

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DANA ESCOFFIER,

Plaintiff,

-v-

THE CITY OF NEW YORK, *et. al.*,

Defendants.

13-CV-3918 (JPO)

ORDER ADOPTING
REPORT AND RECOMMENDATION

J. PAUL OETKEN, District Judge:

On January 4, 2017—after this Court issued an Amended Order of Reference (Dkt. No. 139)—Magistrate Judge Freeman issued a Report and Recommendation that the claims against the John and Jane Doe defendants in this action be dismissed as time-barred. (Dkt. No. 140 (“Report”).)

Mr. Escoffier filed timely objections to the Report. The Court has reviewed the Report and Mr. Escoffier’s objections. For the reasons that follow, the Court adopts Magistrate Judge Freeman’s Report and Recommendation and dismisses Mr. Escoffier’s claims against the John and Jane Doe defendants.

I. Background

Familiarity with the relevant background, as detailed in the Report, is presumed.

Mr. Escoffier, proceeding *pro se*, filed his second amended complaint in this 42 U.S.C. § 1983 action on February 24, 2014. (Dkt. No. 11 (“SAC”).) On February 11, 2016, this Court granted Defendants’ motion to dismiss with respect to claims based on the police’s failure to make an arrest in response to Mr. Escoffier’s complaints, claims for excessive force and conspiracy, and claims based on the First Amendment and Title VII of the Civil Rights Act of

1964, but this Court denied Defendants’ motion to dismiss with respect to claims based on possible violations of the Americans with Disabilities Act (“ADA”) and the Fourth Amendment. (Dkt. No. 94.)

As to the John and Jane Doe defendants, Plaintiff claims that, “about April, 2013,” those unnamed members of the New York City Police Department violated the ADA when they “ridiculed, mimicked and treated [him] with hostility” and referred to him as “mentally unstable, crazy, and EDP (emotionally disturbed person).” (SAC at 6.) Based on the April 2013 timeframe, the three-year statute of limitations period ended in April of 2016.

As Magistrate Judge Freeman held, Federal Rule of Civil Procedure 15(c)(1)(C) allows a party to proceed with an otherwise time-barred claim if (1) “the amendment changes the party or the naming of the party against whom a claim is asserted,” (2) the proposed claim arises out of the “conduct, transaction, or occurrence” detailed in the original pleading, and (3) the defendants who will be brought in by amendment either received notice of the action or “knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party’s identity.” (Report at 4–5 (quoting Fed. R. Civ. P. 15(c)(1)(C)).) Magistrate Judge Freeman concluded that Mr. Escoffier could not demonstrate any circumstances under which the unnamed defendants “knew or should have known that the action would have been brought against [them], but for a mistake concerning [their] identit[ies]” (Report at 5 (alteration in original)), and therefore dismissed the action as to the John and Jane Doe defendants (Report at 9–10).

In particular, Magistrate Judge Freeman concluded that Mr. Escoffier failed to demonstrate that he “exercise[d] due diligence, prior to the running of the statute of limitations, to identify” the John and Jane Doe defendants or “describe[d] the John Doe party in such form as

will fairly apprise the party that [he] is the intended defendant.” (Report at 9 (alterations in original) (quoting *Hogan v. Fischer*, 738 F.3d 509, 519 (2d Cir. 2013)).)

Mr. Escoffier filed timely objection to the Report on February 28, 2017. (Dkt. No. 145 (the “Objection”).)

II. Standard of Review

In reviewing Magistrate Judge Freeman’s Report, this Court “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). Where no objection is made, the Court reviews the Report strictly for clear error; however, the Court will make a *de novo* determination regarding those parts of the Report to which objections have been made. *McDonaugh v. Astrue*, 672 F. Supp. 2d 542, 547 (S.D.N.Y. 2009) (citation omitted).

However, objections that are merely perfunctory responses argued in an attempt to engage the district court in a rehashing of the same arguments set forth in the original petition will not suffice to invoke *de novo* review of the magistrate’s recommendations. Further, the objections must be specific and clearly aimed at particular findings in the magistrate judge’s proposal.

Feliciano v. Comm’r of Soc. Sec., No. 10 Civ. 3151, 2011 WL 6399512, at *3 (S.D.N.Y. Dec. 20, 2011) (quoting *McDonaugh*, 672 F. Supp. 2d at 547). When a party makes only conclusory or general objections, or simply reiterates the original arguments, the Court will review the Report strictly for clear error. *Crowell v. Astrue*, No. 08 Civ. 8019, 2011 WL 4863537, at *2 (S.D.N.Y. Oct. 12, 2011) (citing *Pearson–Fraser v. Bell Atl.*, No. 01 Civ. 2343, 2003 WL 43367, at *1 (S.D.N.Y. Jan. 6, 2003)).

“*De novo* review of a magistrate’s Report does not require that the Court conduct a *de novo* hearing on the underlying issues.” *Feliciano*, 2011 WL 6399512, at *3. Instead, Congress intended “to permit whatever reliance a district judge, in the exercise of sound judicial discretion,

chose to place on a magistrate’s proposed findings and recommendations.” *United States v. Raddatz*, 447 U.S. 667, 676 (1980). Further, courts have held that even when exercising *de novo* review, “[t]he district court need not . . . specifically articulate its reasons for rejecting a party’s objections.” *LaBarbera v. D. & R. Materials Inc.*, 588 F. Supp. 2d 342, 344 (E.D.N.Y. 2008) (alterations in original) (quoting *Morris v. Local 804, Int’l Bhd. of Teamsters*, 167 Fed. Appx. 230, 232 (2d Cir. 2006)) (internal quotation marks omitted).

III. Plaintiff’s Objections

Primarily, Mr. Escoffier objects to the Report on the grounds that Magistrate Judge Freeman “stated, during conference discussion, that showing photographs of NYPD Officers could assist Plaintiff in identifying Officers unknown to Plaintiff by name or badge number.” (Objection at 4.) Mr. Escoffier was “under the impression [that] a day for photo viewing would be granted at a point in time as determined by the Court in order to identify Officer ‘John Doe.’” (*Id.*)

Reviewing the transcripts, it is clear that Magistrate Judge Freeman did not represent that that she intended to schedule such a viewing. For instance, on April 19, 2016, Magistrate Judge Freeman noted that if Mr. Escoffier were able to narrow down the John Doe search to “one of three or four people or something like that,” the Court “*may* do something where some photos are provided for identification purposes.” (Dkt. No. 111 at 19 (emphasis added).)

Mr. Escoffier also objects to Magistrate Judge Freeman’s conclusion that his efforts were not sufficiently diligent. After the April 19, 2016, conference, Magistrate Judge Freeman issued an order directing Mr. Escoffier to provide a letter to Defendants’ counsel with “physical descriptions” of these individuals, “together with any other information” Plaintiff possessed that could assist Defendants in identifying them. (Dkt. No. 99.) Mr. Escoffier submitted such a

letter, identifying twenty-six officers. (Dkt. No. 100.) The seven officers for whom Mr. Escoffier did not provide names were identified with varying degrees of specificity. (*Compare id.* at 1 (“NYPD Officer White male”), *with id.* at 1 (“NYPD Officer Black male – dark skin,, Mohawk style haircut, about 20-30 years, about 6 feet about 150-160 lbs”).) On June 8, 2016, Magistrate Judge Freeman instructed Mr. Escoffier to provide Defendant with any additional information he could supply regarding the John and Jane Doe defendants, but there is no evidence that he did so. (*See Report at 7.*)

Accordingly, this Court concludes, as did Magistrate Judge Freeman, that Mr. Escoffier was not sufficiently diligent and did not provide sufficient detail describing the John and Jane Doe defendants, such that any amendment that would now identify those officers would not “relate back” to his prior pleading under Federal Rule of Civil Procedure 15(c)(1)(C). Moreover, Mr. Escoffier’s other objections (*see* Objection at 1–2) are without merit.

IV. Conclusion

The Court has reviewed the remaining portions of Magistrate Judge Freeman’s thorough and well-reasoned Report, to which no objections were made, and finds no clear error on the face of the record. Judge Freeman’s conclusion, that Mr. Escoffier’s claims against the John and Jane Doe defendants be dismissed as time-barred, was not based on any legal errors and is correct.

Accordingly, the Court ADOPTS the recommendation in the Report that Mr. Escoffier’s claims against the John and Jane Doe defendants be dismissed.

SO ORDERED.

Dated: July 27, 2017
New York, New York



J. PAUL OETKEN
United States District Judge

MAILED TO PRO SE PARTY