

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X		:	
RONALD L. FRANKLIN,		:	
	Plaintiff,	:	16 Civ. 5549 (PAE) (JCF)
	-v-	:	<u>OPINION &amp; ORDER</u>
CITY OF NEW YORK, et al.,		:	
	Defendants.	:	
-----X		X	

PAUL A. ENGELMAYER, District Judge:

*Pro se* plaintiff Ronald L. Franklin brings this action under 42 U.S.C. § 1983 alleging that the mattress he was issued while incarcerated caused him severe pain and injuries. This case arises out of an Amended Complaint, filed by Franklin, pursuant to the Court’s decision of August 15, 2013, dismissing a similar Complaint brought by Franklin in a nearly identical action before this Court. *See Franklin v. City of New York*, No. 12 Civ. 3430 (S.D.N.Y. March 6, 2013) (“2013 Decision”). Before the Court is the February 10, 2017 Report and Recommendation of the Hon. James C. Francis, United States Magistrate Judge, recommending that the Court grant the motion to dismiss Franklin’s Amended Complaint with prejudice. Dkt. 31 (“Report”). For the following reasons, the Court grants the motion.

**I. Background**

**A. Facts**

The Court incorporates by reference the summary of the facts provided in the Report, to which no party specifically objects, *see* Report at 1–4, as well as the facts articulated in the Court’s 2013 Decision. The Court also considers plaintiff’s objections to the Report, filed on

February 22, 2017, Dkt. 32 (“Obj.”), to the extent that they contain further factual allegations consistent with those in the Complaint.

In sum and substance, as liberally construed by the Court, Franklin alleges that for intermittent periods between March 2003 and June 2016, he was forced to use mattresses that were placed on a foundation, despite the fact that the manufacturer’s labels on those mattresses allegedly indicated that they were intended for use without a foundation. Franklin alleges that this caused him serious degenerative bone loss in his spine, as well as excruciating pain and a loss of sensation in his lower extremities.

## **B. Procedural History**

On July 12, 2016, Franklin filed the Amended Complaint in this case. Dkt. 2. On July 26, 2016, the Court referred this case to Judge Francis for general pretrial supervision and a report and recommendation. Dkt. 5.

On December 12, 2016, defendants moved to dismiss, Dkt. 18, and filed a memorandum of law, Dkt. 19, and a declaration, Dkt. 20, in support of that motion. On December 27, 2016, Franklin filed a declaration, Dkt. 24, and a memorandum of law, Dkt. 23, in opposition to the motion to dismiss. On January 18, 2017, defendants filed a reply memorandum of law. Dkt. 28. On January 27, 2017, Franklin filed a reply memorandum of law of his own, again opposing the motion to dismiss. Dkt. 30. On February 10, 2017, Judge Francis issued the Report, recommending that the Court dismiss the Complaint with prejudice. On February 22, 2017, Franklin filed brief objections. Dkt. 32.

## **II. Discussion**

In reviewing a Report and Recommendation, a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28

U.S.C. § 636(b)(1)(C). When a party makes specific objections to a magistrate’s findings, the district court must make a *de novo* determination as to those findings. *Id.* § 636(b)(1). However, where, as is the case here, a party “makes only conclusory or general objections, or simply reiterates the original arguments, the Court will review the Report strictly for clear error.” *Pinkney v. Progressive Home Health Servs.*, No. 06 Civ. 5023 (LTS) (JCF), 2008 WL 2811816, at \*1 (S.D.N.Y. July 21, 2008), *aff’d*, 367 F. App’x 210 (2d Cir. 2010) (summary order). And, while *pro se* parties are, as always, treated leniently in making objections, their objections to a Report “must be specific and clearly aimed at particular findings.” *Id.* Franklin’s sparse objections are not of such a nature, but are instead conclusory. The Court therefore reviews Judge Francis’s Report for clear error.


Careful review of Judge Francis’s thorough and well-reasoned Report (as well as the Order to Amend) reveals no facial error in its conclusions, or indeed any error at all. The Report is, therefore, adopted in its entirety.

### CONCLUSION

For the reasons articulated in the Report, the Court dismisses Franklin’s Complaint with prejudice. The Clerk of Court is directed to close this case.

The Court directs the Clerk to mail a copy of this decision to plaintiff at the address on file.

SO ORDERED.

  
\_\_\_\_\_  
Paul A. Engelmayer  
United States District Judge

Dated: February 27, 2017  
New York, New York