

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

ANTUANE MEANS,

Plaintiff,

v.

9:17-cv-0746 (BKS/ATB)

JARED OLMSTED, et al.,

Defendants.

Appearances:

Antuane Means
13-A-4436
Sing Sing Correctional Facility
354 Hunter Street
Ossining, NY 10562
Plaintiff, pro se

David A. Rosenberg, 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 Antuane Means, a New York State inmate, commenced this civil rights action asserting claims under 42 U.S.C. § 1983 arising out of his incarceration. (Dkt. No. 1). On December 28, 2017, Defendant filed a motion to dismiss under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief may be granted alleging that Plaintiff failed to exhaust his administrative remedies. (Dkt. No. 28). Plaintiff responded to the motion on January 24, 2018, and Defendant has filed a reply. (Dkt. Nos. 31, 32). This matter was assigned to United

States Magistrate Judge Andrew T. Baxter who, on March 5, 2018, issued an Order and Report-Recommendation recommending that Defendant's motion to dismiss be denied without prejudice to filing a properly supported motion for summary judgment after conducting some discovery regarding the alleged grievance. (Dkt. No. 34). 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. 34, at 12). 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 it in its entirety.

For these reasons, it is

ORDERED that the Report-Recommendation (Dkt. No. 34) is **ADOPTED** in its entirety; and it is further

ORDERED that Defendant's motion to dismiss (Dkt. No. 28) is **DENIED without prejudice** to filing a properly supported motion for summary judgment after conducting some discovery regarding the alleged grievance; and it is further

ORDERED that defendant will not be limited to arguing failure to exhaust if appropriate, based on any discovery conducted by the parties; 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: April 9, 2018
Syracuse, New York

A handwritten signature in black ink that reads "Brenda K. Sannes". The signature is written in a cursive style with a horizontal line underneath the name.

Brenda K. Sannes
U.S. District Judge