

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

ROBBIE O. MITCHELL,

Plaintiff,

vs.

5:17-CV-546

(MAD/ATB)

**SUNY UPSTATE MEDICAL UNIVERSITY;
BRIAN C. REED, *Materials Management
Admin*; and LINDA A. MAZZONE, *Leave
Coordinator*,**

Defendants.

APPEARANCES:

OF COUNSEL:

ROBBIE O. MITCHELL

1924 E. Genesee Street, Apt. 4

Syracuse, New York 13210

Plaintiff *pro se*

Mae A. D'Agostino, U.S. District Judge:

ORDER

Plaintiff commenced this action on May 18, 2017, alleging employment discrimination in violation of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 *et seq.* *See* Dkt. No. 1. In an Order and Report-Recommendation dated May 22, 2017, Magistrate Judge Baxter recommended that the Court dismiss with prejudice the claims against Defendants Reed and Mazzone because individuals cannot be held liable under the ADA. *See* Dkt. No. 5 at 4. As to Defendant SUNY Upstate, Magistrate Judge Baxter recommended that the complaint be dismissed without prejudice since it is not clear that amendment would be futile. *See id.* at 7-8.

Although Plaintiff did not object to the Order and Report-Recommendation, on June 15, 2017, Plaintiff filed an amended complaint. *See* Dkt. No. 6. Currently before the Court is Magistrate Judge Baxter's Order and Report-Recommendation.

When a party files specific objections to a magistrate judge's report-recommendation, the district court makes 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, when a party files "[g]eneral or conclusory objections or objections which merely recite the same arguments [that he presented] to the magistrate judge," the court reviews those recommendations for clear error. *O'Diah v. Mawhir*, No. 9:08-CV-322, 2011 WL 933846, *1 (N.D.N.Y. Mar. 16, 2011) (citations and footnote omitted). After the appropriate review, "the court 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)(1).

Having reviewed the May 22, 2017 Order and Report-Recommendation, the Court finds that Magistrate Judge Baxter correctly determined that the claims against the individual Defendants should be dismissed with prejudice and that the claims against Defendant SUNY Upstate should be dismissed without prejudice. Since Plaintiff has since filed an amended complaint and renewed application for leave to proceed *in forma pauperis*, the Court will refer this matter to Magistrate Judge Baxter for review of those filings.

Accordingly, the Court hereby

ORDERS that Magistrate Judge Baxter's Order and Report-Recommendation is **ADOPTED** in its entirety for the reasons stated therein; and the Court further

ORDERS that this matter is referred to Magistrate Judge Baxter for review of the amended complaint and application for leave to proceed *in forma pauperis*.

IT IS SO ORDERED.

Dated: June 22, 2017
Albany, New York



Mae A. D'Agostino
U.S. District Judge