# UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF NEW YORK

#### ZACHARY STRAUSS,

Plaintiff,

-against-

1:21-CV-0414 (LEK/CFH)

MICHAEL L. DWYER,

Defendant.

#### **DECISION AND ORDER**

### I. INTRODUCTION

Plaintiff Zachary Strauss brings this pro se action against defendant Michael Dwyer. Plaintiff commenced this action on April 12, 2021. <u>See</u> Dkt. No. 1 ("Complaint"). On the same day, Plaintiff filed an application to proceed in forma pauperis ("IFP Application"). <u>See</u> Dkt. No. 2.

On August 17, 2021, the Honorable Christian Hummel, United States Magistrate Judge, granted the IFP Application and recommended that Plaintiff's Complaint be dismissed without prejudice and without leave to amend. <u>See</u> Dkt. No. 4 ("Report-Recommendation") at 1. No objections to the Report-Recommendation have been filed in this case. <u>See</u> Docket.

For the reasons discussed below, the Court adopts the Report-Recommendation in its entirety.

# II. BACKGROUND

#### A. Factual History

Plaintiff's factual allegations are detailed in Judge Hummel's Report-Recommendation, familiarity with which is assumed. <u>See</u> R. & R. at 4–6.

#### III. LEGAL STANDARD

Within fourteen days after a party has been served with a copy of a magistrate judge's report-recommendation, the party "may serve and file specific, written objections to the proposed findings and recommendations." Fed. R. Civ. P. 72(b); see also L.R. 72.1(c). A 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). However, if no objections are made, or if an objection is general, conclusory, perfunctory, or a mere reiteration of an argument made to the magistrate judge, a district court need review that aspect of a reportrecommendation only for clear error. See Barnes v. Prack, No. 11-CV-857, 2013 WL 1121353, at \*1 (N.D.N.Y. Mar. 18, 2013); see also Demuth v. Cutting, No. 18-CV-789, 2020 WL 950229, at \*2 (N.D.N.Y. Feb. 27, 2020) (Kahn, J.). "[I]t is established law that a district judge will not consider new arguments raised in objections to a magistrate judge's report and recommendation that could have been raised before the magistrate but were not." Zhao v. State Univ. of N.Y., 04-CV-0210, 2011 WL 3610717, at \*1 (E.D.N.Y. Aug. 15, 2011) (internal quotation marks and citation omitted); see also Hubbard v. Kelley, 752 F. Supp. 2d 311, 312–13 (W.D.N.Y. 2009) ("In this circuit, it is established law that a district judge will not consider new arguments raised in objections to a magistrate judge's report and recommendation that could have been raised before the magistrate but were not.") (internal quotation marks omitted). "A [district] judge . . . may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." § 636(b).

#### **IV. DISCUSSION**

Plaintiff did not file objections to the Report-Recommendation. See Docket.

Consequently, the Court reviews the Report-Recommendation for clear error and finds none.

Therefore, the Court adopts the Report-Recommendation in its entirety.

## V. CONCLUSION

Accordingly, it is hereby:

ORDERED, that the Report-Recommendation (Dkt. No. 4) is APPROVED and

ADOPTED in its entirety; and it is further

## ORDERED, that the Court DISMISS WITHOUT PREJUDICE and WITHOUT

LEAVE TO AMEND Plaintiff's Complaint (Dkt. No. 1) because the Court lacks subject matter

jurisdiction; and it is further

ORDERED, that the Clerk of the Court shall serve a copy of this Decision and Order on

all parties in accordance with the Local Rules.

#### IT IS SO ORDERED.

DATED:

October 1, 2021 Albany, New York

LAWRENCE E. KAHN United States District Judge