

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

JAMES MAXWELL,

Plaintiff,

-against-

9:16-CV-00275 (LEK/DEP)

MR. MILLER, *et al.*,

Defendants.

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**ORDER**

This matter comes before the Court following a Report-Recommendation filed on November 17, 2016, by the Honorable David E. Peebles, U.S. Magistrate Judge, pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3. Dkt. No. 23 (“Report-Recommendation”).

Within fourteen days after a party has been served with a copy of a magistrate judge’s report-recommendation, the party “may serve and file specific, written objections to the proposed findings and recommendations.” Fed. R. Civ. P. 72(b); L.R. 72.1(c). If no objections are made, or if an objection is general, conclusory, perfunctory, or a mere reiteration of an argument made to the magistrate judge, a district court need review that aspect of a report-recommendation only for clear error. Barnes v. Prack, No. 11-CV-857, 2013 WL 1121353, at \*1 (N.D.N.Y. Mar. 18, 2013); Farid v. Bouey, 554 F. Supp. 2d 301, 306–07, 306 n.2 (N.D.N.Y. 2008); see also Machicote v. Ercole, No. 06-CV-13320, 2011 WL 3809920, at \*2 (S.D.N.Y. Aug. 25, 2011) (“[E]ven a pro se party’s objections to a Report and Recommendation must be specific and clearly aimed at particular findings in the magistrate’s proposal, such that no party be allowed a second bite at the apple by simply relitigating a prior argument.”). “A [district] judge . . . may

accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b).

No objections were filed in the allotted time period. Docket. Accordingly, the Court has reviewed the Report-Recommendation for clear error and has found none.

Accordingly, it is hereby:

**ORDERED**, that the Report-Recommendation (Dkt. No. 23) is **APPROVED and ADOPTED in its entirety**; and it is further

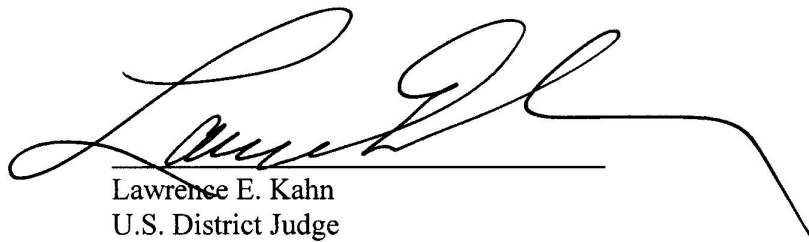
**ORDERED**, that Defendants’ Motion to Dismiss (Dkt. No. 14) is **GRANTED** as to Plaintiff’s medical indifference and verbal harassment claims and **DENIED** as to Plaintiff’s excessive force and failure-to-protect claims; and it is further

**ORDERED**, that Plaintiff has **thirty (30)** days to amend his Complaint (Dkt. No. 1) in order to cure the deficiencies identified in the Report-Recommendation (Dkt. No. 23) regarding his medical indifference claim; and it is further

**ORDERED**, that the Clerk of the Court serve a copy of this Order on all parties in accordance with the Local Rules.

**IT IS SO ORDERED.**

DATED: December 29, 2016  
Albany, New York



Lawrence E. Kahn  
U.S. District Judge