

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JAMES THOMAS,

Plaintiff,

-against-

NOT FOR PUBLICATION

MEMORANDUM AND ORDER

15-CV-5153(KAM)(RER)

CITY OF NEW YORK; CORRECTION
OFFICER EDWIN MONTANEZ; CORRECTION
OFFICER MICHAEL LYNCH; CORRECTION
OFFICER GERALD GATON; CORRECTION
OFFICER DANIELOR BLANCO; and
CAPTAIN BRIAN O'HARA,

Defendants.

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MATSUMOTO, United States District Judge:

Before the court is a Report and Recommendation (ECF No. 38, Report and Recommendation ("R&R")) from Magistrate Judge Ramon Reyes recommending that the court dismiss *pro se* plaintiff James Thomas' action, with prejudice, for failure to prosecute pursuant to Federal Rules of Civil Procedure 37 and 41. The R&R instructed that any objections to the R&R be submitted within fourteen (14) days of receipt of the R&R. (See ECF No. 38, R&R at 3.) Plaintiff was served the R&R on November 18, 2016, and accordingly, the date for filing any objections has since expired. Plaintiff has not filed any objections to the R&R, and for the reasons set forth below, the court adopts the thorough and well-reasoned R&R in its entirety and dismisses plaintiff's complaint.

Plaintiff James Thomas, proceeding *pro se*, commenced the action on September 1, 2015, against the City of New York and numerous correction officers at the Department of Correction, alleging that he was physically attacked and the subject of unjustified use of force by the correction officers. (ECF No. 1, Complaint at 4.) While under the pretrial supervision of Magistrate Judge Reyes, plaintiff refused to participate in discovery, failed to comply with court orders ordering him to provide defendants with responses to their discovery demands, and failed to appear for a scheduled telephone conference. (See ECF minute order dated June 24, 2016; ECF No. 36, letter from defendants regarding plaintiff's refusal to participate in telephonic status conference.) Plaintiff was advised by Magistrate Judge Reyes that his continued failure to respond to defendants' discovery demands would result in a recommendation that his case be dismissed for lack of prosecution and for failure to follow orders of the court. (ECF order dated August 22, 2016.) After plaintiff failed to respond to discovery, or otherwise respond to the court's order, Magistrate Judge Reyes issued the R&R recommending that the case be dismissed pursuant Rule 37(b)(2)(A) for failure to obey an order to provide discovery, and Rule 41(b) for failure to prosecute or to comply with a court order. Plaintiff has not submitted any objections to the R&R.

A district court "may accept, reject, or modify, in whole or in part, the findings and recommendations made by the magistrate judge" in an R&R. 28 U.S.C. § 636(b)(1)(C). Where no objections are made, the court may adopt the R&R without *de novo* review, see *Thomas v. Arn*, 474 U.S. 140, 150 (1985), and need only review for clear error on the face of the record. See Fed. R. Civ. P. 72(b); *Baptichon v. Nev. State Bank*, 304 F. Supp. 2d 451, 453 (E.D.N.Y. 2004), *aff'd*, 125 F. App'x 374 (2d Cir. 2005).

The court has reviewed the unopposed R&R for clear error, including the factors prescribed by the Second Circuit for the court's consideration of dismissals pursuant to Federal Rules of Civil Procedure 37 and 41. See *Lee v. Katz*, 669 F. App'x 57, 58 (2d Cir. 2016) (summary order); *Drake v. Norden Sys., Inc.*, 375 F.3d 248, 254 (2d Cir. 2004). The court finds no error and adopts the R&R in its entirety pursuant to 28 U.S.C. § 636(b)(1). Accordingly, the case is dismissed pursuant to Federal Rules of Civil Procedure 37(b)(2)(A) and 41(b). The Clerk of Court is respectfully directed to enter judgment in favor of defendant, serve a copy of this Memorandum and Order, the judgment, and an appeals packet on plaintiff, note service on the docket, and close the case.

SO ORDERED.

Dated: September 19, 2017
Brooklyn, New York

_____/s/_____
Hon. Kiyo A. Matsumoto
United States District Judge