

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

U.S. DISTRICT COURT  
DISTRICT OF VERMONT  
FILED

2016 SEP 21 PM 2:16

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JONATHAN HENRY, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 VERMONT DEPARTMENT OF )  
 CORRECTIONS and JEREMY BRADLEY, )  
 )  
 Defendants. )

Case No. 2:16-cv-41

**OPINION AND ORDER ADOPTING MAGISTRATE JUDGE'S  
REPORT AND RECOMMENDATION**

(Docs. 5 & 18)

This matter came before the court for a review of the Magistrate Judge's August 2, 2016 Report and Recommendation ("R & R") (Doc. 18), in which he recommended that the court grant the motion to dismiss filed by Defendants Vermont Department of Corrections ("DOC") and former DOC Correctional Officer Jeremy Bradley in his official capacity. (Doc. 5.) The Magistrate Judge further recommended that the court not dismiss Plaintiff Jonathan Henry's claims against Defendant Bradley in his individual capacity. On September 6, 2016, Plaintiff filed a response to the R & R wherein he stated he did not object to the court adopting the R & R because he intends to refile the dismissed claims in Washington County Superior Court.

A district judge must make a *de novo* determination of those portions of a magistrate judge's report and recommendation to which an objection is made. Fed. R. Civ. P. 72(b)(3); 28 U.S.C. § 636(b)(1); *Cullen v. United States*, 194 F.3d 401, 405 (2d Cir. 1999). The district judge may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1); *accord Cullen*, 194 F.3d at 405. A district judge, however, is not required to review the

factual or legal conclusions of the magistrate judge as to those portions of a report and recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985).


Because Plaintiff does not object to the Magistrate Judge's conclusion that his Complaint against Defendant DOC and Defendant Bradley in his official capacity should be dismissed, the court adopts the Magistrate Judge's conclusions and adopts the R & R in its entirety.

### CONCLUSION

For the foregoing reasons, the court hereby ADOPTS the Magistrate Judge's R & R (Doc. 18) as the court's Order and Opinion, and GRANTS Defendants' motion to dismiss Plaintiff's claims against Defendant DOC and Defendant Bradley in his official capacity for lack of subject matter jurisdiction and failure to state a claim without prejudice. (Doc. 5.)

SO ORDERED.

Dated at Burlington, in the District of Vermont, this 21<sup>st</sup> day of September, 2016.

  
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Christina Reiss, Chief Judge  
United States District Court