

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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JEAN BERNIER, #29463-054,

Plaintiff,

v.

DECISION AND ORDER  
15-CV-209A

SWEET AND LEPKOWSKI,

Defendants.

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This civil rights case was referred to Magistrate Judge Hugh B. Scott, pursuant to 28 U.S.C. § 636(b)(1)(B). On February 26, 2018, Magistrate Judge Scott filed a Report and Recommendation (Dkt. No. 67), recommending that Defendant Lepkowski's motion to dismiss (Dkt. No. 61) be granted.

On March 12, 2018, *pro se* Plaintiff Jean Bernier filed objections to the Report and Recommendation (Dkt. No. 68). Defendant Lepkowski filed a response on March 28, 2018 (Dkt. No. 70), and Plaintiff filed a reply on April 12, 2018 (Dkt. No. 44). 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 carefully reviewing the submissions from the parties, the Court adopts Magistrate Judge Scott's conclusions. It is, therefore

ORDERED, that pursuant to 28 U.S.C. § 636(b)(1), and for the reasons set forth in Magistrate Judge Scott's Report and Recommendation, Defendant Lepkowski's

motion to dismiss (Dkt. No. 61) is granted, and the amended complaint is dismissed with respect to Defendant Thomas Lepkowski.

This Decision and Order “adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties.” Fed. R. Civ. P. 54(b). Thus, the Clerk of Court shall not, at this time, enter judgment against Defendant Lepkowski. If the plaintiff seeks entry of final judgment against Defendant Lepkowski, he shall, within 30 days of the date of this Decision and Order, make a motion pursuant to Federal Rule of Civil Procedure 54(b). See *Novick v. AXA Network, LLC*, 642 F.3d 304, 310-11 (2d Cir. 2011) (summarizing standard for certification under Rule 54(b)).

The case is referred back to Magistrate Judge Scott for further proceedings.

IT IS SO ORDERED.

*Richard J. Arcara*

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HONORABLE RICHARD J. ARCARA  
UNITED STATES DISTRICT COURT

Dated: April 17, 2018