

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

DALLAS MCINTOSH,

Plaintiff,

v.

Case No. 16-cv-1018-JPG-RJD

BRENDAN F. KELLY, NICHOLAS
GAILIUS, JEFF STRATMAN, JEFF BLAIR,
TIMOTHY MUELLER, RYAN
WEISENBORN, ELBERT JENNINGS,
JAMES G. PIPER, UNKNOWN PARTY and
CITY OF FAIRVIEW HEIGHTS

Defendants.

MEMORANDUM AND ORDER

This matter comes before the Court on the Report and Recommendation (“Report”) (Doc. 23) of Magistrate Judge Reona J. Daly recommending that the Court grant plaintiff Dallas McIntosh’s motion for leave to file a second amended complaint (Doc. 21), that he be allowed to reinstate Count 1 against defendants Stratman and Blair, but that he not be allowed to add new defendants be added to Count 4.

The Court may accept, reject or modify, in whole or in part, the findings or recommendations of the magistrate judge in a report and recommendation. Fed. R. Civ. P. 72(b)(3). The Court must review *de novo* the portions of the report to which objections are made. *Id.* “If no objection or only partial objection is made, the district court judge reviews those unobjected portions for clear error.” *Johnson v. Zema Sys. Corp.*, 170 F.3d 734, 739 (7th Cir. 1999).

The Court has received no objection to the Report. The Court has reviewed the entire file and finds that the Report is not clearly erroneous. Accordingly, the Court hereby:

- **ADOPTS** the Report in its entirety (Doc. _23);
- **GRANTS** McIntosh's motion for leave to file a second amended complaint (Doc. 21);
- **DIRECTS** the Clerk of Court to file the proposed Second Amended Complaint McIntosh tendered with his motion for leave to amend; and
- **ORDERS** that McIntosh shall be allowed to proceed on the following claims in the Second Amended Complaint:
 - **Count 1** - Fourth Amendment claim against Stratman and Blair for the unlawful stop, search and seizure of Plaintiff on September 25, 2012.
 - **Count 2** - Fourteenth Amendment equal protection claim against Stratman and Blair for stopping Plaintiff and searching him and/or his vehicle without probable cause based on racial animus on September 25, 2012.
 - **Count 3** - Fourteenth Amendment equal protection claim against the City of Fairview Heights, Illinois, including Gailius, for maintaining a policy, custom or practice of stopping individuals without probable cause based on racial animus.
 - **Count 4** - Conspiracy claims against Stratman, Blair, Gailius and the City of Fairview Heights for working together to deprive Plaintiff of his constitutional rights and covering up their misconduct in connection with the traffic stop, search and seizure that occurred on September 25, 2012.

IT IS SO ORDERED.

DATED: July 27, 2017

s/ J. Phil Gilbert _____
J. PHIL GILBERT
DISTRICT JUDGE