

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

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**DAVID BREKSA a/k/a DAVID BRESKA,**

**Plaintiff,**

**v.**

**9:12-CV-952  
(FJS/RFT)**

**SERGEANT RICE, Correctional Sergeant, Clinton  
Correctional Facility; and JOHN DOE, Correctional  
Officer, Clinton Correctional Facility**

**Defendants.**

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**APPEARANCES**

**OF COUNSEL**

**DAVID BREKSA**

**11-A-2493**

Auburn Correctional Facility

135 State Street

Box 618

Auburn, New York 13021

Plaintiff *pro se*

**OFFICE OF THE NEW YORK  
STATE ATTORNEY GENERAL**

The Capitol

Albany, New York 12224

Attorneys for Defendant

**GREGORY J. RODRIGUEZ, AAG**

**SCULLIN, Senior Judge**

**ORDER**

Currently before the Court is Magistrate Judge Treece's September 3, 2013 Report-Recommendation and Order, in which he recommended that this Court grant Defendant Rice's motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). *See* Dkt. 12. The parties did not file any objections to this recommendation.

When a party does not object to a magistrate judge's report-recommendation, the court reviews that report-recommendation for clear error or manifest injustice. *See Linares v. Mahunik*, No. 9:05-CV-625, 2009 WL 3165660, \*10 (N.D.N.Y. July 16, 2009) (citation and footnote omitted). After conducting this review, "the Court may 'accept, reject, or modify in whole or in part, the . . . recommendations made by the magistrate judge.'" *Id.* (quoting 28 U.S.C. § 636(b)(1)(C)).

The Court has reviewed Magistrate Judge Treece's September 3, 2013 Report-Recommendation and Order for clear error and manifest injustice; and, finding none, the Court hereby

**ORDERS** that Magistrate Judge Treece's September 3, 2013 Report-Recommendation and Order is **ACCEPTED in its entirety** for the reasons stated therein; and the Court further

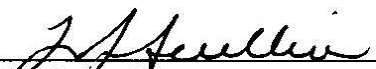
**ORDERS** that Defendant Rice's motion to dismiss is **GRANTED**; and the Court further

**ORDERS** that the Clerk of the Court shall enter judgment in favor of Defendants and close this case; and the Court further

**ORDERS** that the Clerk of the Court shall serve a copy of this Order on the parties in accordance with the Local Rules.

**IT IS SO ORDERED.**

Dated: September 24, 2013  
Syracuse, New York

  
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Frederick J. Scullin, Jr.  
Senior United States District Court Judge