

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

TYRRELL COLLINS,	:	CIVIL ACTION NO. 1:14-CV-1486
	:	
Plaintiff	:	(Chief Judge Conner)
	:	
v.	:	
	:	
DARREN BATES, et al.,	:	
	:	
Defendants	:	

ORDER

AND NOW, this 23rd day of January, 2015, upon consideration of the report (Doc. 27) of Chief Magistrate Judge Martin C. Carlson, recommending the court grant defendants' motion (Doc. 24) pursuant to Federal Rules of Civil Procedure 12(b)(6) and 12(e) and dismiss plaintiff's second amended complaint (Doc. 19) with prejudice for failure to prosecute, see FED. R. CIV. P. 41(b) (permitting court to dismiss lawsuit if "the plaintiff fails to prosecute or to comply with these rules or a court order") and failure to oppose the motion, see LOCAL RULE OF COURT 7.6 ("Any party who fails [to timely file a brief in opposition] shall be deemed not to oppose such motion."), and also on the merits, and, following an independent review of the record, the court being in agreement with the magistrate judge that the *pro se* plaintiff's claims are subject to dismissal, and also agreeing that amendment could not cure the deficiencies identified in the report, see Fletcher-Hardee Corp. v. Pote Concrete Contractors, 482 F.3d 247, 253 (3d Cir. 2007) (observing that leave to amend should ordinarily be granted unless amendment would be futile or result in

undue delay), and noting that plaintiff filed an objection¹ (Doc. 30) to the report, and the court finding his objection to be without merit and squarely addressed by Judge Carlson's report, it is hereby ORDERED that:

1. The report (Doc. 27) of Chief Magistrate Judge Carlson is ADOPTED.
2. Plaintiff's second amended complaint (Doc. 19) is DISMISSED with prejudice.
3. Plaintiff's motion (Doc. 28) for leave to proceed *in forma pauperis* and for appointment of counsel is DENIED as moot.
4. The Clerk of Court is directed to CLOSE this case.
5. Any appeal from this order is deemed to be frivolous and not taken in good faith. See 28 U.S.C. § 1915(a)(3).

/S/ CHRISTOPHER C. CONNER
Christopher C. Conner, Chief Judge
United States District Court
Middle District of Pennsylvania

¹ When a party objects to a magistrate judge's report and recommendation, the district court performs a *de novo* review of the contested portions of the report. See Behar v. Pa. Dep't of Trans., 791 F. Supp. 2d 383, 389 (M.D. Pa. 2011) (citing Sample v. Diecks, 885 F.2d 1099, 1106 n.3 (3d Cir. 1989); 28 U.S.C. § 636(b)(1)(c)). In this regard, Local Rule of Court 72.3 requires written objections to "specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for those objections." LOCAL RULE OF COURT 72.3; also Behar, 791 F. Supp. 2d at 389 (citing Shields v. Astrue, Civ. No. 07-417, 2008 U.S. Dist. LEXIS 74519, at *6 (M.D. Pa. Sept. 8, 2008)).