

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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Stephen LoCurto,

Plaintiff,

-against-

United States Bureau of Prisons, *et al.*,

Defendants.

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DIANE GUJARATI, United States District Judge:

On August 12, 2024, Magistrate Judge Sanket J. Bulsara issued a Report and Recommendation (“R&R”) recommending that Defendants’ Motion to Dismiss, ECF No. 29, be granted in part and denied in part. *See generally* R&R, ECF No. 32. More specifically, Judge Bulsara recommended dismissal of all of *pro se* Plaintiff’s claims except the *Bivens* claim against Defendant Hernandez based upon the Eighth Amendment. *See* R&R at 18.¹

Defendants filed objections to the portion of the R&R recommending denial of Defendants’ Motion to Dismiss. *See* ECF No. 34 (requesting that the Court adopt the portion of the R&R recommending dismissal of Plaintiff’s claims, decline to adopt the portion of the R&R relating to Plaintiff’s *Bivens* claim against Defendant Hernandez, and grant the Motion to Dismiss in its entirety).

Plaintiff filed various letters referencing the R&R, *see* ECF Nos. 33, 35, 39, 41, 43, 44, 45, 49, 50, and 51, which the Court construes liberally, *see Erickson v. Pardus*, 551 U.S. 89, 94 (2007). Plaintiff argues that “Defendants[’] objections fall short in every man[ne]r” and Plaintiff

¹ Familiarity with the procedural history and background of this action and of Case No. 23-CV-00386, which was brought by Plaintiff on the same day as the instant action, is assumed herein.

appears to request, *inter alia*, that the Court review the R&R *de novo*. See ECF No. 51 at 1.

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); *see also* Fed. R. Civ. P. 72(b)(3). A district court “shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1); *see also* Fed. R. Civ. P. 72(b)(3) (providing that a district court “must determine *de novo* any part of the magistrate judge’s disposition that has been properly objected to”); *Arista Recs., LLC v. Doe 3*, 604 F.3d 110, 116 (2d Cir. 2010) (“As to a dispositive matter, any part of the magistrate judge’s recommendation that has been properly objected to must be reviewed by the district judge *de novo*.”); *Lorick v. Kilpatrick Townsend & Stockton LLP*, No. 18-CV-07178, 2022 WL 1104849, at *2 (E.D.N.Y. Apr. 13, 2022). To accept those portions of an R&R to which no timely objection has been made, however, “a district court need only satisfy itself that there is no clear error on the face of the record.” *Lorick*, 2022 WL 1104849, at *2 (quoting *Ruiz v. Citibank, N.A.*, No. 10-CV-05950, 2014 WL 4635575, at *2 (S.D.N.Y. Aug. 19, 2014)); *see also Jarvis v. N. Am. Globex Fund, L.P.*, 823 F. Supp. 2d 161, 163 (E.D.N.Y. 2011).

In light of Defendants’ objections to the R&R and of Plaintiff’s various filings, and out of an abundance of caution, the Court reviews *de novo* the entirety of the R&R. A review of the R&R, the record, and the applicable law reveals that Judge Bulsara properly concluded that the Motion to Dismiss, ECF No. 29, should be granted in part and denied in part. The Court adopts the R&R.

The Motion to Dismiss, ECF No. 29, is GRANTED in part and DENIED in part as set forth in the R&R. *See* R&R at 18.

Although Plaintiff paid the filing fee to commence this action, the Court certifies

pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith and therefore denies *in forma pauperis* status for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

The Clerk of Court is directed to mail a copy of this Order to Plaintiff.

SO ORDERED.

/s/ Diane Gujarati
DIANE GUJARATI
United States District Judge

Dated: November 25, 2024
Brooklyn, New York