

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ANDRES MARTINEZ,

Plaintiff,

v.

09-CV-665

WILLIAM LAPE, Superintendent; JOAN SMITH,
Deputy Superintendent of Health; MR. KILLAR,
I.G.R.C. Supervisor; DR. MILLER, Facility Health
Service Director; DR. Paolano, R.M.U. Clinic;
MR. O'NEAL, Correction Officer; K. TALAVERA,
Counselor; MS. MARILYN, Dietician; MR. SEGATTO,
Sergeant; M. MOTTO, Nurse in R.M.U.; and V. BALDWIN,
Nurse Administrator,

Defendants.

THOMAS J. McAVOY
Senior United States District Judge

DECISION and ORDER

This matter brought pursuant to 42 U.S.C. § 1983 was referred to the Hon. Randolph F. Treece, United States Magistrate Judge, for a Report-Recommendation pursuant to 28 U.S.C. §636(b) and Local Rules 72.3(c).

The Report-Recommendation dated March 28, 2011 recommended that the Defendants' Motion to Dismiss (Dkt. No. 32) be granted and Plaintiff's Second Amended Complaint (Dkt. No. 8) be dismissed.

Plaintiff filed timely objections to the Report-Recommendation, essentially raising the same arguments presented to the Magistrate Judge. When objections to a Magistrate

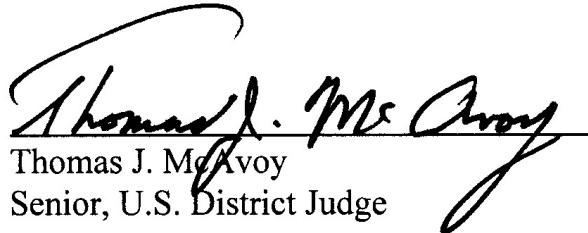
Judge's Report-Recommendation are lodged, the Court makes a "de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." See 28 U.S.C. § 636(b)(1). After such review, the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions." Id.

Having reviewed the record *de novo* and having considered the issues raised in the Plaintiff's objections, the Court has determined to accept and adopt the recommendation of Magistrate Judge Treece for the reasons stated in the Report-Recommendation.

Accordingly, Defendant's motion to dismiss is GRANTED and Plaintiff's Second Amended Complaint is DISMISSED.

IT IS SO ORDERED.

Dated: September 28, 2011


Thomas J. McAvoy
Senior, U.S. District Judge