

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

PRASANNA GOONEWARDENA,

Plaintiff,

ORDER

15-CV-5239 (MKB) (ST)

v.

LOUIS SPINELLI, JAMES ALFIERI and SHAWN
WILLIAMS,

Defendants.

MARGO K. BRODIE, United States District Judge:

Plaintiff Prasanna Goonwardena, proceeding *pro se*, commenced the above-captioned action on September 10, 2015 against, *inter alia*, Defendants Louis Spinelli, Officer James Alfieri, and Shawn Williams. (Compl., Docket Entry No. 1.) Plaintiff asserts claims pursuant to 42 U.S.C. § 1983 for false arrest, first amendment retaliation, and excessive force, and other state law claims. (*Id.*) The parties cross-moved for summary judgment and, by Order dated September 3, 2019, the Court referred the motions to Magistrate Judge Steven L. Tiscione for a report and recommendation. (Order dated Sept. 3, 2019.) By report and recommendation dated March 5, 2020, Judge Tiscione recommended, *inter alia*, that the Court grant Defendants' motion for summary judgment as to Plaintiff's (1) state assault claim against Officer Spinelli arising from the July 16, 2015 incident, and (2) state malicious prosecution claims against all Defendants (the "R&R"). (R&R, Docket Entry No. 191.) In addition, Judge Tiscione recommended that the Court deny Plaintiff's motion for summary judgment in its entirety. (*Id.*)

By letter dated March 7, 2020, Plaintiff notified the Court that he does not intend to object to the R&R. (*See* Letter dated Mar. 7, 2020, Docket Entry No. 199.) Defendants filed

their objections to the R&R on March 27, 2020 but do not oppose these recommendations. (*See* Defs. Obj. to the R&R 3, Docket Entry No. 200.) On March 31, 2020, the Court granted Plaintiff an extension of time until May 29, 2020, to file a response to the portions of the R&R to which Defendants objected. (Order dated Mar. 31, 2020.)

A district court reviewing a magistrate judge's recommended ruling "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)(C). "Where parties receive clear notice of the consequences, failure to timely object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision." *Smith v. Campbell*, 782 F.3d 93, 102 (2d Cir. 2015) (quoting *Mario v. P&C Food Markets, Inc.*, 313 F. 3d 758, 766 (2d Cir. 2002) (citing *Small v. Sec'y of Health & Human Servs.*, 892 F. 2d 15, 16 (2d Cir. 1989) (per curiam))); *see also Sepe v. N.Y. State Ins. Fund*, 466 F. App'x 49, 50 (2d Cir. 2012) (quoting *United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997)); *see also Almonte v. Suffolk Cty.*, 531 F. App'x 107, 109 (2d Cir. 2013) ("As a rule, a party's failure to object to any purported error or omission in a magistrate judge's report waives further judicial review of the point." (quoting *Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003))); *Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C.*, 596 F.3d 84, 92 (2d Cir. 2010) ("[A] party waives appellate review of a decision in a magistrate judge's [r]eport and [r]ecommendation if the party fails to file timely objections designating the particular issue." (citations omitted)).

The Court has reviewed the unopposed portions of the R&R, namely, Judge Tiscione's recommendations that the Court: (1) grant Defendants' motion for summary judgment as to Plaintiff's state law assault claim against Officer Spinelli arising from the July 16, 2015 incident and Plaintiff's state malicious prosecution claims against all Defendants, and (2) deny Plaintiff's

summary judgment motion in its entirety. Finding no clear error, the Court adopts these specific rulings of the R&R pursuant to 28 U.S.C. § 636(b)(1), and reserves ruling on the other portions of the R&R until it receives Plaintiff's response to Defendants' objections.

Dated: March 31, 2020
Brooklyn, New York

SO ORDERED:

s/ MKB
MARGO K. BRODIE
United States District Judge