

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

---

---

ANTHONY AIKENS,

Plaintiff

v.

**DECISION AND ORDER**  
13-CV-1088S

DR. RAO and S. MICHALEK,

Defendants.

---

---

1. On April 15, 2015, Defendants filed a motion for summary judgment dismissing Plaintiff's amended complaint for relief pursuant to 42 U.S.C. § 1983 in its entirety. This Court had previously referred the matter to the Honorable Jeremiah J. McCarthy, 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. On July 8, 2015, Judge McCarthy filed a report recommending that Defendants' motion for summary judgment be granted and the amended complaint be dismissed. (Docket No. 58.)

2. Plaintiff's objection to the Report and Recommendation, timely filed with a permitted extension on July 29, 2015, does not address Judge McCarthy's reasoning for dismissing Plaintiff's claims, but generally repeats previously raised arguments. (Docket No. 61.) Where an objection consists of the arguments previously raised before the magistrate judge, review for only clear error is appropriate United States v. Gardin, 451 F. Supp. 2d 504, 507-8 (W.D.N.Y. 2006); see Mario v. P&C Food Markets, Inc., 313 F.3d 758, 766 (2d Cir. 2002); Automobile Ins. Co. of Harford Conn. v. Murray, Inc., 571 F. Supp. 2d 408, 412 (W.D.N.Y. 2008). After consideration of the submissions, this Court finds no

clear error in Judge McCarthy's reasoning or conclusions. See United States v. Gardin, 451 F. Supp. 2d at 507-8.

3. Although not addressed in his objection, Plaintiff has submitted two purported "original" letter grievances that appear to reference his ignored sick call requests. (See Report and Recommendation at 9-14 (dismissing this claim for failure to exhaust).) To the extent these August 2013 documents are intended to evidence additionally filed grievances, as opposed to letters inquiring into the status of previously filed grievances, they will not be considered. Generally, new evidence not presented to the magistrate judge will not be considered. See Yao Wu v. BDK DSD, No. 14-CV-5402(CBA)(SMG), 2015 WL 5664534, \*1 (E.D.N.Y. Sept. 22, 2015) (new facts not raised before a magistrate judge are not properly construed as objections to a report and recommendation) (citing Grant v. Bradt, No. 10 Civ. 394(RJS), 2012 WL 3764548, at \*4 (S.D.N.Y. Aug. 30, 2012)).

IT HEREBY IS ORDERED, that this Court ACCEPTS Judge McCarthy's July 8, 2015 Report and Recommendation (Docket No. 58) in its entirety;

FURTHER, that Plaintiff's Objection (Docket No. 61) is DENIED.

FURTHER, that Defendant's motion for summary judgment (Docket No. 43) is GRANTED and the amended complaint is dismissed;

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

SO ORDERED.

Dated: October 8, 2015  
Buffalo, New York

/s/William M. Skretny  
WILLIAM M. SKRETNY  
United States District Judge