UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

NEB MORROW, III,

Plaintiff,

v. 17-CV-1109 (JLS) (LGF)

BRIAN HEMBROOK, Law Library Supervisor, MR. BLACKBURN, Program Committee Chairman, JOEY CLINTON, Deputy Superintendent, Law Library Administrator, JOSEPH H. NOETH, Superintendent of Attica C.F., R. COVENY, Deputy Superintendent of Attica C.F., BARBARA OST, Law Library Coordinator,

Defendants.

DECISION AND ORDER

Plaintiff Neb Morrow, III commenced this action on November 1, 2017, alleging claims pertaining to incidents occurring while he was housed at Attica Correctional Facility. Dkt. 1. He filed an Amended Complaint on May 3, 2019, Dkt. 17, and a Second Amended Complaint on February 18, 2022, which is now the operative complaint. Dkt. 49. The case was referred to United States Magistrate Judge Leslie G. Foschio for all proceedings under 28 U.S.C. §§ 636(b)(1)(A), (B), and (C). Dkt. 30.

On June 9, 2022, Defendants moved to dismiss the Second Amended Complaint. Dkt. 54. Plaintiff responded in opposition to Defendants' motion, Dkt. 56, and Defendants replied. Dkt. 57.

On November 18, 2022, Judge Foschio issued a Report and Recommendation ("R&R"), recommending that "Defendants' motion (Dkt. 54) should be GRANTED, with prejudice and without leave to amend." Dkt. 58, at 18. On December 12, 2022, Plaintiff objected to the R&R, arguing that this Court "should completely reject" the R&R "and allow this matter to proceed." Dkt. 59, at 17. Defendants responded to Plaintiff's objections, Dkt. 63, and Plaintiff replied. Dkt. 66.

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 a party objects. *See* 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 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).

This Court carefully reviewed the R&R, the objections briefing, and the relevant record. Based on its *de novo* review, the Court accepts and adopts Judge Foschio's recommendation.

For the reasons stated above and in the R&R, this Court GRANTS Defendants' [54] motion to dismiss. The Second Amended Complaint is dismissed without leave to amend. The Clerk of Court is directed to close the case.

SO ORDERED.

Dated: February 6, 2023
Buffalo, New York

JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE