

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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KENNETH McMASTER,

Plaintiff,

-v-

9:15-CV-0578  
(DNH/CFH)

L.W. LABARGE, S.D. LAMARE, E. SMITH,  
K. ELLSWORTH, J.G. TATRO, M.C. TOMPKINS,  
C.S. ROWE,

Defendants.

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APPEARANCES:

OF COUNSEL:

KENNETH McMASTER  
Plaintiff, *Pro Se*  
08-B-1832  
Upstate Correctional Facility  
P.O. Box 2001  
Malone, NY 12953

HON. ERIC T. SCHNEIDERMAN  
Attorney General for the State of New York  
Attorneys for Defendant James Thomsen  
The Capitol  
Albany, NY 12224

RACHEL MAMAN KISH, ESQ.  
Ass't Attorney General

DAVID N. HURD  
United States District Judge

**DECISION and ORDER**

*Pro se* plaintiff Kenneth McMaster brought this civil rights action pursuant to 42 U.S.C. § 1983. On June 30, 2016, the Honorable Christian F. Hummel, United States Magistrate Judge, advised by Report-Recommendation that defendants' motion to dismiss pursuant to Federal Rule

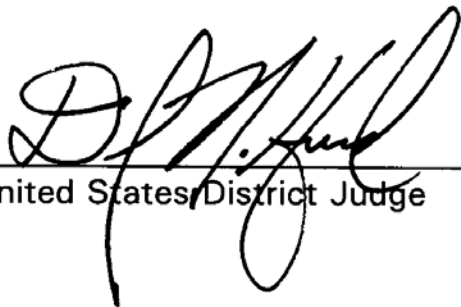
of Civil Procedure 12(b)(6) be denied. See ECF No. 43. Defendants have filed timely objections. See ECF No. 44. Plaintiff has filed a response to such objections. See ECF No. 45.

Based upon a careful review of the entire file and the recommendations of the Magistrate Judge, the Report-Recommendation is accepted in whole. See 28 U.S.C. 636(b)(1).

Therefore, it is ORDERED that:

1. Defendants' motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) (ECF No. 27) is **DENIED**; and
2. The Clerk serve a copy of this Decision and Order upon plaintiff in accordance with the Local Rules.

IT IS SO ORDERED.

  
United States District Judge

Dated: September 22, 2016  
Utica, New York