

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DANIEL RAY BONILLA,

Plaintiff,

-against-

3:15-cv-1276 (LEK/DEP)

NEW YORK STATE,

Defendant.

ORDER

This matter comes before the Court following a Report-Recommendation filed on November 12, 2015, by the Honorable David E. Peebles, U.S. Magistrate Judge, pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3. Dkt. No. 4 (“Report-Recommendation”). On December 28, 2015, the Court received a Letter from Plaintiff Daniel Ray Bonilla (“Plaintiff”) informing the Court that due to a change of address, Plaintiff had not received any docket entries in this case. Dkt. No. 6 (“Letter Request”). In the interest of justice, the Court granted Plaintiff an extension of time in which to file objections to the Report-Recommendation. Dkt. No. 7 (“Text Order”). Plaintiff timely filed a Response on January 11, 2016. Dkt. No. 8 (“Response”).

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); L.R. 72.1(c). 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 report-recommendation only for clear error. *Chylinski v. Bank of Am., N.A.*, 434 F. App’x 47, 48 (2d Cir. 2011); *Barnes v. Prack*, No. 11-CV-0857, 2013 WL 1121353, at *1 (N.D.N.Y. Mar. 18, 2013); *Farid v. Bouey*, 554 F. Supp. 2d

301, 306-07 & n.2 (N.D.N.Y. 2008); see also *Machicote v. Ercole*, No. 06 Civ. 13320, 2011 WL 3809920, at *2 (S.D.N.Y. Aug. 25, 2011) (“[E]ven a *pro se* party’s objections to a Report and Recommendation must be specific and clearly aimed at particular findings in the magistrate’s proposal, such that no party be allowed a second bite at the apple by simply relitigating a prior argument.”). “A [district] judge . . . 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).

Judge Peebles recommended that Plaintiff’s Complaint be dismissed without prejudice and with leave to amend on the basis that the only named Defendant, the State of New York, is immune from suit pursuant to the Eleventh Amendment. Report-Rec. at 7-8. In his Response, Plaintiff does not assert any objections to Judge Peebles Report-Recommendation, and instead has filed an Amended Complaint. Resp. Accordingly, the Court has reviewed the Report-Recommendation for clear error and has found none.

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 Complaint (Dkt. No. 1) is **DISMISSED without prejudice** for failure to state a claim under 28 U.S.C. § 1915(e)(2)(B)(ii); and it is further

ORDERED, that the proposed Amended Complaint is now the operative pleading in this action; and it is further

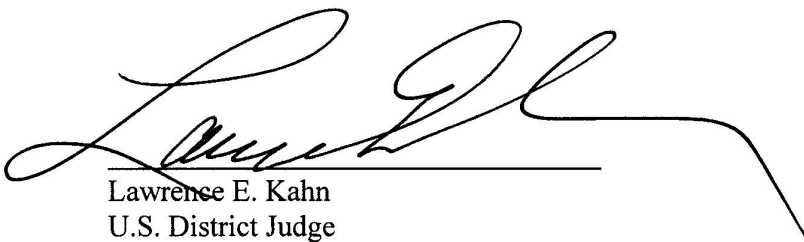
ORDERED, that the Clerk of the Court forward the proposed Amended Complaint (Dkt. No. 8) to U.S. Magistrate Judge David E. Peebles for initial review; and it is further

ORDERED, that the Clerk of the Court serve a copy of this Order on all parties in

accordance with the Local Rules.

IT IS SO ORDERED.

DATED: February 09, 2016
Albany, New York



Lawrence E. Kahn
U.S. District Judge