

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

---

**TIMOTHY A. BARON,**

**Plaintiff,**

v.

**3:13-CV-153  
(FJS/DEP)**

**DICK MILLER, in his official capacity as city Mayor,  
of the City of Oneonta, in his official capacity as President  
of the Board of Foothills Performing Center, Inc., of  
Oneonta, New York and in his individual capacity;  
TIMOTHY WEST, JR., New York State Trooper, in  
his individual capacity; JACOB LAKOMSKI, New  
York State Trooper, in his individual capacity; and  
FOOTHILLS PERFORMING ARTS CENTER, INC.,**

**Defendants.**

---

**APPEARANCES**

**OF COUNSEL**

**TIMOTHY A. BARON**

Oneonta, New York 13820  
Plaintiff *pro se*

**LEMIRE JOHNSON, LLC**

P. O. Box 2485  
2534 Route 9  
Malta, New York 12020  
Attorneys for Defendant Miller

**GREGG T. JOHNSON, ESQ.**

**APRIL J. LAWS, ESQ.  
MARY E. KISSANE, ESQ.  
TIMOTHY J. HIGGINS, ESQ.**

**OFFICE OF NEW YORK STATE  
ATTORNEY GENERAL**

The Capitol  
Albany, New York 12224  
Attorneys for Defendants West and Lakomski

**AARON M. BALDWIN, AAG**

**CORRIGAN, McCOY & BUSH, PLLC**

220 Columbia Turnpike  
Rensselaer, New York 12144  
Attorneys for Defendant Foothills Performing  
Arts Center, Inc.

**SCOTT W. BUSH, ESQ.**

**SCULLIN, Senior Judge**

## ORDER

Currently before the Court is Magistrate Judge Peebles' April 29, 2014 Report and Recommendation, *see* Dkt. No. 68, and Plaintiff's objections thereto, *see* Dkt. No. 69.

After reviewing a magistrate judge's recommendations, the district court may accept, reject or modify those recommendations. *See* 28 U.S.C. § 636(b)(1). The court reviews *de novo* those portions of the magistrate judge's recommendations to which a party objects. *See Pizzaro v. Bartlett*, 776 F. Supp. 815, 817 (S.D.N.Y. 1991). ""If, however, the party makes only conclusory or general objections, . . . the Court reviews the Report and Recommendation only for clear error."" *Salmini v. Astrue*, No. 3:06-CV-458, 2009 WL 179741, \*1 (N.D.N.Y. June 23, 2009) (quoting [*Farid v. Bouey*, 554 F. Supp. 2d 301] at 306 [(N.D.N.Y. 2008)] (quoting *McAllan v. Von Essen*, 517 F. Supp. 2d 672, 679 (S.D.N.Y. 2007))). Finally, even if the parties file no objections, the court must ensure that the face of the record contains no clear error. *See Wilds v. United Parcel Serv., Inc.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003) (quotation omitted).

In light of Plaintiff's conclusory objection to Magistrate Judge Peebles' recommendations, the Court has reviewed Magistrate Judge Peebles' April 29, 2014 Report and Recommendation for clear error; and, finding none, the Court hereby

**ORDERS** that Magistrate Judge Peebles' April 29, 2014 Report and Recommendation is **ACCEPTED in its entirety** for the reasons stated therein; and the Court further

**ORDERS** that Defendants' motions to dismiss, *see* Dkt. Nos. 9, 12, 23, are **GRANTED**; and the Court further

**ORDERS** that the following of Plaintiff's claims are **DISMISSED with leave to replead**: (1) section 1983 claims against all Defendants, including the conspiracy claim asserted against all Defendants and the equal protection claim asserted against the Trooper Defendants;

(2) section 1981 claims against the City Defendants and Defendant Foothills; and (3) sections 2000 and 2000a-2 claims against Defendant Foothills; and the Court further

**ORDERS** that Plaintiff's CAT claim and his claims arising under section 2000a and 2000a-2, insofar as they seek monetary relief, are **DISMISSED with prejudice**; and the Court further


**ORDERS** that the City Defendants' motion to strike certain portions of the amended complaint, *see* Dkt No. 9, is **DENIED**; and the Court further

**ORDERS** that Plaintiff's motion for leave to amend, *see* Dkt. No. 24, is **GRANTED in part**, and Plaintiff is permitted to submit a revised second amended complaint for filing within **thirty (30) days of the date of this Order**, subject to dismissal of all claims on behalf of Plaintiff Nuphlo Entertainment, Inc., as well as those claims dismissed with prejudice; and the Court further

**ORDERS** that the Clerk of the Court shall serve a copy of this Order on the parties in accordance with the Local Rules.

**IT IS SO ORDERED.**

Dated: August 13, 2014  
Syracuse, New York

  
\_\_\_\_\_  
Frederick J. Scullin, Jr.  
Senior United States District Court Judge