UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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NEOGENIX ONCOLOGY, INC.,

Plaintiff,

-against-

PETER GORDON; MINTZ LEVIN COHN FERRIS GLOVSKY AND POPEO P.C.; NIXON PEABODY LLP; DANIEL J. SCHER; HARRY GURWITCH; AND MAIE LEWIS, AS REPRESENTATIVE OF THE ESTATE OF BRIAN LEWIS,

Defendants.

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ORDER
14-CV-4427 (JFB)(AKT)

JOSEPH F. BIANCO, District Judge:

Before the Court is a Report and Recommendation ("R&R") from Magistrate Judge Tomlinson, advising the Court to strike portions of Defendant Peter Gordon's Answer. The R&R instructed that any objections to the R&R be submitted within fourteen (14) days of service of the R&R. (See R&R, dated August 28, 2015, at 21.) The date for filing any objections has since expired, and plaintiff has not filed any objection to the R&R. For the reasons set forth below, the Court adopts the thorough and well-reasoned R&R in its entirety and strikes paragraphs 14 and 15 as well as Exhibit B of the original Answer filed by Defendant Peter Gordon.

Where there are no objections, the Court may adopt the report and recommendation without *de novo* review. *See Thomas v. Arn*, 474 U.S. 140, 150 (1985) ("It does not appear that Congress intended to require district court review of a magistrate's factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings."); *see also 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."); *cf.* 28 U.S.C. § 636(b)(1)(c) *and* Fed. R. Civ. P. 72(b)(3) (requiring *de novo* review after objections). However, because the failure to file timely objections is not jurisdictional, a district judge may still excuse the failure to object in a timely manner and exercise its discretion to decide the case on the merits to, for example, prevent plain error. *See Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003) ("[B]ecause the waiver rule is non jurisdictional, we 'may excuse the default in the interests of justice.'" (quoting *Thomas,* 474 U.S. at 155)).

Although plaintiff has waived any objection to the R&R and thus *de novo* review is not required, the Court has conducted a *de novo* review of the R&R in an abundance of caution and HEREBY ADOPTS the well-reasoned and thorough R&R in its entirety.

IT IS HEREBY ORDERED that Plaintiff's Rule 12(f) motion to strike paragraphs 14 and 15 as well as Exhibit B of the original Answer filed by Defendant Peter Gordon is granted.

SO ORDERED

JOSEPH F. BIANCO
UNITED STATES DISTRICT JUDGE

Dated: September 29, 2015
Central Islip, New York