

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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Terris Hanks,

Plaintiff,

-v.-

5:09-CV-1109  
(NPM)

John Doe #1, *Cricket Communications  
Inc., NY*, and John Doe #2, *Sprint-Nextel  
Corp. LP, NY*,

Defendants.

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APPEARANCES:

OF COUNSEL:

Terris Hanks  
Plaintiff, *pro se*  
08-B-0878  
Five Points Correctional Facility  
Caller Box 119  
Romulus, NY 14541

Neal P. McCurn, Senior District Judge

**ORDER ADOPTING REPORT AND RECOMMENDATION**

Presently before the court is the Report and Recommendation of Honorable George H. Lowe, USMJ, dated May 18, 2010 (Dkt. No. 14), recommending that Sprint-Nextel Corporation's motion to intervene be granted, that the motion to dismiss for failure to state a claim upon which relief may be granted by defendant, John Doe #2 be granted, that the complaint be dismissed *sua sponte* against John

Doe #1 for failure to state a claim upon which relief may be granted, and that the request by plaintiff, Terris Hanks, for assistance with service be denied as moot (“Report”). See Dkt. No. 14. Also before the court is a letter motion from plaintiff requesting that the filing fee be returned. See Dkt. No. 15.

In his Report, Magistrate Judge Lowe advised plaintiff that failure to file timely objections to the Report would preclude appellate review. Plaintiff nonetheless failed to object to the Report. Where no party has filed an objection, the court reviews the findings and recommendations of a magistrate judge for clear error. See Whitney Lane Holdings, LLC v. Don Realty, LLC, No. 08-cv-775, 2010 WL01257879, at \*1 (N.D.N.Y. Mar. 26, 2010). Having found no clear error, the Report is adopted in its entirety.

Remaining to be addressed is plaintiff’s request for return of the filing fee. Under the circumstances present here, a return of the filing fee is not appropriate. See Glendora v. Press, No. 1:07-CV-0940, 2007 WL 3254242, at \*3 (N.D.N.Y. Nov. 2, 2007). Accordingly, plaintiff’s request in this regard is denied.

Therefore, it is ORDERED that the motion to intervene on behalf of defendant John Doe #2, see Dkt. No. 7, filed by Sprint-Nextel Corporation is GRANTED, and it is further

ORDERED that the motion to dismiss the complaint for failure to state a claim upon which relief may be granted on behalf of John Doe #2, see Dkt. No. 7, is GRANTED, and it is further

ORDERED that the complaint be DISMISSED *sua sponte* against defendant John Doe #1 for failure to state a claim upon which relief may be granted, and it is further

ORDERED that plaintiff's letter motion requesting assistance with service, see Dkt. No. 6, be DENIED as moot, and it is further

ORDERED that plaintiff's letter motion, see Dkt. No. 15, requesting return of the filing fee is DENIED.

The Clerk of the Court shall serve copies of the electronically-available-only decisions cited herein<sup>1</sup> and a copy of this Order on plaintiff by regular mail.

IT IS SO ORDERED.

DATED: June 11, 2010  
Syracuse,

New York



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Neal P. McCurn  
Senior U.S. District Judge

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<sup>1</sup> Those decisions include Whitney Lane Holdings, LLC v. Don Realty, LLC, No. 08-cv-775, 2010 WL01257879, at \*1 (N.D.N.Y. Mar. 26, 2010) and Glendora v. Press, No. 1:07-CV-0940, 2007 WL 3254242, at \*3 (N.D.N.Y. Nov. 2, 2007).