

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

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**JASON SMITH,**

**Plaintiff,**

**v.**

**9:15-CV-0496 (BKS/ATB)**

**A. RUFA, et al.,**

**Defendants.**

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**Appearances:**

Jason Smith  
New York, NY 10027  
Plaintiff, pro se

Katie E. Valder, Esq.  
Hon. Eric T. Schneiderman  
Office of New York State Attorney General  
The Capitol  
Albany, NY 12224  
Attorney for Defendants

**Hon. Brenda K. Sannes, United States District Judge:**

**MEMORANDUM-DECISION AND ORDER**

Plaintiff Jason Smith, a former New York State inmate, commenced this action under 42 U.S.C. § 1983 alleging violations of his constitutional rights arising out of his incarceration at Riverview Correctional Facility. (Dkt. No. 1). On August 29, 2017, Defendants filed a motion to dismiss for lack of prosecution and/or for sanctions under Fed. R. Civ. P. 37(d) and 41(b). (Dkt. No. 47). Plaintiff did not respond to the motion. This matter was referred to United States Magistrate Judge Andrew T. Baxter who, on October 2, 2017, issued a Report-Recommendation and Order recommending that Defendants' motion to dismiss be granted and that the complaint

be dismissed with prejudice, unless Plaintiff filed meritorious objections and the Court deemed it appropriate to refer back to Magistrate Judge Baxter for consideration of whether a lesser sanction under Rule 37 would be appropriate. (Dkt. No. 48). Plaintiff filed an objection to the Report-Recommendation on October 18, 2017, (Dkt. No. 49), and the action was referred back to Magistrate Judge Baxter to determine whether a lesser sanction under Fed. R. Civ. P 37 would be appropriate, (Dkt. No. 50). On January 3, 2018, Magistrate Baxter issued a Report-Recommendation recommending that Defendants' motion to dismiss be granted and that the complaint be dismissed with prejudice. (Dkt. No. 53). Magistrate Judge Baxter advised the parties that, under 28 U.S.C. § 636(b)(1), they had fourteen days within which to file written objections to the Report, and that the failure to object to the Report within fourteen days would preclude appellate review. (Dkt. No. 53, at 10). No objections to the Report-Recommendation have been filed.

As no objections to the Report-Recommendation have been filed, and the time for filing objections has expired, the Court reviews the Report-Recommendation for clear error. *See Petersen v. Astrue*, 2 F. Supp. 3d 223, 228–29 (N.D.N.Y. 2012); Fed. R. Civ. P. 72(b) advisory committee's note to 1983 amendment. Having reviewed the Report-Recommendation for clear error and found none, the Court adopts the Report-Recommendation in its entirety.

For these reasons, it is

**ORDERED** that the Report-Recommendation (Dkt. No. 53) is **ADOPTED** in its entirety; and it is further

**ORDERED** that Defendants' motion to dismiss (Dkt. No. 47) is **GRANTED** and plaintiff's complaint is **DISMISSED with prejudice**; and it is further

**ORDERED** that the Clerk serve a copy of this Order upon the parties in accordance with

the Local Rules.

**IT IS SO ORDERED.**

Dated: January 30, 2018  
Syracuse, New York

A handwritten signature in black ink, reading "Brenda K. Sannes". The signature is written in a cursive, flowing style. The first name "Brenda" is written in a larger, more prominent script, followed by "K." and "Sannes". The signature is positioned above a horizontal line.

Brenda K. Sannes  
U.S. District Judge