

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DAMANTANG SYLLA, :
: :
Plaintiff, :
: :
-against- :
: :
PETER RUH and other unknown agents from :
the U.S. Postal Service, :
: :
Defendants. :
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ORDER ADOPTING REPORT
AND RECOMMENDATION
10-CV-3325 (JFB) (GRB)

JOSEPH F. BIANCO, District Judge:

Pro se plaintiff Damantang Sylla (“Sylla” or “plaintiff”) filed the complaint in this action on July 15, 2010. An amended complaint was filed on September 1, 2011, adding plaintiff Mohamed Nabe (“Nabe”) to the action. On November 23, 2011, defendant Ruh filed a motion for summary judgment. Plaintiffs filed an opposition on December 30, 2011 and defendant replied on January 11, 2012. On January 26, 2012, plaintiffs filed a motion for summary judgment, which defendant Ruh opposed on February 16, 2012. By Orders dated February 15, 2012 and February 16, 2012, the Court referred both motions for summary judgment to Magistrate Judge Brown for a Report and Recommendation. On August 30, 2012, Magistrate Judge Brown issued a Report and Recommendation, which the Court adopted by Order dated September 24, 2012. Accordingly, (1) summary judgment was granted as to Nabe and he was dismissed as a plaintiff in the case; (2) summary judgment was granted as to Sylla’s Fourth Amendment claims; and (3) plaintiffs’ motion for summary judgment was denied. Plaintiff was directed to file a second amended complaint by October 26, 2012.

Plaintiff filed a second amended complaint against defendant Ruh on October 10, 2012. The Court held a telephone pre-motion conference on November 16, 2012, during which it set a briefing schedule for defendant Ruh’s second motion for summary judgment. Defendant Ruh filed his

second motion for summary judgment on December 21, 2012. Plaintiff filed an opposition and cross motion for summary judgment on February 7, 2013 and defendant Ruh filed a reply on February 19, 2013. By Order dated May 9, 2013, the Court referred defendant Ruh's second motion for summary judgment to Magistrate Judge Brown for a Report and Recommendation. By Order dated May 21, 2013, Magistrate Judge Brown directed plaintiff to file any additional evidence regarding his purported filing of an administrative tort claim in this matter on or before June 11, 2013. (*See* ECF No. 68 ("Because this is a critical issue in the case, and based upon plaintiff's *pro se* status, the undersigned wants to afford the plaintiff an opportunity to submit any other information or documents on this point. Plaintiff should be advised that failure to submit such documentation will likely result in a recommendation that summary judgment be entered against him with respect to his FTCA claims.")) To date, plaintiff has not filed any such evidence.

On June 24, 2013, Magistrate Judge Brown issued a Report and Recommendation (the "R&R"), recommending that summary judgment be granted in defendant Ruh's favor and that the matter be closed. The R&R further instructed that any objections to the R&R be submitted within fourteen (14) days of service of the R&R. (*See* Report and Recommendation dated June 24, 2013, at 8-9.) As indicated by the docket sheet, a copy of the R&R was mailed to plaintiff by Magistrate Judge Brown's Chambers on June 24, 2013. (*See* ECF No. 69.) No objections have been filed to date, although the date for filing any objections has expired.

A district judge may accept, reject, or modify, in whole or in part, the findings and recommendations of the Magistrate Judge. *See DeLuca v. Lord*, 858 F. Supp. 1330, 1345 (S.D.N.Y. 1994); *Walker v. Hood*, 679 F. Supp. 372, 374 (S.D.N.Y. 1988). As to those portions of a report to which no "specific written objections" are made, the Court may accept the findings contained therein, as long as the factual and legal bases supporting the findings are not clearly erroneous. *See* Fed. R. Civ. P. 72(b); *Thomas v. Arn*, 474 U.S. 140, 149 (1985); *Greene v. WCI Holdings Corp.*, 956

F. Supp. 509, 513 (S.D.N.Y. 1997).

Having conducted a review of the full record and the applicable law, and having reviewed the R&R for clear error, the Court adopts the findings and recommendations contained in the well-reasoned and thorough R&R in their entirety. Even under a *de novo* standard, the Court adopts the R&R in its entirety.

Accordingly, IT IS HEREBY ORDERED that defendant Ruh's motion for summary judgment is granted and plaintiff's cross motion for summary judgment is denied. The Clerk of the Court shall enter judgment accordingly and close the case. 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; therefore, *in forma pauperis* status is denied for purposes of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

JOSEPH F. BIANCO
UNITED STATES DISTRICT JUDGE

Dated: July 16, 2013
Central Islip, New York