

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

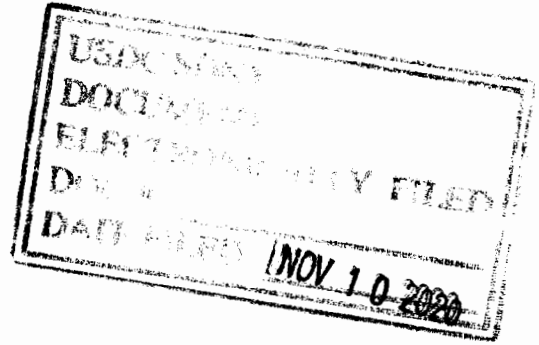
----- X
HENRY JONES,

Plaintiff,

-against-

THE CITY OF NEW YORK et al.,

Defendants.
----- X



MEMORANDUM DECISION
AND ORDER

18 Civ. 4064 (GBD) (KHP)

GEORGE B. DANIELS, United States District Judge:

Plaintiff Henry Jones commenced this action against Defendants the City of New York (“City”), Officer Ruben Serrano, and Officer Daniel Ryan (together, “Individual Defendants”), alleging that the Individual Defendants falsely arrested and imprisoned Plaintiff in violation of 42 U.S.C. § 1983 and maliciously prosecuted Plaintiff in violation of New York State law and 42 U.S.C. § 1983. (Am. Compl., ECF No. 76, ¶¶ 47–57.) Plaintiff also alleges *respondeat superior* liability against Defendant City for the malicious prosecution by the Individual Defendants. (*Id.* ¶¶ 58–60.) Plaintiff further alleges that Defendants deprived him of his federal right to a fair trial. (*Id.* ¶¶ 61–66.)

Before this Court is Magistrate Judge Katharine H. Parker’s October 19, 2020 Report and Recommendation (“Report”), recommending that this Court deny with prejudice the Individual Defendants’ motion to dismiss for insufficient service of process pursuant to Federal Rule of Civil Procedure 12(b)(5), because Magistrate Judge Parker granted Plaintiff’s Rule 4(m) motion for an extension of time to serve the Individual Defendants. (*See* Report, ECF No. 137, at 2.) Magistrate Judge Parker also recommends denying the City’s motion for summary judgment without

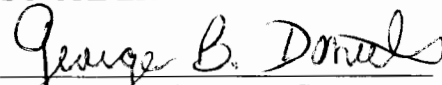
prejudice, because it is premised primarily on the insufficient service of process on the Individual Defendants. (*Id.*) No objections have been filed.

A court “may accept, reject, or modify, in whole or in part, the findings or recommendations” set forth in a magistrate judge's report. 28 U.S.C. § 636(b)(1)(C). A magistrate judge's report to which no objections are made is reviewed for clear error. *See Edwards v. Fischer*, 414 F. Supp. 2d 342, 346–47 (S.D.N.Y. 2006) (citations omitted). Clear error is present only when “upon review of the entire record, [the court is] ‘left with the definite and firm conviction that a mistake has been committed.’” *United States v. Snow*, 462 F.3d 55, 72 (2d Cir. 2006) (citation omitted).

Having reviewed the Report for clear error and finding none, this Court ADOPTS Magistrate Judge Parker’s Report and Recommendation in full. Defendant City’s motion for summary judgment, (ECF No. 92), is DENIED without prejudice. Individual Defendants’ motion to dismiss pursuant to Rule 12(b)(5), (ECF No. 117), is DENIED with prejudice. The Clerk of Court is directed to close the motions accordingly.

Dated: New York, New York
November 10, 2020

SO ORDERED.



GEORGE B. DANIELS
United States District Judge