

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JOSE E. ORTIZ,

Plaintiff,

10 Civ. 9434 (PKC) (FM)

-against-

ORDER ADOPTING  
REPORT AND  
RECOMMENDATION

MICHAEL BLOOMBERG, et al.,

Defendants.  
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P. KEVIN CASTEL, District Judge:

Plaintiff Jose Ortiz commenced this action pro se on November 10, 2010 complaining of the conditions of his confinement at the Anna M. Kross Center at Rikers Island. On February 7, 2011, I referred this case to Magistrate Judge Maas for general pretrial supervision. (Docket # 6.) On October 7, 2011, I dismissed Ortiz’s complaint as to defendants Michael Bloomberg, John C. Liu, and Patty Harris, the three named defendants in this action. (Docket # 26.) Ortiz’s claims against various John Doe defendants remained intact.

On February 6, 2012, Magistrate Judge Maas issued an Order regarding Ortiz’s remaining claims against the John Doe defendants. Magistrate Judge Mass directed the City of New York to identify the individuals described in Ortiz’s March 2011 “Motion for Discovery – Interrogatories Notice” (Docket # 12), and directed Ortiz to serve and file by May 30, 2012 an amended complaint “to set forth clearly and succinctly what each of the individual defendants did.” (Docket # 30.) On March 16, 2012, Ortiz filed a motion challenging the sufficiency of the information provided by the City and requesting an extension of time to file his amended complaint. (Docket # 32.) Magistrate Judge Maas issued an Order directing Ortiz to serve and file his amended complaint by May 30, 2012 and cautioned Ortiz that Magistrate Judge Maas would recommend


dismissal of the action “[i]f an amended complaint is not filed and served within thirty days.” (Docket # 35.) On May 29, 2012, Ortiz filed a “Motion for an extension of time to file brief” (Docket # 36), which Magistrate Judge Maas construed as a request for a further extension of time to file his amended complaint. Magistrate Judge Maas granted Ortiz’s request and directed him to file his amended complaint by July 6, 2012, again cautioning Ortiz that should he “fail[] to file an amended complaint by July 6, 2012, I will recommend to Judge Castel that this action be dismissed.” (Docket # 38.) On June 6, 2012, Magistrate Judge Maas held a pre-trial conference at which Ortiz did not appear.

In a Report and Recommendation (“R & R”) filed August 2, 2012, Magistrate Judge Maas recommended that this Court dismiss the action without prejudice for failure to file and serve his amended complaint pursuant to Rule 41(b), Fed. R. Civ. P. The R & R noted that as of August 2, Ortiz had not filed his amended complaint, nor had he contacted the Court or opposing counsel. The R & R advised the parties that they had fourteen days (14) from service of the R & R to file any objections, and warned that failure to timely file such objections would result in waiver of any right to object. In so advising, the R & R expressly called the parties’ attention to Rule 72(b), Fed. R. Civ. P., and 28 U.S.C. § 636(b)(1). The Court sent copies of the R & R to Ortiz’s last address of record and to the e-mail address Ortiz provided in his May 29 motion. As of the date of this Order, Ortiz has not filed any objection.

I have reviewed the record and Magistrate Judge Maas’s R & R. I find the R & R to be thorough, well-reasoned, and grounded in law. The R & R set forth Ortiz’s repeated failure to file or serve his amended complaint. (R & R at 1–2.) Ortiz has neither objected to the R & R nor requested an extension of time to file an objection. Ortiz received clear notice of the consequences of the failure to object and has thus waived the right to object to the R & R or obtain appellate review. Frank v. Johnson, 968 F.2d 298, 300 (2d Cir. 1992).

I therefore adopt the R & R in its entirety, and for the reasons set forth therein, this action is DISMISSED without prejudice. The Clerk is directed to terminate the motions at Docket Nos. 32 and 36, and to close the case.

SO ORDERED.



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P. Kevin Castel  
United States District Judge

Dated: New York, New York  
August 29, 2012