

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

FRANCIS HELMER (MENARD), f/k/a Francis Menard,

Plaintiff,

v.

6:22-CV-1082
(GTS/TWD)

CAPITAL ONE; and CAMILLE,
ID #GFB717, Fraud Investigator – Capital one,

Defendants.

APPEARANCES:

FRANCIS HELMER (MENARD)

Plaintiff, *Pro Se*

4399 Lee Center Taberg Road

Taberg, New York 13471

GLENN T. SUDDABY, United States District Judge

DECISION and ORDER

Currently before the Court, in this *pro se* civil rights action filed by Francis Helmer (Menard) (“Plaintiff”) against the above-captioned entity and individual (“Defendants”), is United States Magistrate Judge Thérèse Wiley Dancks’ Report-Recommendation recommending that Plaintiff’s Complaint be *sua sponte* dismissed, with leave to amend, for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). (Dkt. No. 5.) Plaintiff has not filed an Objection to the Report-Recommendation, and the deadline by which to do so has expired. (*See generally* Docket Sheet.) After carefully reviewing the relevant papers herein, including Magistrate Judge Dancks’ thorough Report-Recommendation, the Court can find no clear error in

the Report-Recommendation:¹ Magistrate Judge Dancks employed the proper standards, accurately recited the facts, and reasonably applied the law to those facts. As a result, the Report-Recommendation is accepted and adopted in its entirety for the reasons set forth therein.

ACCORDINGLY, it is

ORDERED that Magistrate Judge Dancks' Report-Recommendation (Dkt. No. 5) is **ACCEPTED** and **ADOPTED** in its entirety; and it is further

ORDERED that Plaintiff's Complaint (Dkt. No. 1) shall be *sua sponte* **DISMISSED** **with prejudice UNLESS**, within **THIRTY (30) DAYS** of the date of this Decision and Order, Plaintiff files an **AMENDED COMPLAINT** correcting the pleading defects identified in the Report-Recommendation; and it is further

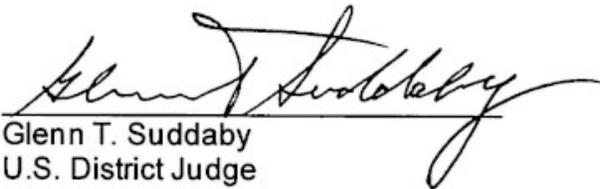
ORDERED that, should Plaintiff wish to file such an Amended Complaint in this action, that Amended Complaint must be a complete pleading which complies with the pleading standards set forth in Federal Rules of Civil Procedure 8 and 10 and Local Rule 10.1 of the District's Local Rules of Practice, and which will supercede and replace his original Complaint in all respects; and it is further

ORDERED that, should Plaintiff file an Amended Complaint within the above-referenced thirty (30) day time period, the Amended Complaint shall be returned to Magistrate

¹ When no objection is made to a report-recommendation, the Court subjects that report-recommendation to only a clear-error review. Fed. R. Civ. P. 72(b), Advisory Committee Notes: 1983 Addition. When performing such a clear-error review, "the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." *Id.*; see also *Batista v. Walker*, 94-CV-2826, 1995 WL 453299, at *1 (S.D.N.Y. July 31, 1995) (Sotomayor, J.) ("I am permitted to adopt those sections of [a magistrate judge's] report to which no specific objection is made, so long as those sections are not facially erroneous.") (internal quotation marks omitted).

Judge Dancks for further review pursuant to 28 U.S.C. § 1915.

Dated: January 17, 2023
Syracuse, New York


Glenn T. Suddaby
U.S. District Judge