

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

DAVID CALDWELL,

Plaintiff,

v.

**9:19-CV-673
(TJM/ATB)**

C.O. KUSMINSKY, et al.,

Defendants.

**THOMAS J. McAVOY,
Senior United States District Judge**

DECISION and ORDER

I. INTRODUCTION

This *pro se* action brought pursuant to 42 U.S.C. § 1983 was referred to the Hon. Andrew T. Baxter, United States Magistrate Judge, for a Report and Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c). In his February 7, 2022 Report-Recommendation (Dkt. No. 52), Judge Baxter recommends that defendant C.O. Kusminsky's motion for summary judgment (Dkt. No. 49) be GRANTED, and that the complaint be DISMISSED IN ITS ENTIRETY FOR FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES. *Id.* at 13. Plaintiff has filed no objections to the Report-Recommendation, and his time to do so has passed.

II. DISCUSSION

After examining the record, this Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice.

III. CONCLUSION

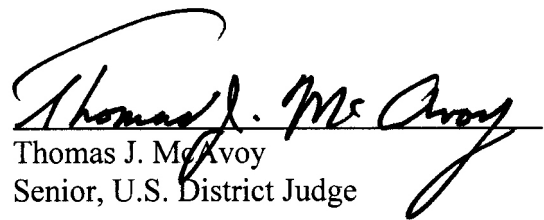
Accordingly, the Court **ACCEPTS** and **ADOPTS** the Report-Recommendation (Dkt. No. 52) for the reasons stated therein. It is therefore

ORDERED that defendant C.O. Kusminsky's motion for summary judgment (Dkt. No. 49) is **GRANTED**, and that the complaint is **DISMISSED IN ITS ENTIRETY FOR FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES**.

The Clerk may close the file in this case.

IT IS SO ORDERED.

Dated: March 31, 2022


Thomas J. McAvoy
Senior, U.S. District Judge