

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

BARTRAM YIHNI DABNEY,

Plaintiff,

-against-

9:11-CV-0273 (LEK/RFT)

DONALD SAWYER, Executive Director,
Marcy Mental Hospital; JOANN
WALDRON, Chief of OMH Satellite,
Clinton Correctional Facility; DR.
BERGEN, Psychiatrist, Clinton
Correctional Facility; DR. LEE, Medical
Director, Clinton Correctional Facility; DR.
FAROOKI, Dentist; SARA NEPHEW,
OMH Therapist, Clinton Correctional
Facility; C.O. BEESHAW, Correctional
Officer, Clinton Correctional Facility; DR.
BATTU, Psychiatrist, Great Meadow
Correctional Facility; J. NOCERA,
Assistant Inspector General, Department
of Correctional Services; and V.
DONAHUE, Social Worker, Great
Meadow Correctional Facility,

Defendants.

ORDER

This *pro se* action under 42 U.S.C. §§ 1983, 1985, and 1986 comes before the Court on a Report-Recommendation filed September 13, 2013, by the Honorable Randolph F. Treece, U.S. Magistrate Judge, pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c). Dkt. No. 59 (“Report-Recommendation”). Judge Treece recommends that Defendants’ Motion for judgment on the pleadings be granted as to Plaintiff’s claims for: (1) improper investigation by Defendant J. Nocera; (2) inadequate winter clothing provision by Defendant Foley; and (3) inadequate medical care by

Dr. Lee for Plaintiff's sore rib.¹ See Report-Rec. at 24; Dkt. No 48 ("Motion"). Judge Treece recommends denying Defendants' Motion as to Plaintiff's claims for: (4) inadequate mental health care by Defendants Sawyer, Waldron, Savage, Donahue, Battu, Bergen, and Nephew; (5) inadequate physical health care by Dr. Lee for Plaintiff's Hepatitis C; and (6) inadequate dental care by Defendant Farooki. Id. at 24-25. Judge Treece also recommends that the following claims, on which Defendants did not seek judgment on the pleadings, should proceed: (7) retaliation by Defendants Donahue, Bergen, Beeshaw, Savage, Waldron, Sawyer, and Nephew; (8) conspiracy among Defendants Savage, Waldron, Bergen, Sawyer, and Nephew; (9) racial discrimination by Defendants Foley and Dr. Lee; and (10) failure to protect by all Defendants. Id. at 25.

Neither Plaintiff nor Defendants filed objections to the Report-Recommendation within the fourteen-day objection period. See 28 U.S.C. § 636(b); FED. R. CIV. P. 72(b)(2). See generally Dkt. The Court therefore has reviewed the Report-Recommendation for clear error and found none. See Cephias v. Nash, 328 F.3d 98, 107 (2d Cir. 2003) ("As a rule, a party's failure to object to any purported error or omission in a magistrate judge's report waives further judicial review of the point."); Farid v. Bouey, 554 F. Supp. 2d 301, 306-07 & n.2 (N.D.N.Y. 2008).

Accordingly, it is hereby:

ORDERED, that the Report-Recommendation (Dkt. No. 59) is **APPROVED and ADOPTED in its entirety**; and it is further

ORDERED, that Defendants' Motion (Dkt. No. 48) for judgment on the pleadings is **GRANTED in part** consistent with the Report-Recommendation (Dkt. No. 59); and it is further

¹ Judge Treece recommends that Plaintiff's second and third claims be dismissed without prejudice to Plaintiff repleading them in an amended complaint with proper support.

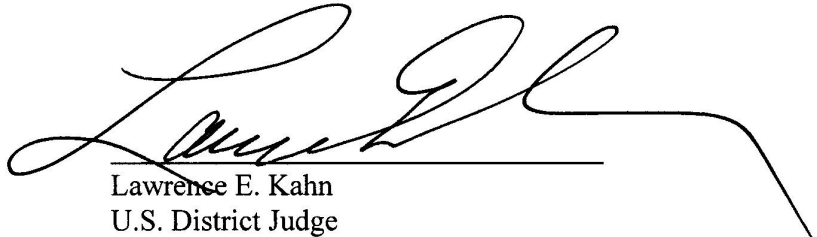
ORDERED, that Plaintiff is granted leave to file an amended complaint **within thirty (30) days** of the filing of this Order to cure the deficiencies in his claims as identified in the Report-Recommendation. Any amended complaint will supersede the original Complaint in all respects and therefore must be a complete pleading; and it is further

ORDERED, that this case is referred back to Judge Treece to lift the stay and set a schedule for proceeding; and it is further

ORDERED, that the Clerk of the Court serve a copy of this Order on all parties.

IT IS SO ORDERED.

DATED: September 30, 2013
Albany, NY



Lawrence E. Kahn
U.S. District Judge