

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

**FILED**  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.

★ AUG 18 2017 ★

-----X  
ROBERT PONDEXTER,

**BROOKLYN OFFICE**

Plaintiff,

-against-

JACK'S CARTAGE, INC. and DT  
TRUCKING,

NOT FOR PUBLICATION  
**MEMORANDUM & ORDER**  
No. 16-CV-4803 (CBA) (RML)

Defendants.  
-----X

**AMON, United States District Judge:**

On August 26, 2016, Plaintiff Robert Pondexter filed the instant action against Defendants Jack's Cartage, Inc. and DT Trucking, asserting tort claims under New York law. (D.E. # 1.) After Defendants failed to respond to the Complaint by their September 23, 2016, deadline, the Honorable Steven L. Tiscione, United States Magistrate Judge, who then presided over pre-trial proceedings, ordered Plaintiff to file a status report by October 28, 2016. (D.E. dated Oct. 25, 2016.) Plaintiff having not filed the report, Magistrate Judge Tiscione reasonably granted an order extending the deadline to November 15, 2016, and noted that another failure to file would result in a sua sponte Report and Recommendation ("R&R") recommending dismissal of the case for failure to prosecute. (D.E. dated Nov. 8, 2016.)

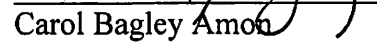
Plaintiff again failed to abide by Magistrate Judge Tiscione's order, and the Magistrate Judge issued the R&R on January 18, 2017. (D.E. # 7.) In the R&R, Magistrate Judge Tiscione correctly found that Plaintiff's failure to abide by his pre-trial orders, "essential[] unreachab[ility]," and "pattern of dilatory conduct," as well as his "ample notice" to Plaintiff of potential dismissal and the presumption of prejudice against Defendants as established by case law, heavily counseled for dismissal. (See id. at 3-5.)

Since Magistrate Judge Tiscione's issuance of the R&R, Defendants have answered the Complaint, (see D.E. # 9); the case has been consolidated with a related action, (see D.E. dated May 11, 2017); and litigation of the claims is ongoing. In light of its preference for having cases decided on the merits, the Court declines to adopt Magistrate Judge Tiscione's recommendation that the case be dismissed. All of the parties are advised, however, that further dilatory conduct will not be tolerated.

SO ORDERED.

Dated: August 18, 2017  
Brooklyn, New York

s/Carol Bagley Amon

  
Carol Bagley Amon  
United States District Judge