

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ALEX RODRIGUEZ,

Plaintiff,

- against -

THE CITY OF NEW YORK; DET. WALTER
MARIN; DET. KATHLEEN GRANT; DET.
EHTASHAM KHAN; SGT. ADAN MUNOZ;
DET. ANDREW PRENDERGAST; DET.
VINCENT BARASE; CAPTAIN GREGORY
STEWART; UC #52; UC #286; JOHN DOES
1-15,

Defendants.

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ROSLYNN R. MAUSKOPF, United States District Judge.

Plaintiff Alex Rodriguez commenced this action on February 14, 2015, asserting claims for, *inter alia*, false arrest/imprisonment, excessive force, and malicious prosecution. (Compl. (Doc. No. 1) at 7-8; First Am. Compl. (Doc. No. 15) at 9-10; Second Am. Compl. (Doc. No. 19) at 9-10.) On July 13, 2016, the Magistrate Judge assigned to this matter, the Honorable Robert M. Levy, issued a *sua sponte* Report and Recommendation ("R&R") recommending that the Court dismiss this action for lack of prosecution. (R&R (Doc. No. 33) at 2.) Judge Levy reminded the parties that any objections to the R&R must be filed within fourteen (14) days. (*Id.*) That deadline has passed and no party has filed an objection.

Pursuant to 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure ("Rule") 72, the Court has reviewed the R&R for clear error and, finding none, concurs with and adopts the R&R in its entirety.

On April 18, 2016, Judge Levy granted the motion to withdraw of Ameer Benno, Rodriguez's counsel. (4/18/16 Order.) Judge Levy then scheduled a status conference for June

10, 2016 and directed Rodriguez to inform the Court in writing by May 19, 2016 whether he intended to continue the action. (*Id.*) Rodriguez did not appear for the June 10, 2016 status conference and did not communicate with the Court in any way. (*See* 6/10/16 Minute Entry)

After Rodriguez failed to appear at the June 10, 2016 status conference, Judge Levy set a conference for July 11, 2016, noting that “[i]f plaintiff fails to appear, the court will impose sanctions, including a recommendation that this case be dismissed for failure to prosecute.” (*Id.*) Rodriguez again failed to appear or otherwise communicate with the Court. (*See* 7/11/16 Minute Entry) On July 13, 2016 Judge Levy issued an R&R recommending dismissal for failure to prosecute, which was mailed to Rodriguez via First-Class Mail. (R&R (Doc. No. 33).) Rodriguez has not subsequently communicated with the Court.

Rule 41(b) governs the dismissal of an action for failure to prosecute, providing that “[i]f the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it.” Fed. R. Civ. P. 41(b). Rule 41(b) also “gives the district court authority to dismiss a plaintiff’s case *sua sponte* for failure to prosecute.” *LeSane v. Hall’s Sec. Analyst, Inc.*, 239 F.3d 206, 209 (2d Cir. 2001); *see Storey v. O’Brien*, 482 Fed. App’x 647, 648 (2d Cir. 2012). In considering whether dismissal is proper, courts consider the following factors: (1) the duration of plaintiff’s failure to comply with court orders; (2) whether plaintiff was on notice that failure to comply would result in dismissal; (3) whether defendant is likely to be prejudiced by further delay in the proceedings; (4) a balancing of the court’s interest in managing its docket with the plaintiff’s interest in receiving a fair chance to be heard; and (5) whether the judge has adequately considered a sanction less drastic than dismissal. *See Davis v. Town of Hempstead*, 597 Fed. App’x 31, 32 (2d Cir. 2015). Generally, no one factor is dispositive. *Baptiste v. Sommers*, 768 F.3d 212, 216 (2d Cir. 2014).

Here, the requisite factors, on balance, support Judge Levy's recommendation. Pursuant to 28 U.S.C. § 636(b) and Rule 72, the Court has reviewed the R&R for clear error and, finding none, concurs in its entirety. *See Covey v. Simonton*, 481 F. Supp. 2d 224, 226 (E.D.N.Y. 2007).

CONCLUSION

Accordingly, the Court adopts Judge Levy's unopposed R&R in its entirety, and this case is dismissed for failure to prosecute. The Clerk of Court is directed to enter judgment accordingly and close the case.

SO ORDERED.

s/Roslynn R. Mauskopf

ROSLYNN R. MAUSKOPF
United States District Judge

Dated: Brooklyn, New York
Mauskopf 2017