

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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MARK B. MILLER,

Plaintiff,

vs

6:10-CV-14

DARYL BAZAN, NYS Trooper Inv.; SAMUEL THOMPSON, NYS Trooper; LOUISE K. SIRA, Fulton County District Attorney; CITY OF JOHNSTOWN; PATRICIA ESCHLER, Chief Clerk Fulton County Supreme Court; and KRIS SINGH, Fulton County Supreme Court Law Clerk,

Defendants.

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APPEARANCES:

MARK B. MILLER

Plaintiff, Pro Se

09-A-4876

Clinton Correctional facility

PO Box 2002

Dannemora, NY 12929

DAVID N. HURD

United States District Judge

**DECISION and ORDER**

Plaintiff, Mark B. Miller, commenced this civil rights action in January 2010, pursuant to 42 U.S.C. § 1983. By Report-Recommendation dated May 5, 2010, the Honorable George H. Lowe, United States Magistrate Judge, recommended that the first amended complaint (Docket No. 5) be dismissed for failure to state a claim on which relief could be granted; that plaintiff be allowed to file a second amended complaint within thirty days of the filing date of any order adopting the report-recommendation; that if plaintiff failed to timely file a second amended complaint, the clerk should enter judgment dismissing this

action without prejudice, and without further order of the court due to plaintiff's failure to comply with the terms of any order adopting the report-recommendation; and that upon the filing of a second amended complaint, the file be returned for further review. No objections to the Report-Recommendation have been filed; however, the plaintiff did file a second amended complaint on June 4, 2010.

Based upon a careful review of the file, and the recommendations of Magistrate Judge Lowe, the Report-Recommendation is accepted and adopted in all respects. See 28 U.S.C. 636(b)(1).

Accordingly, it is

ORDERED that

1. The first amended complaint (Docket No. 5) is DISMISSED for failure to state a claim on which relief can be granted;
2. The Magistrate Judge's recommendations that plaintiff be allowed to file such second amended complaint is GRANTED; and
3. The Clerk is directed to return the file to the Magistrate Judge for further review of the second amended complaint filed by the plaintiff.

IT IS SO ORDERED.

Dated: June 9, 2010  
Utica, New York.

  
United States District Judge