

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

FILED  
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U.S. DISTRICT COURT E.D.N.Y.

★ JAN 31 2019 ★

LONG ISLAND OFFICE

MELVIN HERRING,

Plaintiff,

-against-

SUFFOLK COUNTY POLICE DEPT., *et al.*,

Defendants.

ORDER  
17-CV-5904 (JFB)(AYS)

JOSEPH F. BIANCO, District Judge:

On October 19, 2018, Magistrate Judge Shields issued a Report and Recommendation (the "R&R," ECF No. 74) recommending that the Court grant the motion to dismiss filed by defendant Dr. Lien Lam (incorrectly sued herein as Liam Lam) ("Dr. Lam") (ECF No. 46). The R&R was served on plaintiff on the same date via FedEx as well as by First Class Mail. (ECF No. 75.) 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 November 2, 2018. (R&R 11.) The date for filing any objections has thus expired, and plaintiff has not 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, grants Dr. Lam's motion to dismiss, and dismisses plaintiff's claims as to Dr. Lam with prejudice.

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 plaintiff has 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 the motion to dismiss with prejudice (ECF No. 46) is granted as to the claims against Dr. Lam. IT IS FURTHER ORDERED that defendant Lam serve a copy of this Order on plaintiff.

SO ORDERED.

s/ Joseph F. Bianco

JOSEPH F. BIANCO  
UNITED STATES DISTRICT JUDGE

Dated: January <sup>31</sup>, 2019  
Central Islip, NY