

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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WOO HEE CHO,

Plaintiff,

**ORDER**

16-CV-4811 (MKB) (CLP)

v.

MAXIE OQUENDO,

Defendant.

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MARGO K. BRODIE, United States District Judge:

Plaintiff Woo Hee Cho commenced the above-captioned action on August 26, 2016, against Defendants Maxie Oquendo, LaGuardia Airport, the Port Authority of New York and New Jersey, the Transportation Security Administration, and the United States of America. (Compl., Docket Entry No. 1.) By Memorandum and Order dated August 2, 2017 (the “August 2017 Order”), the Court dismissed the Complaint as to all Defendants except Oquendo. (Aug. 2017 Order, Docket Entry No. 39.) On September 1, 2017, Plaintiff filed an Amended Complaint, asserting claims against Oquendo and the United States of America. (Am. Compl., Docket Entry No. 40.) By Memorandum and Order dated August 25, 2018 (the “August 2018 Order”), the Court dismissed Plaintiff’s claims against the United States of America. (Aug. 2018 Order, Docket Entry No. 49.) For the reasons explained below, the Court dismisses the case without prejudice for failure to prosecute.

**I. Background**

On May 16, 2019, Magistrate Judge Cheryl L. Pollak directed the parties to file a status report by June 17, 2019. (Order dated May 16, 2019.) The parties failed to comply with Judge Pollak’s Order. On July 25, 2019, Judge Pollak attempted to contact Plaintiff’s counsel to

inquire about the status of the filing of the status report. (Docket Note dated July 25, 2019.) On August 16, 2019, Judge Pollak ordered Plaintiff to file a status report within thirty (30) days of the date of the Order, and warned Plaintiff that if Plaintiff failed to comply with the Order, she would recommend that the Court dismiss the case for lack of prosecution. (Order dated Aug. 16, 2019.) To date, Plaintiff has not filed a status report.

By report and recommendation dated September 24, 2019 (the “R&R”), Judge Pollak recommended that the Court dismiss the action without prejudice for failure to prosecute. (R&R, Docket Entry No. 51.) No party has objected to the R&R and the time for doing so has passed.

## **II. Discussion**

A district court reviewing a magistrate judge’s recommended ruling “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)(C). “Where parties receive clear notice of the consequences, failure to timely object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.” *Smith v. Campbell*, 782 F.3d 93, 102 (2d Cir. 2015) (quoting *Mario v. P&C Food Markets, Inc.*, 313 F. 3d 758, 766 (2d Cir. 2002) (citing *Small v. Sec’y of Health & Human Servs.*, 892 F. 2d 15, 16 (2d Cir. 1989) (per curiam))); *see also Sepe v. N.Y. State Ins. Fund*, 466 F. App’x 49, 50 (2d Cir. 2012) (quoting *United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997)); *see also Almonte v. Suffolk Cty.*, 531 F. App’x 107, 109 (2d Cir. 2013) (“As a rule, a party’s failure to object to any purported error or omission in a magistrate judge’s report waives further judicial review of the point.” (quoting *Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003))); *Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C.*, 596 F.3d 84, 92 (2d Cir. 2010) (“[A] party waives appellate

review of a decision in a magistrate judge’s [r]eport and [r]ecommendation if the party fails to file timely objections designating the particular issue.” (citations omitted)).

The Court has reviewed the unopposed R&R and, finding no clear error, adopts the R&R in its entirety pursuant to 28 U.S.C. § 636(b)(1).

### **III. Conclusion**

For the reasons set forth above, the Court adopts the R&R and dismisses this action without prejudice for failure to prosecute. The Court directs the Clerk of Court to close this case.

Dated: February 13, 2020  
Brooklyn, New York

SO ORDERED:

s/ MKB  
MARGO K. BRODIE  
United States District Judge