

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ **SEP 11 2017** ★

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CORY TERRELL JONES,

Plaintiff,

-against-

SHERIFF MICHAEL J. SPOSATO, ET AL.,

Defendants.

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LONG ISLAND OFFICE

ORDER
16-CV-5121 (JFB) (GRB)

JOSEPH F. BIANCO, District Judge:

On August 22, 2017, Magistrate Judge Brown issued a Report and Recommendation (the "R&R," ECF No. 43) recommending that the Court deny defendants' motion to dismiss the complaint (ECF No. 28) without prejudice to renewal as a Rule 56 motion for summary judgment following limited discovery on the issue of administrative exhaustion, and that the Court deny as moot defendants' motion to dismiss the Amended Complaint as unopposed or, alternatively, for lack of prosecution (ECF No. 35). The R&R instructed that any objections to the R&R be submitted within fourteen (14) days of service of the R&R, *i.e.*, by September 5, 2017. (R&R 14.) The date for filing any objections has thus expired, and neither 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, denies defendants' motion to dismiss the complaint (ECF No. 28) without prejudice to renewal as a Rule 56 motion for summary judgment following limited discovery on the issue of administrative exhaustion, and denies as moot defendants' motion to dismiss the Amended Complaint as unopposed or, alternatively, for lack of prosecution (ECF No. 35).

Where there are no objections to a report and recommendation issued by a magistrate

judge, the Court may adopt the 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 the parties have waived any objection to the R&R and thus *de novo* review is not required, the Court has conducted a *de novo* review of the R&R in an abundance of caution. Having conducted a review of the Complaint, the motion papers, 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 defendants’ motion to dismiss the complaint (ECF No. 28) is denied without prejudice to renewal as a Rule 56 motion for summary judgment following limited discovery on the issue of administrative exhaustion;

IT IS FURTHER ORDERED that defendants’ motion to dismiss the Amended Complaint as unopposed or, alternatively, for lack of prosecution (ECF No. 35) is denied as moot; and

IT IS FURTHER ORDERED that defendants serve a copy of this Order on plaintiff.

SO ORDERED.

~~JOSEPH F. BIANCO~~
~~UNITED STATES DISTRICT JUDGE~~

Dated: September 11, 2017
Central Islip, NY