants in their individual capacities would fail because Mr. Ntamere has not identified any plausible violation of a constitutional or federal right.

This leaves Mr. Ntamere's state law claims. This Court does not have jurisdiction over such claims. Section 1331 establishes federal-court jurisdiction over federal-law claims, but that provision does not supply original jurisdiction over state-law claims. Although Section 1332 supplies federal courts with original jurisdiction over claims where the parties are of diverse citizenship, Mr. Ntamere does not allege diversity of citizenship here. Accordingly, this Court does not have original jurisdiction over these claims. Further, the Eighth Circuit has instructed courts to not exercise supplemental jurisdiction over state-law claims where, as here, all federal claims are dismissed prior to trial. *See Hervey v. Cnty. of Koochiching*, 527 F.3d 711, 726-27 (8th Cir. 2008). Accordingly, the entirety of this action should be dismissed without prejudice—the federal-law claims for failure to state a claim on which relief may be granted, *see* 28 U.S.C. § 1915(e)(2)(B)(ii), and the state-law claims for lack of jurisdiction, *see* Fed. R. Civ. P. 12(h)(3).[5]

[5] As far as the Court can tell, Plaintiff's third amended complaint, self-styled the "Second Amended Complaint" (Dkt. No. 65), is identical to the SAC filed at Dkt. No. 61-1. The third amended complaint does not amend any defendants or factual allegations. (*Cf.* Dkt. No. 61-1 *with* Dkt. No. 65). Thus, even if the Court were to consider Plaintiff's third

RECOMMENDATION

Based on the foregoing, and on all of the files, records, and proceedings herein, **IT IS HEREBY RECOMMENDED THAT** the Second Amended Complaint of Anthony E. Ntamere (Dkt. No. 61-1) be **DISMISSED WITHOUT PREJUDICE**. The federal-law claims should be dismissed for failure to state a claim on which relief may be granted, *see* 28 U.S.C. § 1915(e)(2)(B)(ii), and the state-law claims should be dismissed for lack of jurisdiction, *see* Fed. R. Civ. P. 12(h)(3).

Date: January 16, 2024

s/ John F. Docherty
JOHN F. DOCHERTY
United States Magistrate Judge

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals. Under Local Rule 72.2(b)(1), "[a] party may file and serve specific written objections to a magistrate judge's proposed findings and recommendations within 14 days after being served with a copy of the recommended disposition." A party may respond to those objections within 14 days after being served with a copy. D. Minn. LR 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).

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amended complaint as the operative complaint (which it does not), the Court's recommendations for dismissal would be the same: because Mr. Ntamere has failed to allege any viable claims over which this Court has jurisdiction, the state-law claims should be dismissed for lack of jurisdiction.