

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

WONDER WILLIAMS,

Plaintiff,

9:16-CV-1343
(GTS/TWD)

v.

KEVIN HESSE, Corr. Officer, Auburn Corr. Fac.;
BRIAN CHUTTEY, Captain, Auburn Corr. Fac.;
HAROLD GRAHAM, Super., Auburn Corr. Fac.;
ROBINSON, First Deputy, Auburn Corr. Fac.;
DONNELLY, Sgt., Auburn Corr. Fac.;
FAGAN, Deputy Super., Southport Corr. Fac.; and
QUINN, Lieut., Auburn Corr. Fac.,

Defendants.

APPEARANCES:

WONDER WILLIAMS, 10-A-0102

Plaintiff, *Pro Se*

Mid-State Correctional Facility

P.O. Box 2500

Marcy, New York 13403

HON. ERIC T. SCHNEIDERMAN
Attorney General for the State of New York
Counsel for Defendants

The Capitol
Albany, New York 12224

RICHARD LOMBARDO, 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 Wonder Williams (“Plaintiff”) against the seven above-captioned employees of the New York State Department of Corrections and Community Supervision (“Defendants”), are the following: (1) Defendants’ motion to dismiss Plaintiff’s Complaint for failure to state a claim upon which relief

can be granted, and (2) United States Magistrate Judge Thérèse Wiley Dancks' Report-Recommendation recommending that Defendants' motion to dismiss be granted in part and denied in part such that Plaintiff's Eighth Amendment excessive force claim and claim for declaratory relief be dismissed with prejudice, but that his First Amendment retaliation claims remain pending. (Dkt. Nos. 18, 25.) The parties have not 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 Dancks' thorough Report-Recommendation, the Court can find no clear-error in the Report-Recommendation.¹ Magistrate Judge Dancks 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 Defendants' motion to dismiss is granted in part and denied in part: Plaintiff's Eighth Amendment excessive force claim and claim for declaratory relief are dismissed with prejudice, but his First Amendment retaliation claims survive Defendants' motion.

¹ 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).

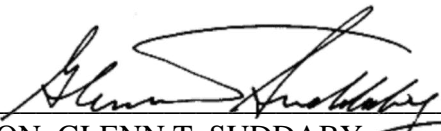
ACCORDINGLY, it is

ORDERED that Magistrate Judge Dancks' Report-Recommendation (Dkt. No. 25) is **ACCEPTED** and **ADOPTED** in its entirety; and it is further

ORDERED that Defendants' motion to dismiss (Dkt. No. 18) is **GRANTED in part** and **DENIED in part** such that Plaintiff's Eighth Amendment excessive force claim and his claim for declaratory relief are **DISMISSED with prejudice**, but that his First Amendment retaliation claims **SURVIVE** Defendants' motion to dismiss; and it is further

ORDERED that Defendants file an answer to the Plaintiff's Complaint within 14 days of the date of this Decision and Order pursuant to Fed.R.Civ.P. Rule 12(a)(4)(a), and this case is referred back to Magistrate Judge Dancks for the setting of pretrial deadlines.

Dated: March 14, 2018
Syracuse, New York



HON. GLENN T. SUDDABY
Chief United States District Judge