

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

**USDC-SDNY
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DATE FILED: 5-19-20**

RICHARD J. CAPAK,

Plaintiff,

v.

TAUHEED EPPS *also known as 2 CHAINZ*
AND RORY DORALL SMITH,

Defendants.

18-CV-4325 (RA)

ORDER ADOPTING REPORT AND
RECOMMENDATION

RONNIE ABRAMS, United States District Judge:

Plaintiff Richard J. Capak filed this action against Defendants Tauheed Epps and Rory Dorall Smith in the Supreme Court of the State of New York, asserting claims for assault, battery, negligence, and negligent hiring and retention. Defendants subsequently removed the action to this Court. *See* Dkt. 3. The case was referred to Magistrate Judge Katharine Parker for general pretrial management on November 26, 2019. *See* Dkt. 34. At a conference before Judge Parker on December 18, 2019, Plaintiff indicated for the first time that he intended to file a motion to amend the complaint to add “Street Execs Management” as a defendant. *See* Dkt. 41 at 3-4.¹ Judge Parker set a briefing schedule on Plaintiff’s motion to amend, and directed him to “provide a proposed amended pleading together with [his] motion.” Dkt. 41 at 16.

Plaintiff filed his motion to amend the complaint on January 10, 2020, *see* Dkts. 51, 61, and Defendant Epps filed an opposition on January 24, 2020, *see* Dkt. 66.² On April 7, 2020,

¹ Fact discovery closed on December 5, 2019. At the December 18, 2019 conference, Defendant Epps also informed the Court of his intent to move for summary judgment based on the existing record. *See* Dkt. 41 at 4-5.

² Plaintiff did not file a reply brief. *See* Dkt. 61 at 1 (“There will be no reply.”).

Judge Parker issued a report and recommendation (the “Report”), recommending that the Court deny Plaintiff’s motion. *See* Dkt. 92. Neither party filed objections to the Report.

A district 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). Parties may object to a magistrate judge’s recommended findings “[w]ithin 14 days after being served with a copy of the recommended disposition.” Fed. R. Civ. P. 72(b)(2); *see also* Report at 10 (advising parties of deadline to file written objections pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b)). “When the parties make no objections to the Report, the Court may adopt the Report if ‘there is no clear error on the face of the record.’” *Smith v. Corizon Health Servs.*, No. 14-CV-8839 (GBD) (SN), 2015 WL 6123563, at *1 (S.D.N.Y. Oct. 16, 2015) (quoting *Adee Motor Cars, LLC v. Amato*, 388 F. Supp. 2d 250, 253 (S.D.N.Y. 2005)). “Furthermore, if as here . . . the magistrate judge’s report states that failure to object will preclude appellate review and no objection is made within the allotted time, then the failure to object generally operates as a waiver of the right to appellate review.” *Hamilton v. Mount Sinai Hosp.*, 331 F. App’x 874, 875 (2d Cir. 2009) (citations omitted).

As no objections to the Report were filed, the Court has reviewed Judge Parker’s Report for clear error. The Court finds no error and thus adopts the well-reasoned Report in its entirety. Plaintiff’s motion to amend the complaint to add Street Execs Management as a defendant is therefore denied. The Clerk of Court is respectfully directed to terminate the motion pending at Dkt. 61.

SO ORDERED.

Dated: May 19, 2020
New York, New York



Ronnie Abrams
United States District Judge