

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

x

JCG,

Plaintiff,

-against-

ROBERT E. ERCOLE, et al.,

Defendants.

x

MEMORANDUM ORDER ADOPTING REPORT AND RECOMMENDATIONS
OF THE HON. JAMES L. COTT, UNITED STATES MAGISTRATE JUDGE

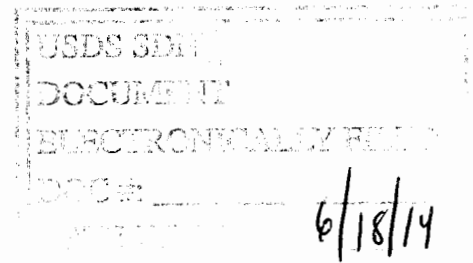
McMahon, J.:

On April 24, 2014, the court received the comprehensive, 66 page Report from the learned Magistrate Judge, recommending that this case proceed only on Plaintiff's First Amendment claim against Defendant Chill and his Eighth Amendment claim against Defendant Koskowski, and be otherwise dismissed without leave to amend (the plaintiff having already amended the complaint once, and further amendment being found to be futile). The court is grateful for the time and obvious care with which the Magistrate Judge has treated this complex complaint.

The time to file objections to the report expired fourteen days after the Report issued, or on May 24, 2014. Plaintiff filed neither an objection nor a request for an extension of time. The court instead received a letter on May 23, 2014 from Mr. Gomez's sister, indicating that her brother has not been at Marcy Correctional Facility (his address on the docket) since May 1, when he was hospitalized "for an indefinite amount of time." Obviously, Mr. Gomez received the Report or he would not have caused his sister to communicate with the court.

The court has waited patiently for further word from Mr. Gomez. Hearing nothing, my Deputy Clerk called the Marcy Correctional Facility and confirmed that Mr. Gomez was Midstate Correctional Facility Infirmary from May 8 through May 20, 2014. He was then returned to Marcy, where he has been ever since. He was back at Marcy by the time his sister sent her letter.

Copies mailed /faxed/handed to counsel on 6/18/14



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I have heard nothing from plaintiff since he returned to March on May 20. His extended silence is evidence that he has no objection to the Report – or at least that he has filed to file one. The Defendants have also filed no objection.

I have reviewed the Report. The court accepts it as its opinion and adopts all of the Recommendations. The Clerk of the Court is directed to dismiss all claims against all defendants except for the Eighth Amendment Claim against defendant Koskowski and the First Amendment Claim against Defendant Chill. The caption in this case shall be amended to read as follows:

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

_____ x

Juan C. Gomez,

Plaintiff,

-against-

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Rabbi Chill and Former Deputy Superintendent
of Security R. Koskowski,

Defendants.

_____ x

The new caption reflects the defendant's full name. I had previously granted his request to allow his name to be replaced by his initials (See Docket #116), but in view of the fact that his sister sent a letter to the court calling Mr. Gomez by his full name I hereby rescind that order.

This constitutes the decision and order of the court

Dated: June 18, 2014



U.S.D.J.

BY ECF TO COUNSEL FOR DEFENDANTS
BY FIRST CLASS MAIL TO PLAINTIFF