

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GILBERT LAU,

Plaintiff,

-against-

AMERICAN EAGLE OUTFITTERS, MARCLE
MARVERSON, and JOHN DOE OR JANE DOE
also known as DIRECTOR OF HUMAN
RESOURCES,

Defendants.
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MEMORANDUM DECISION
AND ORDER

17 Civ. 6055 (GBD) (BCM)

GEORGE B. DANIELS, United States District Judge:

Pro se Plaintiff Gilbert Lau brought this action in New York State Court against Defendants American Eagle Outfitters (“American Eagle”), Marcle Maverson, and John or Jane Doe, asserting employment discrimination claims under state and federal law stemming from his application for a position as a security guard with American Eagle.¹ *See* Notice of Removal, Ex. C (“Am. Compl.”), ECF No. 1-3.) Defendants removed the action to this Court, invoking its federal question jurisdiction. (*See* Notice of Removal, ECF No. 1, ¶ 9.) This Court referred the matter to Magistrate Judge Barbara C. Moses. (*See* ECF No. 6.) By letter dated March 22, 2018, Plaintiff informed this Court and Magistrate Judge Moses that “Plaintiff has filed federal criminal charges with [the] FBI.” (Letter from Plaintiff to this Court and Magistrate Judge Moses, ECF No. 58, at 2.) By letter dated March 23, 2018, Plaintiff informed Magistrate Judge Moses that he wished to “withdraw[] his lawsuit because by [sic] the US Attorney for USDC SDNY and FBI that he cannot have criminal case[s] against the attorneys and current defendants and it appears they

¹ American Eagle asserts that the person identified by Plaintiff as an American Eagle employee named “Marcel Maverson” is actually an employee named Marcel Malvoisin. (Notice of Removal, ECF No. 1, at 1 n.1.)

may possibl[y] [conduct a] federal criminal investig[ation].” (Letter from Plaintiff to Magistrate Judge Moses, ECF No. 59.) By letter dated April 2, 2018, Defendants informed Magistrate Judge Moses that they did not oppose Plaintiff’s request. (Letter from S. Jeanine Conley to Magistrate Judge Moses, ECF No. 60.) Before this Court is Magistrate Judge Moses’s April 9, 2018 Report and Recommendation, (the “Report,” ECF No. 62), recommending that Plaintiff’s March 23, 2018 letter be construed as an application for an order dismissing this action pursuant to Rule 41 of the Federal Rules of Criminal Procedure and that the application be granted.² (*Id.* at 3.) In the Report, Magistrate Judge Moses advised the parties that failure to file timely objections to the Report would constitute a waiver of those objections on appeal. (*Id.*) No objections have been filed.

A court “may accept, reject, or modify, in whole or in part, the findings or recommendations” set forth within a magistrate judge’s report. 28 U.S.C. § 636(b)(1)(C). The court must review *de novo* the portions of a magistrate judge’s report to which a party properly objects. *Id.* Portions of a magistrate judge’s report to which no or “merely perfunctory” objections are made are reviewed for clear error. *See Edwards v. Fischer*, 414 F. Supp. 2d 342, 346–47 (S.D.N.Y. 2006) (citation omitted). Clear error is present only when “upon review of the entire record, [the court is] left with the definite and firm conviction that a mistake has been committed.” *United States v. Snow*, 462 F.3d 55, 72 (2d Cir. 2006) (citation omitted).

Having reviewed the Report for clear error and finding none, this Court ADOPTS the Report in full. The Report correctly construed Plaintiff’s March 23, 2018 letter as a motion to dismiss the complaint. (Report at 2.) The Report correctly found that because all parties consent, the action should be dismissed without prejudice. (*Id.* at 2–3.)


² The relevant procedural and factual background is set forth in greater detail in the Report, and is incorporated herein.

CONCLUSION

Magistrate Judge Moses's Report is ADOPTED. Plaintiff's complaint is DISMISSED without prejudice. The Clerk of Court is directed to close this case accordingly.

Dated: New York, New York
April 30, 2018

SO ORDERED.



GEORGE B. DANIELS
United States District Judge