

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

ALBERTO RESTO,

Plaintiff,

v.

No. 9:08-CV-929
(GLS/DRH)

OFFICE OF MENTAL HEALTH; UPSTATE
SPECIAL HOUSING UNIT; GEORGE PATAKI;
DOCTOR WURZBERGER; MR. MARINELLI,
Coordinator; and KIM, Unit Chief,

Defendants.

APPEARANCES:

ALBERTO RESTO
Plaintiff pro se
01-A-0183
Upstate Correctional Facility
Post Office Box 2001
Malone, New York 12953

**DAVID R. HOMER
U.S. MAGISTRATE JUDGE**

REPORT-RECOMMENDATION

In an order filed September 2, 2008, this Court directed Alberto Resto ("Resto") to either pay the filing fee of \$350.00 or submit a current authorization form. Docket No. 4. On November 18, 2008, a Text Order was issued reminding plaintiff of his obligation and granting an extension of time until December 21, 2008 to comply with the Court's order. Resto has neither paid the filing fee nor submitted a current authorization form. Accordingly, since this action cannot proceed in the absence of Resto's submission of the required filing fee or an authorization form, it is hereby

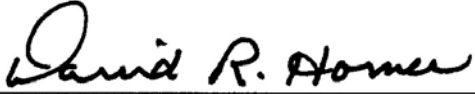
RECOMMENDED that Resto's complaint be **DISMISSED** in its entirety without prejudice pursuant to Fed. R. Civ. P. 16(f)(1)(C) and 37(b)(2)(A)(v) for Resto's failure to comply with the Court's September 2, 2008 order.

Pursuant to 28 U.S.C. § 636(b)(1), the parties have ten days within which to file written objections to the foregoing report. Such objections shall be filed with the Clerk of the Court.

FAILURE TO OBJECT TO THIS REPORT WITHIN TEN DAYS WILL PRECLUDE

APPELLATE REVIEW. Roldan v. Racette, 984 F.2d 85 (2d Cir. 1993) (citing Small v. Secretary of HHS, 892 F.2d 15 (2d Cir. 1989)); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72, 6(a), 6(e).

Dated: January 7, 2009
Albany, New York



United States Magistrate Judge