

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

SHAWN WOODWARD,

Plaintiff,

v.

DECISION AND ORDER
09-CV-451

MANN, et al.,

Defendants.

Plaintiff, an inmate at Wende Correctional Facility, has brought the instant lawsuit against various New York State Department of Corrections and Community Services (“DOCCS”) employees. Plaintiff alleges that from December 2008 until in or around January 2009 defendants retaliated against him for exercising his First Amendment rights and subjected him to excessive force, in contravention of Section 1983 of Title 18 of the United States Code. The matter was referred to Magistrate Judge Jeremiah J. McCarthy pursuant to 28 U.S.C. §636(b)(1). Defendants filed a motion for summary judgment pursuant to Federal Rule of Civil Procedure 56. (Dkt. No. 94)

On May 8, 2013, Magistrate Judge McCarthy issued a Report and Recommendation recommending that defendants’ motion be granted to the extent of dismissing defendants Camp, Hojsan, Scissum, and all official capacity claims against the remaining defendants, but that the motion otherwise be

denied.¹ (Dkt. No. 117)

On May 28, 2013, defendants filed objections to specific findings in Magistrate Judge McCarthy's Report and Recommendation.² (Dkt. No. 118) Plaintiff filed a response to defendants' objections on June 18, 2013. (Dkt. No. 120) Defendants filed a reply on June 27, 2013 (Dkt. No. 121), and the Court deemed the matter submitted.

Pursuant to 28 U.S.C. §636(b)(1), this Court must make a *de novo* determination of those portions of the Report and Recommendation to which objections have been made. Upon a *de novo* review, and after reviewing the submissions from the parties, the Court hereby adopts Magistrate Judge McCarthy's recommendation granting in part and denying in part defendants' motion for summary judgment.³

Accordingly, for the reasons set forth in Magistrate Judge McCarthy's Report and Recommendation dated May 8, 2013, defendants' motion for summary judgment is granted in part and denied in part. Specifically, defendants'

¹ The dismissal of the claims against defendants Camp, Hojsan and Scissum were not opposed by plaintiff.

² Defendants do not object to the Magistrate Judge's denial of summary judgment with respect to the excessive force claims against defendant Mann and defendant Lewalski.

³ To accept the report and recommendation of a magistrate, to which no objection has been made, a district court need only satisfy itself that there is "no clear error on the face of the record." *Torres v. New York*, 976 F. Supp. 249 (SDNY 1997). The Court also fully adopts the Magistrate's findings to which no objections have been raised.

motion is granted to the extent of dismissing defendants Camp, Hojsan, Scissum, and all official capacity claims against the remaining defendants. Defendants' motion is otherwise denied.

The parties are instructed to appear before the Court on September 11, 2013 at 9:00am for a status conference or meeting to set a trial date.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE

DATED: August 7, 2013