

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

HERMAN CRUZ,

Plaintiff,

v.

**9:13-CV-30
(FJS/TWD)**

M. GROSSO,

Defendant.

APPEARANCES

OF COUNSEL

HERMAN CRUZ

86-C-0468

Green haven Correctional Facility

P.O. Box 4000

Stormville, New York 12582

Plaintiff *pro se*

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

The Capitol

Albany, New York 12224

Attorneys for Defendant

KEVIN M. HAYDEN, AAG

SCULLIN, Senior Judge

ORDER

Currently before the Court are Magistrate Judge Dancks' March 5, 2014 Report-Recommendation and Order and Plaintiff's objections thereto. *See* Dkt. Nos. 34, 50. In her Report-Recommendation and Order, Magistrate Judge Dancks recommended that this Court deny Defendant's motion to dismiss for failure to state a claim, dismiss Plaintiff's claims of retaliation based on denial of legal pads and denial of medical care, *sua sponte*, with leave to amend, and direct Defendant to answer the remainder of the complaint. *See* Dkt. No. 34 at 17-18.

Plaintiff filed an objection to Magistrate Judge Dancks' recommendation that this Court dismiss his claims of retaliation based on denial of medical care. *See, generally*, Dkt. No. 50.

After reviewing a magistrate judge's recommendations, the district court may decide to accept, reject or modify those recommendations. *See* 28 U.S.C. § 636(b)(1). The court conducts a *de novo* review of the portions of the magistrate judge's recommendations to which a party objects. *See Pizzaro v. Bartlett*, 776 F. Supp. 815, 817 (S.D.N.Y. 1991). ""If, however, the party makes only conclusory or general objections, or simply reiterates his original arguments, the Court reviews the Report and Recommendation only for clear error."" *Salmini v. Astrue*, No. 3:06-CV-458, 2009 WL 179741, *1 (N.D.N.Y. June 23, 2009) (quoting [*Farid v. Bouey*, 554 F. Supp. 2d 301] at 306 [(N.D.N.Y. 2008)] (quoting *McAllan v. Von Essen*, 517 F. Supp. 2d 672, 679 (S.D.N.Y. 2007))). Finally, even if the parties file no objections, the court must ensure that the face of the record contains no clear error. *See Wilds v. United Parcel Serv., Inc.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003) (quotation omitted).

The Court has thoroughly reviewed Plaintiff's objections to Magistrate Judge Dancks' recommendations and finds them to be without merit. The basis for Magistrate Judge Dancks' recommendation that the Court dismiss Plaintiff's retaliation claims based on denial of medical care was that "Plaintiff fail[ed] to allege that Defendant took adverse action against Plaintiff related to medical care . . . and therefore he [had] not alleged personal involvement of Defendant in this claim." *See* Dkt. No. 34 at 17. In his objections to this recommendation, although Plaintiff continues to complain about denial of medical care, he still has not alleged any basis for finding that Defendant was personally involved in that denial. Thus, the Court finds that Plaintiff's objections do not cure the defects that Magistrate Judge Dancks noted with respect to

this part of Plaintiff's retaliation claims.

Accordingly, for the above-stated reasons, the Court hereby

ORDERS that Magistrate Judge Dancks' March 5, 2014 Report-Recommendation and Order is **ACCEPTED in its entirety** for the reasons stated therein; and the Court further


ORDERS that Defendant's motion to dismiss for failure to state a claim, *see* Dkt. No. 13, is **DENIED**; and the Court further

ORDERS that Plaintiff's claims of retaliation based on denial of legal pads and denial of medical care are **DISMISSED sua sponte with leave to amend**; and the Court further

ORDERS that Defendant is directed to answer the remainder of the complaint.

IT IS SO ORDERED.

Dated: May 23, 2014
Syracuse, New York



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