

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

---

---

HOWARD AYERS,

Plaintiff,

v.

ORDER  
12-CV-656A(F)

J. ESGROW, Hearing Officer, (CHO),  
L. FRIOT, SCC,  
D. VENETOZZI, Acting Director (SHU), and  
A. PRACK, Director Special Housing Unit,

Defendants.

---

---

The above-referenced case was referred to Magistrate Judge Leslie G. Foschio, pursuant to 28 U.S.C. § 636(b)(1)(B). On September 24, 2014, Magistrate Judge Foschio filed a Report and Recommendation, recommending that defendants' motion to dismiss (Dkt. No 13) the Second and Third Claims for Relief should be granted, and that the plaintiff should be permitted to file an amended complaint. On November 6, 2014, plaintiff filed a notice stating that he sought leave to amend his complaint but that he did not intend to file objections to the Report and Recommendation. (Dkt. No. 29)

The Court has carefully reviewed the Report and Recommendation, the record in this case, and the pleadings and materials submitted by the parties, including plaintiff's November 6, 2014 submission, it is hereby

ORDERED, that pursuant to 28 U.S.C. § 636(b)(1), and for the reasons set forth in Magistrate Judge Foschio's Report and Recommendation, defendants' motion to dismiss the Second and Third Claims for Relief is granted. Plaintiff is

permitted to file an amended complaint in accordance with the parameters set forth in the Report and Recommendation. The amended complaint is due on or before February 26, 2015.

The case is referred back to Magistrate Judge Foschio for further proceedings.

IT IS SO ORDERED.

*Richard J. Arcara*

---

HONORABLE RICHARD J. ARCARA  
UNITED STATES DISTRICT COURT

Dated: December 16, 2014