

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

BENJI D. REED,

Plaintiff,

v.

9:11-CV-250

**JOHN DOE, 1 and SUPERINTENDENT,
Eastern Correctional Facility,**

Defendants.

DECISION & ORDER

Thomas J. McAvoy, Senior District Judge.

This *pro se* action brought pursuant to 42 U.S.C. § 1983 and state law, alleges violations of Plaintiff's civil rights as a result of being served contaminated food while a prisoner at Eastern Correctional Facility in New York. The matter was referred to David E. Peebles, United States Magistrate Judge, for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c).

In the Report-Recommendation, dated January 30, 2015, Magistrate Judge Peebles recommends that the Defendants' Motion for Summary Judgment be granted with prejudice with respect to the Superintendent and without prejudice with respect to John Doe, 1. See dkt. # 56. The Plaintiff did not respond to the motion.

Defendants filed timely objections to the Report-Recommendation pursuant to 28 U.S.C. § 636(b)(1), arguing that the motion should be granted with prejudice with respect to both the Superintendent and the unnamed Defendant. When objections to a magistrate judge's Report-Recommendation are lodged, the Court makes a "*de novo* determination of

those portions of the report or specified proposed findings or recommendations to which the objection is made.” See 28 U.S.C. §636(b)(1). After such a review, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.” Id.

Having reviewed the record *de novo* and having considered the issues raised in the Defendants’ objections, this Court has determined to accept the recommendation of Magistrate Judge Peebles for the reasons stated in the Report-Recommendation.

It is therefore ordered that:

(1) Defendants’ Objections, dkt. # 57, to the Report-Recommendation of Magistrate Judge Peebles, dkt. # 56, are hereby OVERRULED;

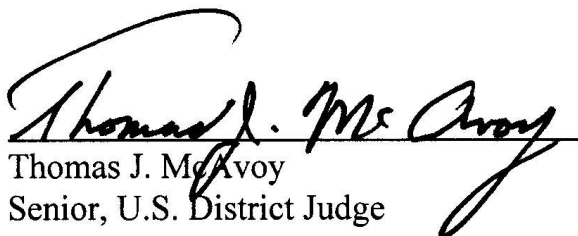
(2) The Report-Recommendation is hereby ADOPTED;

(3) The Defendants’ Motion for Summary Judgment, dkt. # 53, is GRANTED.

Plaintiff’s claims against the Defendant Superintendent are hereby DISMISSED WITH PREJUDICE. Plaintiff’s claims against Defendant John Doe 1 are hereby DISMISSED WITHOUT PREJUDICE.

IT IS SO ORDERED.

Dated: March 3, 2015


Thomas J. McAvoy
Senior, U.S. District Judge