

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION**

ROY SHERMAN,

Plaintiff,

vs.

Case No. 5:15-cv-36-Oc-34PRL

CHRIS BLAIR, in his official capacity as
Sheriff of Marion County, Florida; FRANCO
PORCELLI; and PAXTON SAPP,

Defendants.

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ORDER

THIS CAUSE is before the Court on the Report and Recommendation (Dkt. No. 41; Report), entered by the Honorable Philip R. Lammens, United States Magistrate Judge, on December 18, 2015. In the Report, Magistrate Judge Lammens recommends that the motions to dismiss filed by Defendants Porcelli and Sapp (Dkt. Nos. 23 and 24) be granted, in part, and denied, in part, and that the motion to dismiss filed by Defendant Sheriff Blair be granted. See Report at 18. The parties have failed to file objections to the Report, and the time for doing so has now passed.

The Court “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). If no specific objections to findings of facts are filed, the district court is not required to conduct a de novo review of those findings. See Garvey v. Vaughn, 993 F.2d 776, 779 n.9 (11th Cir. 1993); see also 28 U.S.C. § 636(b)(1). However, the district court must review legal conclusions de novo. See Cooper-Houston v. Southern Ry. Co., 37 F.3d 603, 604 (11th Cir. 1994);

United States v. Rice, No. 2:07-mc-8-FtM-29SPC, 2007 WL 1428615, at * 1 (M.D. Fla. May 14, 2007).

Upon independent review of the file and for the reasons stated in the Magistrate Judge's Report, the Court will accept and adopt the legal and factual conclusions recommended by the Magistrate Judge. Accordingly, it is hereby

ORDERED:

1. The Report and Recommendation (Dkt. No. 41) of Magistrate Judge Lammens is **ADOPTED** as the opinion of the Court.

2. Defendant, Deputy Franco Porcelli's Motion to Dismiss the First Amended Complaint (Dkt. No. 23) and Defendant, Deputy Paxton Sapp's Motion to Dismiss Counts II, VII and X of the First Amended Complaint (Dkt. No. 24) are **GRANTED, in part, and DENIED, in part.**

A. The Motions are **GRANTED** to the extent Plaintiff seeks claims against Defendants Porcelli and Sapp in their official capacities, seeks claims against them under the First Amendment, and seeks relief for the "negligent infliction of excessive force and battery."

B. The Motions are **DENIED** as to the constitutional claims in Counts I (false arrest as to Porcelli), II (false arrest as to Sapp), and III (excessive force as to Porcelli); and as to the state law claims asserted against them in Counts VI (excessive force as to Porcelli), VII (excessive force as to Sapp), IX (false arrest as to Porcelli), and X (false arrest as to Sapp).

3. The Motion to Dismiss the First Amended Complaint by Defendant Sheriff (Dkt. No. 21) is **GRANTED**. The constitutional claim against Defendant Sheriff in Count V (for failing to train and allowing or creating a custom, policy, or practice that permitted the deputies' misconduct), the state law claim in Count VIII (vicarious liability for the deputies' use of excessive force), and any claim Plaintiff seeks to bring under the First Amendment, and for the purported state law claims of "negligent infliction of excessive force and battery" are **DISMISSED with prejudice**.

4. Defendants are directed to respond to the remaining claims on or before **February 3, 2016**.

DONE and ORDERED in Chambers, this 8th day of January, 2016.


MARCIA MORALES HOWARD
United States District Judge

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Copies to:

Counsel of Record