

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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JOSUE DELISER,

Plaintiff,

v.

9:13-CV-803  
(GTS/DEP)

J. MILLER, Lt. C.O.,

Defendant.

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APPEARANCES:

OF COUNSEL:

JOSUE DELISER, 09-A-3970

Plaintiff, *Pro Se*

Clinton Correctional Facility

P.O. Box 2001

Dannemora, New York 12929

HON. ERIC T. SCHNEIDERMAN

Attorney General for the State of New York

Counsel for Defendant

The Capitol

Albany, New York 12224

MELISSA A. LATINO, ESQ.

Assistant Attorney General

GLENN T. SUDDABY, Chief United States District Judge

**DECISION and ORDER**

Currently before the Court, in this *pro se* prisoner civil rights action filed by Josue Deliser (“Plaintiff”) against New York State Department of Corrections and Community Supervision employee J. Miller (“Defendant”) pursuant to 42 U.S.C. § 1983, are (1) Defendant’s motion to dismiss, and (2) United States Magistrate Judge Peebles’ Report-Recommendation recommending that Defendants’ motion be granted. (Dkt. Nos. 46, 53.) None of the parties have filed objections to the Report-Recommendation, and the deadline by which to do so has expired. (*See generally* Docket Sheet.) After carefully reviewing the relevant papers herein, including

Magistrate Judge Peebles' thorough Report-Recommendation, the Court can find no clear error in the Report-Recommendation.<sup>1</sup> Magistrate Judge Peebles employed the proper standards, accurately recited the facts, and reasonably applied the law to those facts. As a result, the Report-Recommendation is accepted and adopted in its entirety for the reasons set forth therein, and Defendant's motion is granted.

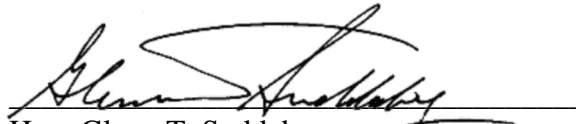
**ACCORDINGLY**, it is

**ORDERED** that Magistrate Judge Peebles' Report-Recommendation (Dkt. No. 53) is **ACCEPTED** and **ADOPTED** in its entirety; and it is further

**ORDERED** that Defendant's motion to dismiss (Dkt. No. 46) is **GRANTED**; and it is further

**ORDERED** that Plaintiff's Complaint (Dkt. No. 1) is **DISMISSED** in its entirety and the Clerk of the Court shall enter Judgment for Defendant and close this action.

Dated: November 25, 2015  
Syracuse, New York

  
Hon. Glenn T. Suddaby  
Chief, United States District Judge

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<sup>1</sup> When no objection is made to a report-recommendation, the Court subjects that report-recommendation to only a clear-error review. Fed. R. Civ. P. 72(b), Advisory Committee Notes: 1983 Addition. When performing such a clear-error review, "the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." *Id.*; see also *Batista v. Walker*, 94-CV-2826, 1995 WL 453299, at \*1 (S.D.N.Y. July 31, 1995) (Sotomayor, J.) ("I am permitted to adopt those sections of [a magistrate judge's] report to which no specific objection is made, so long as those sections are not facially erroneous.") (internal quotation marks omitted).