

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

HERMAN CRUZ,

Plaintiff,

v.

9:13-CV-1287

DARLENE ZWART, et al.,

Defendants.

DECISION & ORDER

Thomas J. McAvoy, Senior District Judge.

This *pro se* civil rights action pursuant to 42 U.S.C. § 1983 was referred to the Honorable David E. Peebles, United States Magistrate Judge, for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c).

In the Report-Recommendation, dated July 9, 2014, Magistrate Judge Peebles recommends that Plaintiff's *in forma pauperis* status be revoked, and this action dismissed without further order of the Court, unless within thirty days of the issuance of an order approving the recommendation, plaintiff pays the full \$400 filing fee. This recommendation is made based on material misrepresentations in Plaintiff's complaint concerning his prior litigation history.

Plaintiff filed a timely objection to the Report-Recommendation pursuant to 28 U.S.C. § 636(b)(1), claiming that he was completely forthcoming in his complaint. 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 the objection is made.” See 28 U.S.C. §636(b)(1). After such a 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, this Court has determined to accept the recommendation of Magistrate Judge Peebles for the reasons stated in the Report-Recommendation.

It is therefore ordered that:

(1) Plaintiff’s Objections, dkt. # 55, to the Report-Recommendation of Magistrate Judge Peebles, dkt. # 54, are hereby OVERRULED;

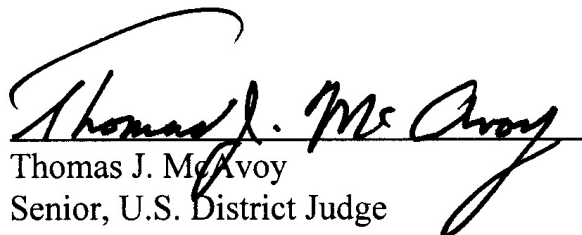
(2) The Report-Recommendation is hereby ADOPTED;

(3) Defendant’s motion to revoke Plaintiff’s IFP status, dkt. # 31, is hereby GRANTED;

(4) This action will be dismissed without further order of the court, unless, within thirty days of the issuance of this order, Plaintiff pays the \$400 filing fee.

IT IS SO ORDERED.

Dated: September,24 , 2014


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