

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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RANDY COLON and HUGH SMITH,

Plaintiffs,

-against-

MEMORANDUM & ORDER  
12-CV-4466 (JS) (AYS)

COUNTY OF NASSAU; MICHAEL SPOSATO,  
Sheriff of Nassau County; ARMOR  
CORRECTIONAL HEALTH, INC.; DR. KAY,  
M.D.; DR. OMANU, M.D.; DR. VINCENT  
MANETTI, M.D.; NURSING ADMINISTRATOR  
HAILEY; and DR. SANTARELLI, D.D.S.,

Defendants.

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APPEARANCES

For Plaintiffs:

Randy Colon

Randy Colon, pro se

15-A-1535

Great Meadow Correctional Facility

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For Defendants:

County of Nassau

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Michael Sposato,  
Armor Correctional  
Health, Inc, Dr. Kay,  
Dr. Manetti, Nursing  
Administrator Hailey  
and Dr. Santarelli

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SEYBERT, District Judge:

Pending before the Court are: (1) Defendants Armor Correctional Health, Inc., Dr. Kay, Dr. Vincent Manetti, and Dr. Santarelli's (collectively, the "Armor Defendants") March 21, 2017 letter motion to dismiss for failure to prosecute pursuant to Rule 41(b) of the Federal Rules of Civil Procedure (Defs.' Mot., Docket Entry 114) and (2) Magistrate Judge Anne Y. Shields' Report and Recommendation ("R&R") recommending that the Court grant the Armor Defendants' motion to dismiss. (R&R, Docket Entry 121.) For the following reasons, the Court ADOPTS Judge Shields' R&R in its entirety.

#### BACKGROUND

On September 6, 2012, pro se Plaintiff Daniel Miller<sup>1</sup> commenced this action with five other pro se plaintiffs, including Hugh Smith ("Smith") pursuant to 42 U.S.C. § 1983, alleging various violations of his constitutional rights by Defendants County of Nassau, Sheriff of Nassau County Michael Sposato, and the Armor Defendants. (See generally Compl., Docket Entry 1.) Smith and Randy Colon ("Colon") are the only remaining plaintiffs in this action. (R&R at 1-2.)

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<sup>1</sup> Plaintiffs Daniel Miller, Edward Vaiana, Elvi Rodriguez, and Tyron Maynor have been terminated from this action. (See Nov. 20, 2012 Order, Docket Entry 24; Oct. 6, 2016 Mem. & Order, Docket Entry 98.)

On March 21, 2017, the Armor Defendants addressed to Judge Shields a motion to dismiss Smith's claims for failure to prosecute based on his non-compliance with court orders. (Defs.' Mot.) On May 5, 2017, Judge Shields issued her R&R. (See generally R&R.)

#### THE R&R

In her R&R, Judge Shields recommended that this Court grant the Armor Defendants' motion to dismiss, with prejudice. (R&R at 7-8.) Judge Shields found that Smith "has repeatedly failed to comply with the Court's orders" and "failed to make any appearance on this docket since December 6, 2016." (R&R at 6.) Moreover, Smith has failed to comply with five of Judge Shields' orders since that time. (R&R at 6.) Judge Shields found that Smith's "failure to follow Court directives and his lack of prosecution has an adverse impact not only on the Court's calendar, but also on Defendants, who already bear the costs and burdens incidental to defending civil litigation." (R&R at 6.) In light of the prejudice resulting from Smith's unreasonable delay and the fact that lesser sanctions would not be effective, Judge Shields recommended that the undersigned grant the Armor Defendants' motion and dismiss Smith's claims with prejudice. (R&R at 7.)

#### DISCUSSION

In reviewing an R&R, a district court "may accept, reject, or modify, in whole or in part, the findings and

recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). If no timely objections have been made, the “court need only satisfy itself that there is no clear error on the face of the record.” Urena v. New York, 160 F. Supp. 2d 606, 609-10 (S.D.N.Y. 2001) (internal quotation marks and citation omitted).

Objections were due within fourteen (14) days of service of the R&R. The time for filing objections has expired, and no party has objected. Accordingly, all objections are hereby deemed to have been waived.

Upon careful review and consideration, the Court finds Judge Shields’ R&R to be comprehensive, well-reasoned, and free of clear error, and it ADOPTS the R&R in its entirety.

#### CONCLUSION

For the foregoing reasons, Judge Shields’ R&R (Docket Entry 121) is ADOPTED in its entirety. The Armor Defendants’ motion to dismiss (Docket Entry 114) is GRANTED and Smith’s claims are DISMISSED with prejudice. The Clerk of the Court is directed to TERMINATE Smith as a plaintiff in this matter.

The Armor Defendants are directed to serve a copy of this Order by overnight mail and first-class mail to Plaintiffs at their last-known addresses and to file proof of service on ECF no later than two (2) days after the date of this Order.

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 in forma pauperis status is DENIED for the purpose of any appeal. See Coppedge v. United States, 369 U.S. 438, 444-45, 82 S. Ct. 917, 8 L. Ed. 2d 21 (1962).

SO ORDERED.

/s/ JOANNA SEYBERT  
Joanna Seybert, U.S.D.J.

Dated: February 14, 2018  
Central Islip, New York