

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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JOHN ROBERTS,

Plaintiff,

v.

FRESENIUS KABI USA LLC,

Defendant.

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**DECISION AND ORDER**  
14-CV-369-A

This case was referred to Magistrate Judge Leslie G. Foschio pursuant to 28 U.S.C. § 636(b)(1) for the conduct of the pretrial proceedings. On July 17, 2017, the Magistrate Judge filed a Report and Recommendation (Dkt. No. 41) recommending that defendant Fresenius Kabi's motion for summary judgment pursuant to Fed. R. Civ. P. 56 (Dkt. No. 34) be granted because no material issues of fact require a trial.

On August 31, 2017, plaintiff John Roberts filed objections to the Report and Recommendation. Dkt. No. 47. Defendant Fresenius Kabi filed a timely response (Dkt. No. 49). Oral argument is unnecessary.

Pursuant to 28 U.S.C. §636(b)(1), the Court makes a *de novo* determination of those portions of the Report and Recommendation to which objections have been made. Upon *de novo* review, and after considering the parties' arguments, the Court hereby adopts the Magistrate Judge's recommended findings and conclusions. Based upon the undisputed material facts, no reasonable jury could find for the plaintiff as a matter of law. Accordingly, defendant Fresenius Kabi's motion for

summary judgment pursuant to Fed. R. Civ. P. 56 is granted.

The Clerk shall enter Judgment in favor of the defendant, Fresenius Kabi USA LLC, and shall close the case.

**IT IS SO ORDERED.**

*Richard J. Arcara*  
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HONORABLE RICHARD J. ARCARA  
UNITED STATES DISTRICT COURT

Dated: October 19, 2018