UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NEW YORK

LEV GRIGORYOU,

Plaintiff.

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ORDER 13-CV-526

PALLET SERVICE INC.,

Defendant.

The above-referenced case was referred to Magistrate Judge Jeremiah J. McCarthy, pursuant to 28 U.S.C. §636(b)(1)(B). Plaintiff, who is proceeding *prose*, filed a motion to appoint counsel. (Dkt. No. 9) Defendant filed a motion to dismiss plaintiff's complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). (Dkt. No. 6) On February 14, 2014, Magistrate Judge McCarthy issued a Report, Recommendation and Order denying, without prejudice, plaintiff's motion for appointment of counsel, and recommending that defendant's motion to dismiss the complaint be granted, without prejudice to plaintiff filing an amended complaint.

Plaintiff filed objections on April 3, 2014. (Dkt. No. 15) Defendant responded on April 14, 2014, (Dkt. No. 16), at which time the Court considered the matter submitted.

Pursuant to 28 U.S.C. §636(b)(1), this Court must make a *de novo* determination of those portions of the Report and Recommendation to which

objections have been made. Upon de novo review, and after reviewing the

submissions of the parties, the Court adopts the proposed findings of the Report,

Recommendation and Order.

Accordingly, for the reasons set forth in Magistrate Judge McCarthy's

Report, Recommendation and Order, plaintiff's motion for appointment of counsel

is denied without prejudice. Defendant's motion to dismiss is granted, without

prejudice to plaintiff filing an amended complaint. Plaintiff shall file an amended

complaint on or before June 2, 2014. If an amended complaint is not filed by that

date, the Clerk of the Court is instructed to close the case.

SO ORDERED.

Richard J. Arcara____

HONORABLE RICHARD J. ARCARA UNITED STATES DISTRICT COURT

Dated: May 2, 2014

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