

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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KEVIN L. JEFFERSON,

Plaintiff,

MEMORANDUM & ORDER
15-CV-0544(JS)(AYS)

-against-

COUNTY OF SUFFOLK, POLICE OFFICER ANDREW
DUBRISKE, POLICE OFFICER MICHAEL
UMBARILA, POLICE OFFICER DANIEL SALVATORE,
POLICE OFFICER JOHN WILLIAMS,
SERGEANT MIKE SMITH, VINCENT F. DEMARCO,
Suffolk Sherriff, POLICE OFFICER RYAN
KERLEY, and POLICE OFFICER FRED MIGNONE,

Defendants.

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APPEARANCES

For Plaintiff: Kevin L. Jefferson, pro se
8 Candlewood Road
N. Bay Shore, NY 11706

For Defendants: Brian C. Mitchell, Esq.
Suffolk County Attorney
100 Veterans Memorial Highway
P.O. Box 6100
Hauppauge, NY 11788

Presently pending before the Court is Magistrate Judge
Anne Y. Shields' Report and Recommendation dated February 10, 2017
(the "R&R") recommending that this Court: (1) deny without
prejudice Defendants' motion to dismiss the consolidated cases on
this docket for failure to prosecute, and (2) deny without
prejudice the motions to dismiss pending under docket numbers
15-CV-2303, 15-CV-2304, and 15-CV-2305. (R&R, Docket Entry 23.)
For the following reasons, the Court ADOPTS Judge Shields' R&R in
its entirety.

BACKGROUND

The Court assumes familiarity with the factual and procedural background of this matter, which is set forth in detail in the R&R. Briefly, on February 4, 2015, Plaintiff commenced the lead case in this matter under Docket Number 15-CV-0544 (the "Lead Case"). Plaintiff asserted claims pursuant to 42 U.S.C. § 1983 with respect to the deprivation of his First and Fourteenth Amendment rights in connection with, inter alia, alleged interference with his right to panhandle (the "Lead Case"). (See Compl. at 1-2.)

On January 15, 2016, the Court granted in part and denied in part the motion to dismiss filed in the Lead Case (the "January Order"). (Jan. Order, Docket Entry 18, at 1.) The Court held, in relevant part, that Plaintiff's claim against Officer Dubriske was dismissed without prejudice and with leave to replead within thirty (30) days of the date of the January Order. (Jan. Order at 26.) To date, Plaintiff has not replead his claim against Officer Dubriske.

Additionally, the Court sua sponte consolidated the Lead Case with Plaintiff's other lawsuits filed against the County of Suffolk (the "County"), County police officers, and/or County sheriffs, (see Docket Numbers 15-CV-2303, 15-CV-2304, and 15-CV-2305 (collectively, the "Consolidated Cases")), as these cases arose out of the same general set of facts. (Jan. Order at 25.)

The Court further directed that all future filings be docketed in the Lead Case. (Jan. Order at 25.)

Prior to the Court's determination of the motion to dismiss filed in the Lead Case, motions to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) or 12(c) were filed in the Consolidated Cases (the "Rule 12 Motions to Dismiss"). (See No. 15-CV-2303, Docket Entry 9; No. 15-CV-2304, Docket Entry 9; and No. 15-CV-2305, Docket Entry 11.)

On May 13, 2016, Defendants filed a motion requesting that all of Plaintiff's claims be dismissed for failure to prosecute pursuant to Federal Rule of Civil Procedure 41, and that Plaintiff's claims in the Consolidated Cases be dismissed pursuant to Rule 12(b)(6). (Defendants' Mot., Docket Entry 20, at 3.) On November 8, 2016, the Court referred Defendants' motion to Judge Shields for a report and recommendation on whether the motion should be granted. (Ref. Order, Docket Entry 22.)

On February 10, 2017, Judge Shields issued her R&R. (See generally R&R.) Judge Shields recommended that the Court deny without prejudice Defendants' motion to dismiss for lack of prosecution. (R&R at 7-10.) Judge Shields also recommended that the Rule 12 Motions to Dismiss be denied without prejudice to Defendants' submission of a proposed briefing schedule for renewed motions to dismiss the Consolidated Cases. (R&R at 6-7.) Judge Shields noted that any renewed motions should "consider, argue and

incorporate if appropriate" this Court's determinations set forth in the January Order. (R&R at 11.)

On February 18, 2017, Defendants filed a letter requesting that the Court adopt the following briefing schedule for their motion to dismiss the Consolidated Cases: Defendants' motion to dismiss to be filed and served by April 3, 2017; Plaintiff's response to be filed and served by May 1, 2017; and Defendants' reply to be filed and served by May 15, 2017. (Defs.' Ltr., Docket Entry 25, at 1.)

DISCUSSION

In reviewing an R&R, a district court "may accept, reject, or modify, in whole or in part, the findings and recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). If no timely objections have been made, the "court need only satisfy itself that there is no clear error on the face of the record." Urena v. New York, 160 F. Supp. 2d 606, 609-10 (S.D.N.Y. 2001) (internal quotation marks and citation omitted).

Objections were due within fourteen (14) days of service of the R&R. The time for filing objections has expired, and no party has objected. Accordingly, all objections are hereby deemed to have been waived.

Upon careful review and consideration, the Court finds Judge Shields' R&R to be comprehensive, well-reasoned, and free of clear error, and it ADOPTS the R&R in its entirety. The Court

also APPROVES Defendants' proposed briefing schedule for their motion to dismiss the Consolidated Cases. (See Defs.' Ltr.)

Additionally, in light of Plaintiff's failure to timely replead his claim against Officer Dubriske, (see Jan. Order at 26), Plaintiff's claim against Officer Dubriske is DISMISSED WITH PREJUDICE.

CONCLUSION

For the foregoing reasons, the Court ADOPTS Judge Shields' R&R (Docket Entry 23) in its entirety. Defendants' motion to dismiss for lack of prosecution (Docket Entry 20) is DENIED WITHOUT PREJUDICE. The motions to dismiss pursuant to Rule 12 filed in the Consolidated Cases (No. 15-CV-2303, Docket Entry 9; No. 15-CV-2304, Docket Entry 9; and No. 15-CV-2305, Docket Entry 11) are DENIED WITHOUT PREJUDICE. Defendants' proposed briefing schedule for their renewed motion to dismiss the Consolidated Cases (see Docket Entry 25) is APPROVED. Defendants shall file and serve their motion to dismiss on or before April 3, 2017; Plaintiff shall file and serve his response on or before May 1, 2017; Defendants shall file and serve their reply, if any, on or before May 15, 2017.

Plaintiff's claim against Officer Dubriske is DISMISSED WITH PREJUDICE and the Clerk of the Court is directed to TERMINATE Officer Dubriske as a defendant in this action. The Clerk of the

Court is further directed to mail a copy of this Memorandum and Order to the pro se Plaintiff.

The Court 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 Coppedge v. United States, 369 U.S. 438, 444-45, 82 S. Ct. 917, 8 L. Ed. 2d 21 (1962).

SO ORDERED.

/s/ JOANNA SEYBERT
Joanna Seybert, U.S.D.J.

Dated: March 7, 2017
Central Islip, New York