

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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TERRELL THOMAS,

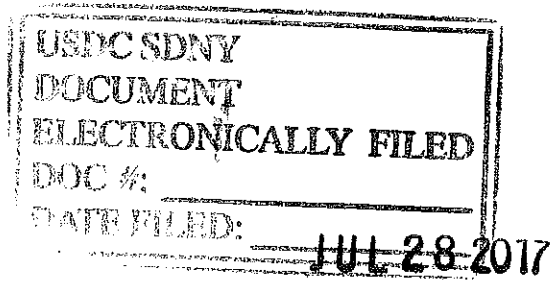
Plaintiff,

-against-

GRUNBERG 77 LLC and 359 COLUMBUS  
AVENUE, LLC,

Defendants.  
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GEORGE B. DANIELS, United States District Judge:



MEMORANDUM DECISION  
AND ORDER  
15-CV-1925 (GBD) (BCM)

Plaintiff, a wheelchair user, filed this action on March 13, 2015 asserting claims under Title III of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12181, the New York State Human Rights Law, N.Y.C. Admin. Code §§ 8-101, N.Y. Civ. Rights Law §§ 40-c and 40-d, and common law negligence, all arising out of the alleged inaccessibility of premises known as Isabella’s Restaurant (“Isabella’s”). (“Complaint,” ECF No. 1.) This Court had original jurisdiction over the ADA claim (*see* 28 §§ U.S.C. 1331, 1343) and supplemental jurisdiction over Plaintiff’s related state and local claims (*see* 28 U.S.C. § 1367). Defendants, owner of the property (“Owner”) and tenant (“Tenant”) leasing the property and operating Isabella’s, answered denying Plaintiff’s allegations. (Answers, ECF 11, 16.) Additionally, Owner filed cross-claims against Tenant for contribution and/or indemnification. (Crossclaim Ans., ECF 19.) Both Owner and Tenant filed summary judgement motions against each other with respect to the cross-claims. (ECF Nos. 42, 49.) Tenant informed this Court that it closed Isabella’s on May 15, 2017 and would vacate the premises on June 16, 2017, effectively mooting Plaintiff’s ADA claim, which seeks only injunctive relief. (Ltr. dated May 16, 2017 from Tenant, ECF No. 67.)

On January 6, 2017, the case was referred to Magistrate Judge Barbara Moses. (ECF No. 70.) Before this Court is Magistrate Judge Moses’s Report and Recommendation (“Report,” ECF No. 83) recommending that this Court dismiss Plaintiff’s complaint brought under the ADA with prejudice, as moot, and dismiss all remaining claims and cross-claims brought under state and local law, without prejudice to refile in state court.<sup>1</sup> (*Id.* at 1.) This Court adopts the Report in its entirety.

## I. LEGAL STANDARD

This Court may accept, reject, or modify, in whole or in part, the findings set forth in the Report. 28 U.S.C. § 636(b)(1)(C). When no party files objections to a Report, the Court may adopt the Report if “there is no clear error on the face of the record.” *Adee Motor Cars, LLC v. Amato*, 388 F. Supp. 2d 250, 253 (S.D.N.Y. 2005) (quoting *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)); *Wilds v. United Parcel Service, Inc.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003) (To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record).

Magistrate Judge Moses advised the parties that failure to file timely objections to the Report would constitute a waiver of those objections on appeal. (Report at 7); *see also* 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b). No objections to the Report have been filed.

## II. THIS COURT LACKS JURISDICTION

All parties agree that the permanent closing of Isabella’s mooted Plaintiff’s sole federal claim under the ADA. (*Id.* at 3.) Thus, the Report properly found that this Court lacks subject

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<sup>1</sup> The relevant procedural and factual background is set forth in detail in the Report and is incorporated herein.

matter jurisdiction and recommended that the ADA claim be dismissed. (*Id.* at 4.) Magistrate Judge Moses noted that although the supplemental jurisdiction statute, 28 U.S.C. § 1367, provides that a district court has “original jurisdiction” over an action, supplemental jurisdiction may be declined where “the district court has dismissed all claims over which it has original jurisdiction.” 28 U.S.C. § 1367(c)(3). Magistrate Judge Moses recommended that this Court decline to exercise supplemental jurisdiction over the non-federal claims because those claims “present questions ‘best left to the courts of the State of New York.’” (internal citations omitted). (*Id.* at 6.) This Court finds no clear error of law and adopts Magistrate Judge Moses’ Report in full.


### III. CONCLUSION

Count I of Plaintiff’s Complaint, brought under the ADA, is dismissed with prejudice as moot. All remaining claims and cross-claims in this action, brought under state and local law, are dismissed without prejudice.

The Clerk of Court is directed to close the motions at ECF Nos. 42 and 49, and this case.

Dated: New York, New York  
July 28, 2017

SO ORDERED.

  
GEORGE B. DANIELS  
United States District Judge