

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
CIVIL ACTION NO. 5:14-CV-00137-RLV-DCK**

ALVIN LINEBERGER,)	
)	
Plaintiff,)	
)	
v.)	<u>ORDER</u>
)	
NEWTON POLICE DEPARTMENT, ET)	
AL.,)	
)	
Defendants.)	
)	

THIS MATTER IS BEFORE THE COURT on Defendants’ Motion for Summary Judgment (Doc. No. 54) and the Memorandum and Recommendation (the “M&R”) of Judge David Keesler (Doc. No. 58). In the M&R, Judge Keesler recommends that the Defendants’ Motion be denied-as-moot and *without prejudice* because leave was granted to the Plaintiff to file a Second Amended Complaint. A Second Amended Complaint was filed on May 16, 2016. *See* [Doc. No. 59]. The parties have not filed objections to the M&R, and the time for doing so has expired. *See* Fed. R. Civ. Pro. 72(b)(2).

II. DISCUSSION

A. Standard of Review

The Federal Magistrate Act provides that a court may “designate a magistrate judge to conduct hearings . . . and to submit . . . proposed findings of fact and recommendations for the disposition [of dispositive motions.]” 28 U.S.C. § 636(b)(1)(B). “[A] district court shall make a *de novo* determination of those portions of the report or specific proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1); *Camby v. Davis*, 718 F.2d 198, 200 (4th Cir. 1983); *accord* Fed. R. Civ. Pro. 72(b)(3). “By contrast, in the absence of a timely

filed objection, a district court need not conduct a *de novo* review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72, Advisory Committee Note).

B. Analysis

Under Rule 72(b) of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1), a district court judge shall make a *de novo* determination of any portion of an M&R to which specific written objection has been made. A party’s failure to make timely objection is accepted as an agreement with the conclusions of the Magistrate Judge. *See Thomas v. Arn*, 474 U.S. 140, 149-50 (1985). No objection to the M&R having been filed, and the time for doing so having expired, the parties have waived their right to *de novo* review of any issue discussed in the M&R.

After a careful review of the record, the Court finds that Judge Keesler’s M&R is supported by the record and is consistent with and supported by law. Finding no clear error, the Court **ADOPTS** the recommendation of the Magistrate Judge as its own. *See* [Doc. No. 58]. Because the Second Amended Complaint (Doc. No. 59) supersedes the First Amended Complaint (Doc. No. 14), Defendants’ Motion for Summary Judgment (Doc. No. 54) is hereby **DENIED-AS-MOOT** and *without prejudice*.

SO ORDERED.

Signed: June 10, 2016



Richard L. Voorhees
United States District Judge

