v.

## UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF NEW YORK

SHAIN MALDONADO,

Plaintiff,

9:17-CV-1303 (BKS/TWD)

VIJAYKUMAR S. MANDALAYWALA, Clinical Physician, et al.,

Defendants.

**Appearances:** 

Shain Maldonado 15-B-2138 Upstate Correctional Facility P.O. Box 2001 Malone, NY 12953 Plaintiff, pro se

David A. Rosenberg, Esq. Hon. Letitia James 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 Shain Maldonado, a New York State inmate, commenced this civil rights action asserting claims under 42 U.S.C. § 1983 arising out of his incarceration at Upstate Correctional Facility and Great Meadow Correctional Facility. (Dkt. No. 15). On July 23, 2018, Defendants 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. (Dkt. No. 24). Plaintiff opposed the motion. (Dkt. No. 33). This matter

was referred to United States Magistrate Judge Thérèse Wiley Dancks who, on December 6,

2018, issued a Report-Recommendation recommending that Defendants' motion to dismiss be

denied. (Dkt. No. 38). Magistrate Judge Dancks 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. (Id., at

20). 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. 38) is **ADOPTED** in its

entirety; and it is further

**ORDERED** that Defendants' motion to dismiss (Dkt. No. 24) is **DENIED**; 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 8, 2019

Syracuse, New York

Brenda K. Sannes

heudat Sanna

U.S. District Judge

2