UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SHAIN MALDONADO,

Plaintiff, 9:17-cv-1303 (BKS/TWD)

v.

VIJAYKUMAR S. MANDALAYWALA, et al.,

Defendants.

Appearances:

Plaintiff, pro se:
Shain Maldonado
15-B-2138
Wende Correctional Facility
P.O. Box 1187
Alden, NY 14004

For Defendants:
Letitia James
Attorney General of the State of New York
Keith J. Starlin
Assistant Attorney General, of Counsel
The Capitol
Albany, NY 12224

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. (Dkt. No. 15). On July 11, 2019, Defendants filed a motion for summary judgment. (Dkt. No. 46). The motion was fully briefed, with a response filed by Plaintiff and a reply filed by Defendants. (Dkt. Nos. 53, 54). This matter was referred to United States Magistrate Judge Thérèse Wiley Dancks who, on February 12, 2020, issued a Report-Recommendation recommending that Defendants' motion

for summary judgment be granted as to Dr. Vijaykumar Mandalaywala and the Superintendent of Great Meadow and denied, without prejudice, as to D. Bennett. (Dkt. No. 58). With respect to D. Bennett, Magistrate Judge Dancks recommended denying the motion for summary judgment based on a failure to exhaust administrative remedies because Plaintiff raised a material issue of fact as to the availability of administrative remedies under *Williams v. Priatno*, 829 F.3d 118 (2d Cir. 2015). 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. (Dkt. No. 58, at 39).

No objections to the Report-Recommendation have been filed. As 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. 58) is **ADOPTED** in its entirety; and it is further

ORDERED that Defendants' motion for summary judgment (Dkt. No. 46) is **GRANTED IN PART** and **DENIED IN PART**; and it is further

ORDERED that Defendants' motion for summary judgment is **GRANTED** as to Defendants Mandalaywala and the Superintendent of Great Meadow, and they are **DISMISSED** from this action; and it is further

ORDERED that Defendants' motion for summary judgment is **DENIED without prejudice** as to D. Bennett, and an exhaustion hearing will be scheduled on Plaintiff's Eighth Amendment excessive force claim against D. Bennett; 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: March 10, 2020
Syracuse, New York

Brenda K. Sannes
U.S. District Judge