

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SAMUEL CABASSA,

Plaintiff,

-against-

9:08-CV-0480 (LEK/DEP)

JOSEPH T. SMITH, et al.,

Defendants.

DECISION AND ORDER

This matter comes before the Court following a Report-Recommendation filed on April 10, 2009, by the Honorable David E. Peebles, United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b) and L.R. 72.3(c) of the Northern District of New York. Report-Rec. (Dkt. No. 31).

Within ten days, excluding weekends and holidays, after a party has been served with a copy of a Magistrate Judge's Report-Recommendation, the party "may serve and file specific, written objections to the proposed findings and recommendations," FED. R. CIV. P. 72(b), in compliance with L.R. 72.1. No objections have been raised in the allotted time with respect to Judge Peebles' Report-Recommendation. Furthermore, after examining the record, the Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice.

Accordingly, it is hereby

ORDERED, that the Report-Recommendation (Dkt. No. 31) is **APPROVED** and **ADOPTED** in its **ENTIRETY**; and it is further

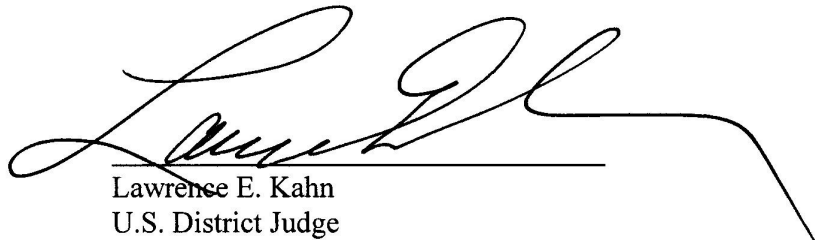
ORDERED, that Defendants' Motion to dismiss (Dkt. No. 28) be **GRANTED**, in part, and that Plaintiff's first, second and third causes of action be **DISMISSED** in their entirety; that all

claims against Defendants Malone, Bergmann and Miller be **DISMISSED**; that all damage claims, except those arising under the ADA, against Defendants in their official capacities be **DISMISSED**; all damage claims against Defendants in their individual capacities asserted under the ADA and section 504 be **DISMISSED**; that Plaintiff's sixth cause of action against Defendants Smith, Maley and Pico in their individual capacities be **DISMISSED**; but that Defendants' Motion otherwise be **DENIED**; and it is further

ORDERED, that the Clerk serve a copy of this Order on all parties.

IT IS SO ORDERED.

DATED: April 30, 2009
Albany, New York



Lawrence E. Kahn
U.S. District Judge