

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

QUINTINO D. LIBERTA,

Plaintiff,

v.

6:17-CV-214 (BKS/TWD)

MICHAEL S. SMITH,

Defendant.

Appearances:

Quintino D. Liberta
Rome, NY
Plaintiff, pro se

Hon. Brenda K. Sannes, United States District Judge:

MEMORANDUM-DECISION AND ORDER

Plaintiff Quintino D. Liberta, a corrections officer employed by the Oneida County Sheriff's Office commenced this 42 U.S.C. § 1983 action against Defendant Michael S. Smith who, according to the Complaint, is an inmate at the Oneida County Correctional Facility. Dkt. No. 1. On July 10, 2017, Plaintiff filed a motion for default judgment. Dkt. No. 15. On July 28, 2017, the Court issued an Order directing that the action be dismissed for lack of subject matter jurisdiction unless Plaintiff files an amended complaint setting for a basis for subject matter jurisdiction. Dkt. No. 18. Plaintiff filed an amended complaint on August 23, 2017. Dkt. No. 19. The case was referred to United States Magistrate Judge Thérèse Wiley Dancks, who reviewed the amended complaint and, on September 5, 2017, issued an Order and Report-Recommendation recommending that this action be dismissed for lack of subject matter jurisdiction. Dkt. No. 20. Magistrate Judge Dancks advised the Plaintiff that under 28 U.S.C. §

636(b)(1), he had fourteen days within which to file written objections to the report, and that the failure to object to the report within fourteen days would preclude appellate review. Dkt. No. 20, pp. 4-5. No objections to the Report-Recommendation have been filed.

As no objections to the Report-Recommendation have been filed, and the time for filing objections has expired, the Court reviews the Report-Recommendation for clear error. *See Petersen v. Astrue*, 2 F. Supp. 3d 223, 228-29 (N.D.N.Y. 2012); Fed. R. Civ. P. 72(b) advisory committee's note to 1983 amendment. Having reviewed the Report-Recommendation for clear error and found none, the Court adopts the Report-Recommendation, including the recommendation that the Court decline to exercise supplemental jurisdiction over the state law claims (Dkt. No. 20, at 4 n.2), *see Carnegie–Mellon Univ. v. Cohill*, 484 U.S. 343, 350 n.7 (1988) (“in the usual case in which all federal-law claims are eliminated before trial, the balance of factors to be considered under the pendent jurisdiction doctrine—judicial economy, convenience, fairness, and comity—will point toward declining to exercise jurisdiction over the remaining state-law claims”), in its entirety.

For these reasons, it is

ORDERED that the Report-Recommendation (Dkt. No. 20) is **ADOPTED** in its entirety; and it is further

ORDERED that this action is **DISMISSED** without prejudice for lack of subject matter jurisdiction; and it is further

ORDERED that Plaintiff's pending motion for default judgment (Dkt. No. 15) is **DENIED** as moot; and it is further

ORDERED that the Clerk serve a copy of this Order upon the plaintiff in accordance with the Local Rules.

IT IS SO ORDERED.

Date: September 29, 2017
Syracuse, New York

A handwritten signature in cursive script that reads "Brenda K. Sannes". The signature is written in black ink and is positioned above a horizontal line.

Brenda K. Sannes
U.S. District Judge