

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF MAINE**

<b>MITCHELL STIMSON,</b>	)	
	)	
<i>Plaintiff</i>	)	
	)	
<b>v.</b>	)	<b><i>Docket No.99-335-P-H</i></b>
	)	
<b>GOODWILL INDUSTRIES OF</b>	)	
<b>NORTHERN NEW ENGLAND,</b>	)	
	)	
<i>Defendant</i>	)	

***RECOMMENDED DECISION ON DEFENDANT’S MOTION TO DISMISS***

The defendant has moved to dismiss this action pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) for lack of subject matter jurisdiction and for failure to state a claim upon which relief may be granted, because the complaint fails to allege that the plaintiff has received a “right-to-sue letter” from the Equal Employment Opportunity Commission (“EEOC”), a prerequisite to suit on his claim under the Americans with Disabilities Act (“ADA”), the only claim in the complaint based on federal law, citing 42 U.S.C. § 12117, a section of the ADA that requires compliance with, *inter alia*, the procedural requirements set forth at 42 U.S.C. § 2000e-5(f)(1). Receipt of such a letter is ordinarily a prerequisite to suit under the conditions present in this case. *E.g., Black v. Brown Univ.*, 555 F. Supp. 880, 883-84 (D.R.I. 1983).

The plaintiff responds, in a statement by his attorney, which I accept as true, in a memorandum of law submitted in opposition to the motion, that he has requested but not yet received a right-to-sue letter from the EEOC. Plaintiff’s Objection to Defendant’s Motion to

Dismiss (Docket No. 4) at [2]. He argues that the statute of limitations applicable to his claims under the Maine Human Rights Act was about to expire when he filed this action, which includes claims under that state statute, and that filing this action in federal court avoided “an egregious waste of judicial (and the parties [sic]) resources.” *Id.* at [5]. He also contends that he should be allowed to proceed because the defendant will not be prejudiced and because he “will almost certainly be able to cure this ‘defect,’ and amend the complaint or otherwise notify the court, before any serious activity takes place” in this court. *Id.* at [4]. Given this court’s customary procedures and schedules for such cases, and the well-known track record of the EEOC, the latter of these arguments is based on a statement more hopeful than realistic. Be that as it may, in each case from this circuit cited by the plaintiff in support of his arguments the court actually dismissed the action brought before the right-to-sue letter was received from the EEOC. *Tang v. State of Rhode Island Dep’t of Elderly Affairs*, 904 F. Supp. 55, 59 (D.R.I. 1995); *Marrero-Rivera v. Department of Justice of the Commonwealth of Puerto Rico*, 800 F. Supp. 1024, 1029 (D.P.R. 1992). In *Black*, the court applied the doctrine of equitable tolling because the plaintiff had been “lulled into the sanguine belief [by the EEOC] that he did not have to obtain a . . . right-to-sue letter” from it, 555 F. Supp. at 885, a situation not present here, where the plaintiff’s attorney has in fact requested such a letter from the EEOC.

The plaintiff chose to pursue remedies available under both state and federal law. If that choice required him to file separately in state and federal courts, that fact is a result of his choice and does not permit him to file prematurely in federal court in the hope that the necessary statutory prerequisite will be fulfilled before the action progresses significantly. He has offered no equitable consideration sufficient to overcome that statutory prerequisite. Accordingly, I recommend that the

motion to dismiss be **GRANTED**, with the specific provision that the dismissal be without prejudice.

**NOTICE**

*A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.*

*Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.*

*Dated this 20th day of December, 1999.*

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*David M. Cohen  
United States Magistrate Judge*