

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

STEVEN MACKLEY,

Plaintiff,

v.

Case No. 12-2774-SAC

TW TELECOM HOLDINGS, INC.,

Defendant.

MEMORANDUM AND ORDER

This employment discrimination case comes before the Court on the Magistrate Judge's report and recommendation to deny leave to amend plaintiff's retaliation claim.

This Court previously granted defendant's motion to dismiss, dismissed the complaint without prejudice, and gave plaintiff a specific date by which to file a motion to amend in compliance with the rules. Dk. 10. Plaintiff did so. On January 17, 2014, the Magistrate Judge issued an Order (Dk. 19) permitting plaintiff to amend his complaint as to his age and sex discrimination claims (Counts I and II), but recommending that this court deny plaintiff's motion to amend as to his proposed retaliation claim (Count III). The stated time for filing objections to that Order and Recommendation has passed and no objections have been filed.

The Court has conducted a de novo review of the record, *see Cuenca v. Univ. of Kansas*, 205 F. Supp.2d 1226, 1228 (D. Kan. 2002), and finds the

Magistrate Judge's findings and application of law to be accurate and appropriate. Plaintiff's proposed retaliation claim fails to state a claim for relief, and plaintiff has not exhausted his administrative remedies for this claim, as detailed in the Magistrate Judge's order and this Court's prior order.

Accordingly, the Court adopts the recommendation of the Magistrate Judge and denies plaintiff's motion to amend to the extent it seeks to include the proposed retaliation claim (Count III).

IT IS THEREFORE ORDERED that plaintiff's motion for leave to amend his complaint (Dk. 11) is denied as it regards the amended Count III (retaliation) and is granted in all other respects.

Dated this 4th day of March, 2014, at Topeka, Kansas.

s/Sam A. Crow
Sam A. Crow, U.S. District Senior Judge