

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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FRANCES MOODY,

Plaintiff,

v.

16-CV-901  
DECISION AND ORDER

ALLERGAN USA, INC.,

Defendant.

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On October 13, 2016, the plaintiff commenced this action in New York State Supreme Court, Niagara County. After the defendant removed the case to this Court, Docket Item 1, it was referred to United States Magistrate Judge H. Kenneth Schroeder, Jr., for all proceedings under 28 United States Code Section 636(b)(1)(A) and (B). Docket Item 4.

On November 16, 2016, the defendant moved to dismiss for failure to state a claim, Docket Item 3; on January 20, 2017, the plaintiff responded, Docket Item 9; and on February 21, 2017, the defendant replied, Docket Item 10. On December 5, 2017, Judge Schroeder issued a Report and Recommendation finding that the defendant's motion should be granted and the case should be dismissed with prejudice. Docket Item 12. The parties did not object to the Report and Recommendation, and the time to do so now has expired. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a de novo review of those portions of a magistrate judge's

recommendation to which objection is made. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). But neither 28 United States Code Section 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. See *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

Although not required to do so in light of the above, this Court nevertheless has reviewed Judge Schroeder's Report and Recommendation as well as the parties' submissions to him. Based on that review and the absence of any objections, the Court accepts and adopts Judge Schroeder's recommendation to grant the defendant's motion to dismiss for failure to state a claim.

For the reasons stated above and in the Report and Recommendation, the defendant's motion to dismiss, Docket Item 3, is GRANTED; the complaint, Docket Item 1-1, is dismissed with prejudice; and the Clerk of the Court is instructed to close the file.

SO ORDERED.

Dated: January 16, 2018  
Buffalo, New York

*s/Lawrence J. Vilaro*  
LAWRENCE J. VILARDO  
UNITED STATES DISTRICT JUDGE