

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JEROME BARBER,

Plaintiff,

v.

CITY OF BUFFALO,
CITY OF BUFFALO POLICE DEPARTMENT,
and CAPTAIN MARK ANTONIO,

Defendants.

DECISION AND ORDER
14-CV-1075-A

This action was referred to Magistrate Judge H. Kenneth Schroeder, Jr., pursuant to 28 U.S.C. § 636(b)(1) for the conduct of pretrial proceedings. On May 5, 2016, Magistrate Judge Schroeder filed a Report and Recommendation (Dkt. No. 13) recommending that defendants' motion to dismiss the Complaint (Dkt. No. 7) be granted.

On July 13, 2016, *pro se* plaintiff Jerome Barber filed objections to the Report and Recommendation. Dkt. No. 17. Defendants filed a response on August 8, 2016 (Dkt. No. 19) and plaintiff filed a reply on September 2, 2016 Dkt. No. 20. The matter was deemed 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 from the parties, the Court hereby adopts Magistrate Judge

Schroeder's findings and conclusions.

Accordingly, for the reasons set forth in Magistrate Judge Schroeder's Report and Recommendation (Dkt. No. 13), defendants' motion to dismiss plaintiff's Complaint is granted without prejudice. Plaintiff is granted leave to amend the Complaint within the confines outlined in the Report and Recommendation.

If Plaintiff Barber chooses to amend his Complaint, he must do so on or before February 17, 2017. In the event Plaintiff fails timely to file an amendment, the Clerk shall enter Judgment without further order of the Court.

IT IS SO ORDERED.

Richard J. Arcara

HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT COURT

Dated: January 21, 2017