

COUNTY OF SUFFOLK



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DEPARTMENT OF LAW

February 5, 2019

Hon. Sandra J. Feuerstein
United States District Judge.
Eastern District of New York
100 Federal Plaza
Central Islip, New York

Re: Silva et al. v. Farrish, et al
CV-18-3648 (SJF)(SIL)

Dear Judge Feuerstein:

This office represents Assistant District Attorney Jamie Greenwood and the Suffolk County District Attorney's Office (County defendants) in the above referenced action. The County defendants respectfully submit this letter in opposition to the plaintiffs' objections to the Report and Recommendation of the Hon. Steven I. Locke recommending that the County's motion to dismiss pursuant to Fed. R. Civ. P 12(b)(6) be granted. (See Report and Recommendation Docket Entry 63, dated January 7, 2019). We respectfully request that the plaintiffs' opposition to the Report and Recommendation be denied and that the Court adopt the findings of Judge Locke in their entirety and dismiss this matter with prejudiced.

In recommending that the claims against the County defendants be dismissed, Judge Lock found that ADA Greenwood was entitled to absolute prosecutorial immunity; that the Suffolk County District Attorney's Office (SCDAO) was not an entity susceptible to suit; and that the claims against ADA Greenwood in her official capacity and against the SADAO should not be construed as claims against the County, but rather against the State.¹

A district judge may accept, reject, or modify, in whole or in part, the findings and recommendations of the Magistrate Judge. *See DeLuca v. Lord*, 858 F.Supp. 1330, 1345 (S.D.N.Y.1994); *Walker v. Hood*, 679 F.Supp. 372, 374 (S.D.N.Y.1988). As to those portions of a report to which no "specific written objections" are made, the Court may accept the findings contained therein without *de novo* review, as long as the factual and legal bases supporting the findings are not clearly erroneous. *See Fed.R.Civ.P. 72(b)*; *Thomas v. Arn*, 474 U.S. 140, 149, 106 S.Ct. 466, 88 L.Ed.2d 435 (1985); *Greene v. WCI Holdings Corp.*, 956 F.Supp. 509, 513

¹ The Court also found that its analysis underlying the dismissal of the Plaintiffs' claims for declaratory relief against the state (*see, e.g.*, sections III(B)(1)(a)-(c) of the R&R) applied equally to any possible construed claims for declaratory relief against the County. Plaintiffs have not objected to this portion of the report and recommendation.

(S.D.N.Y.1997). When “a party submits a timely objection to a report and recommendation, the district judge will review the parts of the report and recommendation to which the party objected under a *de novo* standard of review.” *Jeffries v. Verizon*, 10–CV–268 (JFB)(AKT), 2012 WL 4344188, at * 1 (E.D.N.Y. Sept. 21, 2012); *see also* 28 U.S.C. § 636(b)(1)(C) (“A judge of the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.”); Fed.R.Civ.P. 72(b)(3) (“The district judge must determine *de novo* any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.”). *See, Harrison v. New York* WL 1413359, 1 -2 (E.D.N.Y., 2015).

In their objections to the Report and Recommendation the plaintiffs make general objections to the findings of the Magistrate Judge regarding the claims against the County defendants (See Plaintiff's Memo of Law at Pgs 4-5), however, beyond these initial objections they submit no argument at all to support a finding that Judge Locke's determinations were clearly erroneous. Nor do they point to any specific errors in law or fact in the report or recommendation that would provide a sufficient reason to overrule the findings in the R&R. Simply stated, the plaintiffs have submitted no substantive argument to support their stated objections beyond the objections themselves. The Court need not consider such unsupported and perfunctory “objections” to a Report and Recommendation. *Edwards v. Fischer*, 414 F. Supp. 2d at 346-347. Likewise, objections must be specific and clearly aimed at particular findings in the magistrate's proposal “such that no party be allowed a second bite at the apple by simply re-litigating a prior argument.” *Pinkney v. Progressive Home Health Servs.*, No. 06–CV–5023, 2008 WL 2811816, at *1 (S.D.N.Y. July 21, 2008); *see also Walker v. Vaughan*, 216 F.Supp.2d 290, 292 (S.D.N.Y.2002); *Duren v. County of Nassau*, WL 5406443, 1 -2 (E.D.N.Y.,2013).

A review of the Report and Recommendation reveals that it contains a thorough analysis of the facts and is well reasoned and fully supported by the applicable law. The factual and legal basis of the finding of Magistrate Locke are not clearly erroneous and accordingly, the Court should adopt the Report and Recommendation in its entirety.

Respectfully submitted,

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