

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORKFILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ MAR 08 2018 ★

TERRELL CLARK, et al.,

X

LONG ISLAND OFFICE

Plaintiffs,

:

ORDER

-against-

14-CV-7195 (JFB)(AYS)

:

SUFFOLK COUNTY,

:

Defendant.

:

X

JOSEPH F. BIANCO, District Judge:

On February 7, 2018, Magistrate Judge Anne Y. Shields issued a Report and Recommendation (“R&R,” ECF No. 41), recommending that the Court (i) grant the motion to dismiss (ECF No. 37) filed by defendant Suffolk County (“defendant”); (ii) deny the “omnibus motion” (ECF No. 38) filed by *pro se* plaintiffs Terrell Clark and Sarene Robinson (“plaintiffs”); (iii) dismiss plaintiffs’ amended complaint (that is, the federal claims) with prejudice; and (iv) decline to exercise supplemental jurisdiction over any potential state law claims. The R&R instructed that any objections to the R&R be submitted within fourteen (14) days of the filing of the R&R. (ECF No. 41 at 11.) The R&R was served on plaintiffs on February 8, 2018. (See ECF No. 42.) The date for filing any objections has thus expired, and no party has filed any objection to the R&R. For the reasons set forth below, the Court adopts the thorough and well-reasoned R&R in its entirety and grants defendant’s motion to dismiss the federal claims with prejudice and denies plaintiffs’ omnibus motion. In addition, given the dismissal of the federal claims, the Court declines to exercise supplemental jurisdiction over any potential state law claims against defendant, and these state law claims are dismissed without prejudice.

Where there are no objections, the Court may adopt a report and recommendation without *de novo* review. *See Thomas v. Arn*, 474 U.S. 140, 150 (1985) (“It does not appear that Congress intended

to require district court review of a magistrate's factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings."); *see also Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) ("Where parties receive clear notice of the consequences, failure timely to object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision."); *cf.* 28 U.S.C. § 636(b)(1)(c) *and* Fed. R. Civ. P. 72(b)(3) (requiring *de novo* review after objections). However, because the failure to file timely objections is not jurisdictional, a district judge may still excuse the failure to object in a timely manner and exercise its discretion to decide the case on the merits to, for example, prevent plain error. *See Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003) ("[B]ecause the waiver rule is non jurisdictional, we 'may excuse the default in the interests of justice.'" (quoting *Thomas*, 474 U.S. at 155)).

Although no party has objected to the R&R, the Court has conducted a *de novo* review of the R&R in an abundance of caution. Having conducted a review of the full record and the applicable law, and having reviewed the R&R *de novo*, the Court adopts the findings and recommendations contained in the well-reasoned and thorough R&R in their entirety.

Accordingly, IT IS HEREBY ORDERED that the Court grants defendant's motion to dismiss the federal claims with prejudice and denies plaintiffs' omnibus motion. In addition, given the dismissal of the federal claims, the Court declines to exercise supplemental jurisdiction over any potential state law claims against defendant, and these state law claims are dismissed without prejudice. The Clerk of the Court shall enter judgment accordingly and close the case. The Court also certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith and therefore *in forma pauperis* status is denied for the purpose of any appeal.

See Coppededge v. United States, 369 U.S. 438, 444-45 (1962).

IT IS FURTHER ORDERED that defendant shall serve a copy of this Order on plaintiffs and file proof of service with the Court.

SO ORDERED ✓

Joseph F. Bianco
United States District Judge

Dated: March 8, 2018
Central Islip, New York