

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

WILLIAM FIGUEROA,

Plaintiff

v.

DECISION AND ORDER
13-CV-240S

SGT. DARRIN McGUIRE,

Defendant.

1. On January 7, 2015, Defendant filed a motion for summary judgment dismissing Plaintiff's complaint for relief pursuant to 42 U.S.C. § 1983 in its entirety. This Court then referred the matter to the Honorable Hugh B. Scott, United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b)(1)(B) and (C) to prepare and file a report and recommendation containing findings of fact, conclusions of law and a recommended disposition on any dispositive motion. Despite the scheduling order and the express warning in Defendant's notice of motion that failure to respond could result in dismissal of his complaint, Plaintiff failed to file any opposition to Defendants' motion.

2. On March 2, 2015, Judge Scott filed a Report and Recommendation finding that Defendants had established their entitlement to summary judgment on the grounds that: (1) Plaintiff failed to exhaust his administrative remedies; and (2) alternatively, the alleged force used against Plaintiff and resulting injuries were insufficient to state a viable constitutional claim of excessive force. Judge Scott therefore recommended that the motion be granted in its entirety. (Docket No. 23.)

3. Plaintiff thereafter filed an objection in which he states that he submitted a grievance to "all offices." (Docket No. 24.) Because Plaintiff failed to raise this argument before the Magistrate Judge, the Report and Recommendation is reviewed under a clear

error rather than *de novo* standard. See Reiseck v. Universal Comm'ns of Miami, No. 06 Civ. 0777(LGS), 2014 WL 5364081, *1 (S.D.N.Y. Oct. 22, 2014); see also Patterson-Leitch Co. v. Massachusetts Municipal Wholesale Electric Co., 840 F.2d 985, 990-91 (1st Cir. 1988). Plaintiff's conclusory assertion is insufficient to raise a triable issue of fact. See Davis v. New York, 316 F.3d 93, 100 (2d Cir. 2002) ("reliance upon conclusory statements or mere allegations is not sufficient to defeat a summary judgment motion"). Further, this Court finds no clear error in the Magistrate Judge's analysis and conclusions, and therefore accepts the Report and Recommendation in its entirety.

IT HEREBY IS ORDERED, that this Court ACCEPTS Judge Scott's March 2, 2015 Report and Recommendation (Docket No. 23) in its entirety;

FURTHER, that Plaintiff's Objection (Docket No. 24) is DENIED.

FURTHER, that Defendant's motion for summary judgment dismissing the complaint (Docket No. 18) is GRANTED and the complaint is dismissed;

FURTHER, that the Clerk of the Court shall close this case.

SO ORDERED.

Dated: May 5, 2015
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
Senior United District Court Judge