ORIGINAL
DEF
C/M

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------x
JOSEFINA VELASQUEZ, M.D.,

Plaintiff,

-against-

UNITED STATES DEPARTMENT OF DEFENSE and UNITED STATES MILITARY ENTRANCE PROCESSING COMMAND,

Defendants.
----------x

MEMORANDUM AND ORDER
No. 08-CV-2215 (FB) (CLP)

Appearances:
For the Plaintiff:
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For the Defendants:
BENTON J. CAMPBELL, ESQ.
United States Attorney
Eastern District of New York
By: DAVID M. ASKEW, ESQ.
Assistant United States Attorney
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Brooklyn, NY 11201

BLOCK, Senior District Judge:

On October 1, 2008, Magistrate Judge Pollack recommended that this action be dismissed for lack of prosecution. Upon receipt of an affirmation from plaintiff's counsel explaining his failure to respond to her prior orders, the magistrate judge withdrew her initial recommendation and instead issued, on November 10, 2008, a Report and Recommendation ("R&R") that the action not be dismissed.

The R&R recited that "[a]ny objections to this Report and Recommendation must be filed . . . within ten (10) days of receipt of this Report," and that "[f]ailure to file objections within the specified time waives the right to appeal the District Court's Order."

R&R at 1. Notice of the R&R was sent electronically to plaintiff's counsel, who – not surprisingly – has not filed any objections. Defendants, unserved when the R&R was issued, have since appeared, but have not voiced any objection to the R&R.

If clear notice has been given of the consequences of failure to object, and there are no objections, the Court may adopt the R&R without *de novo* review. *See Thomas v. Arn*, 474 U.S. 140, 149-50 (1985); *Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) ("Where parties receive clear notice of the consequences, failure timely to object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision."). The Court will excuse the failure to object, however, and conduct *de novo* review if it appears that the magistrate judge may have committed plain error. *See Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F.3d 162, 174 (2d Cir. 2000).

Here, nothing in the R&R suggests plain error. Accordingly, the Court adopts it without *de novo* review.

SO ORDERED.

s/FB

FREDERIC BLOCK
Senior United States District Judge

Brooklyn, New York
January 8, 2009