

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOHN LEE CORTRIGHT, JR.,

Plaintiff,

v.

DECISION AND ORDER
13-CV-865A

STEVEN BELLOMA, et al.,

Defendants.

This case was referred to Magistrate Judge Hugh B. Scott, pursuant to 28 U.S.C. § 636(b)(1)(B). On February 16, 2016, Judge Scott filed a Report and Recommendation (Dkt. No. 37), recommending that defendants Belloma and Esgrow's motion to dismiss or for summary judgment (Dkt. No. 18) be granted in part and denied in part.

After several extensions, on June 13, 2016, the plaintiff filed objections to the Report and Recommendation. Dkt. No. 58. Two months later, on August 15, 2016, the Plaintiff filed what he called "Amended/Supplemental Objections to Docket 37 [i.e., Judge Scott's Report and Recommendation] . . . R&R's A Request to amend Complaint." Dkt. No. 70.

In proceedings before Judge Scott, the plaintiff did not respond to the defendants' motion to dismiss/motion for summary judgment, despite being warned of the consequences of not responding (Dkt. No. 24), and despite receiving several extensions of time within which to respond. Thus, the plaintiff's objections and "supplemental" objections" necessarily raise a number of arguments that the plaintiff did

not raise before Judge Scott. “Generally, courts do not consider . . . ‘new arguments’ or new evidence raised in objections to a magistrate judge’s report and recommendation that could have been raised before the magistrate but were not and the Court declines to do so.” *Chalasan v. Daines*, 10-CV-1978(RRM)(RML), 2011 WL 4465408, at *1 n.3 (E.D.N.Y. Sept. 26, 2011) (quotation marks omitted).

The Court therefore will not consider the plaintiff’s objections and, instead, reviews the Report and Recommendation as if no objections had been filed. “Where no objection is made to a report and recommendation . . . only ‘clear error’ review is required by the district court.” *Teixeria v. St. Jude Medical S.C., Inc.*, 193 F. Supp. 3d 218, 222 (W.D.N.Y. 2016) (citing Fed. R. Civ. P. 72(b)). “In such case, the district court ‘need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Id.* (quoting 1983 Advisory Committee Note to Fed. R. Civ. P. 72(b)). The Court has carefully reviewed Judge Scott’s Report and Recommendation, as well as the record in this case as it pertains to the Report and Recommendation before the Court. Upon such review, the Court finds no clear error in any of Judge Scott’s recommendations.

Accordingly, it is hereby **ORDERED**, that defendants Belloma and Esgrow’s motion to dismiss, or for summary judgment, be granted in part and denied in part, as stated in Judge Scott’s Report and Recommendation.

IT IS SO ORDERED.

Richard J. Arcara

HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT COURT

Dated: May 23, 2017