<u>IG REPORT</u> NDATION

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK		
TERRENCE ARMSTRONG,	x :	
Plaintiff,	:	
	:	ORDER ADOPTIN
V.	:	AND RECOMMEN
	:	
CAROLYN W. COLVIN,	:	
Acting Commissioner of Social Security,	:	12 CV 8126 (VB)
Defendant.	:	
	X	

Briccetti, J.:

Before the Court is Magistrate Judge Paul E. Davison's Report and Recommendation ("R&R"), dated October 15, 2013 (Doc. #25), on defendant's motion for judgment on the pleadings pursuant to Rule 12(c). (Doc. #16). Because plaintiff's affirmation in opposition to defendant's motion affirmatively urges the Court to vacate and reverse the Commissioner's decision (Doc. #23), Judge Davison treated plaintiff's opposition as a motion for judgment on the pleadings, and recommended the Court grant plaintiff's motion and deny defendant's motion.

Subsequent to the filing of the R&R, plaintiff filed a motion for an order "foregoing further administrative proceedings and rule on the plaintiff's filing as a dispositive motion urging the Court to vacate and reverse." (Doc. #27).

The Court presumes familiarity with the factual and procedural background of this case. For the following reasons, the Court (i) adopts the R&R as the opinion of the Court, (ii) denies defendant's motion, (iii) deems plaintiff's opposition to defendant's motion to be a motion for judgment on the pleadings, and grants plaintiff's motion to the extent that the case is remanded for further administrative proceedings consistent with the R&R, pursuant to 42 U.S.C. § 405(g), sentence four, and (iv) denies plaintiff's motion to forego further administrative proceedings. A district court reviewing a magistrate judge's report and recommendation "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). Parties may raise objections to the magistrate judge's report and recommendation, but they must be "specific[,] written," and submitted within 14 days after being served with a copy of the recommended disposition. Fed.R.Civ.P. 72(b)(2); 28 U.S.C. § 636(b)(1).

Insofar as a report and recommendation deals with a dispositive motion, a district court must conduct a <u>de novo</u> review of those portions of the report or specified proposed findings or recommendations to which timely objections are made. 28 U.S.C. § 636(b)(1)(C). The district court may adopt those portions of a report and recommendation to which no timely objections have been made, provided no clear error is apparent from the face of the record. <u>Lewis v. Zon</u>, 573 F. Supp. 2d 804, 811 (S.D.N.Y. 2008); <u>Nelson v. Smith</u>, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985). The clearly erroneous standard also applies when a party makes only conclusory or general objections, or simply reiterates his original arguments. <u>Ortiz v. Barkley</u>, 558 F. Supp. 2d 444, 451 (S.D.N.Y. 2008).

Neither party objected to Judge Davison's thorough and well-reasoned R&R. The Court has reviewed the R&R and finds no error, clear or otherwise.

CONCLUSION

Accordingly, the R&R is adopted in its entirety as the opinion of the Court.

Defendant's motion for judgment on the pleadings is DENIED.

Plaintiff's affirmation in opposition to defendant's motion is deemed to be a motion for judgment on the pleadings, and is GRANTED to the extent that the case is REMANDED for

further administrative proceedings consistent with the R&R, pursuant to 42 U.S.C. § 405(g), sentence four.

Plaintiff's motion for an order "foregoing further administrative proceedings and rule on the plaintiff's filing as a dispositive motion urging the Court to vacate and reverse" is DENIED.

The Clerk is instructed to enter Judgment accordingly and close this case.

The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose of an appeal. <u>See Coppedge v. United States</u>, 369 U.S. 438, 444-45 (1962).

Dated: December 3, 2013 White Plains, NY

SO ORDERED:

Vincent L. Briccetti United States District Judge