

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

<p>USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 12/11/18</p>
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DAVID CHAVIS,

Plaintiff,

-v-

CITY OF NEW YORK, et al.,

Defendants.

17 Civ. 9518 (PAE) (BCM)

OPINION & ORDER

PAUL A. ENGELMAYER, District Judge:

Before the Court is the October 12, 2018 Report and Recommendation of Magistrate Judge Barbara C. Moses, recommending—in response to defendants’ motion to dismiss this action with prejudice for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b), or in the alternative to impose discovery sanctions on plaintiff pursuant to Rule 37(b)(2)(A)(v)—that the Court dismiss this action without prejudice. Dkt. 40 (the “Report”). For the following reasons, the Court adopts the Report in full.

I. Background

The Court incorporates by reference the summary of the facts and procedural history set forth in the Report. *See* Report at 1–4. The Court also notes that the copy of the Report mailed to plaintiff was returned undelivered on November 6, 2018.

II. Discussion

In reviewing a Report and Recommendation, a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). “To accept those portions of the report to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the

record.” *Ruiz v. Citibank, N.A.*, No. 10 Civ. 5950 (KPF) (RLE), 2014 WL 4635575, at *2 (S.D.N.Y. Aug. 19, 2014) (quoting *King v. Greiner*, No. 02 Civ. 5810 (DLC) (AJP), 2009 WL 2001439, at *4 (S.D.N.Y. July 8, 2009), *aff’d* 453 Fed. App’x 88 (2d Cir. 2011)); *see also, e.g., Mims v. Walsh*, No. 04 Civ. 6133 (BSJ) (FM), 2012 WL 6699070, at *2 (S.D.N.Y. Dec. 23, 2012) (quoting *Edwards v. Fischer*, 414 F. Supp. 2d 342, 346–47 (S.D.N.Y. 2006)).

Because neither party has submitted objections to the Report, review for clear error is appropriate. Careful review of Judge Moses’ thorough and well-reasoned Report reveals no facial error in its conclusions. Judge Moses’ handling of this matter, exemplified by her Report, was faithful throughout to the Second Circuit’s admonition that “*pro se* plaintiffs [] be granted special leniency regarding procedural matters.” *LeSane v. Hall’s Sec. Analyst, Inc.*, 239 F.3d 206, 209 (2d Cir. 2001). *See, e.g.*, Dkt. 33 (reminding plaintiff of his “obligation to participate in discovery and respond in a timely fashion to defendants’ discovery requests” and that his failure to do so may result in the Court “issu[ing] sanctions up to and including the dismissal of his case”); Dkt. 36 (permitting, *sua sponte*, “plaintiff one last chance to satisfy his obligations in this action” before ruling on defendants’ letter-motion seeking dismissal of plaintiff’s claims). While dismissal of plaintiff’s complaint was clearly warranted under the circumstances, Judge Moses’ decision to recommend that the dismissal be without prejudice reflected the same appropriate solicitude. The Court, therefore, adopts the Report in its entirety.

In addition, the Report expressly states that “[f]ailure to file timely objections will preclude appellate review.” Report at 10. Accordingly, each party’s failure to object to the Report operates as a waiver of appellate review. *See Monroe v. Hyundai of Manhattan & Westchester*, 372 F. App’x 147, 147–48 (2d Cir. 2010) (summary order) (quoting *Caidor v.*

Onondaga Cnty., 517 F.3d 601, 604 (2d Cir. 2008); *Frank v. Johnson*, 968 F.2d 298, 300 (2d Cir. 1992)).

CONCLUSION

For the reasons stated herein, the Court adopts the Report in full. Defendant's motion to dismiss is hereby granted without prejudice pursuant to Rule 41(b).

The Court respectfully directs the Clerk of Court to terminate the motion pending at docket 37.

SO ORDERED.



Paul A. Engelmayer
United States District Judge

Dated: December 11, 2018
New York, New York