

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STEVEN OSBORN,

Plaintiffs,

-against-

SGT. MONTGOMERY, et al.,

Defendants.

15-CV-9730 (NSR)(LMS)


**ORDER ADOPTING REPORT
AND RECOMMENDATION**

NELSON S. ROMÁN, United States District Judge:

Plaintiff Steven Osborn, a pro se inmate, commenced this action pursuant to 42 U.S.C. § 1983 alleging various violations of his constitutional rights against employees of the Fishkill Correctional facility. Now before the Court, is a Report and Recommendation (“R&R”) issued by the Honorable Magistrate Judge Lisa M. Smith (“MJ Smith”) recommending that this Court grant Defendants’ motion to dismiss the operative complaint for failure to prosecute. For the following reasons, the Court adopts the R&R and the motion to dismiss is granted.

Plaintiff filed his initial complaint on or about December 10, 2015, alleging claims sounding in violations of 42 U.S.C. § 1983. ECF No. 2. By order dated February 29, 2016, Plaintiff was granted leave to file an amended complaint. ECF No. 13. On April 8, 2016, Plaintiff filed an amended complaint. ECF No.16. On November 3, 2016, Plaintiff filed a second amended complaint, which is the operative complaint. ECF No. 33. Following Defendants’ appearance and filing of an answer, the action was referred to MJ Smith for all pre-trial matters. ECF No. 52. Following the reference, MJ Smith sent all the parties multiple scheduling notices and set the matter down for multiple conferences. Despite no longer residing at a correctional facility, Plaintiff failed to appear in court. The Court also notes that Plaintiff was reminded of his ongoing obligation

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to notify the court of any change in his residence. ECF No. 46. By Notice of Motion dated January 22, 2018, Defendants move to dismiss the complaint for failure to prosecute. ECF No. 56-57. Plaintiff has not opposed the motion.

In reviewing an R&R, 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). A district court “must determine *de novo* any part of the magistrate judge’s disposition that has been properly objected to.” Fed. R. Civ. P. 72(b)(3); *see also United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997). To accept those portions of the report to which no timely objection has been made, however, a district court need only satisfy itself that there is no clear error on the face of the record. *See, e.g., Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003). This clearly erroneous standard also applies when a party makes only conclusory or general objections, or simply reiterates his original arguments. *See, e.g., Ortiz v. Barkley*, 558 F. Supp. 2d 444, 451 (S.D.N.Y. 2008).

In the present case, the R&R advised the parties that they had 14 days from service of the R&R to file any objections, and warned that failure to timely file such objections would result in waiver of any right to object. In addition, it expressly called the parties’ attention to Rule 72 of the Federal Rules of Civil Procedure and Title 28 United States Code Section 636(b)(1). Nevertheless, as of the date of this Order, no objections have been filed and no request for an extension of time to object has been made. Accordingly, the parties have waived the right to object to the Report and Recommendation or to obtain appellate review. *See Frank v. Johnson*, 968 F.2d 298, 300 (2d Cir. 1992); *see also Caidor v. Onondaga County*, 517 F.3d 601 (2d Cir. 2008).


Despite the waiver, the Court has reviewed Defendants’ application and the R&R, unguided by objections, and finds the R&R to be well reasoned and grounded in fact and law. Accordingly, the Court adopts the R&R in its entirety. Defendants’ motion to dismiss Plaintiff’s

amended complaint for failure to prosecute is granted.

The Clerk of Court is directed to terminate the motion at ECF No. 56 and to terminate the action.

Dated: May 01, 2018
White Plains, New York

SO ORDERED:



NELSON S. ROMÁN
United States District Judge