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★ APR 12 2018 ★

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MARC S. SCHNEIDER, et al.,

Plaintiffs,

-against-

DANBURY PHARMA, LLC, et al.,

Defendants.
-----X

LONG ISLAND OFFICE

ORDER
14-CV-7127 (JFB) (ARL)

JOSEPH F. BIANCO, District Judge:

Before the Court is a February 26, 2018 Report and Recommendation (“R&R,” ECF No. 42) from Magistrate Judge Lindsay recommending that the Court deny plaintiffs’ motion for damages (ECF No. 40) with leave to renew. The R&R instructed that any objections to the R&R be submitted within fourteen (14) days of the R&R. (R&R at 9.) The date for filing any objections has since expired, and plaintiffs have 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 denies plaintiffs’ motion for damages with leave to renew.

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 plaintiffs 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. Having conducted a review of the full record and the applicable law, and having reviewed the R&R *de novo*, the Court adopts the findings and recommendations contained in the well-reasoned and thorough R&R in their entirety. Accordingly,

IT IS HEREBY ORDERED that plaintiffs’ motion for damages (ECF No. 40) is denied with leave to renew.

IT IS FURTHER ORDERED that plaintiffs serve a copy of this Order on defendants and file proof of service with the Court.

SO ORDERED. (
S/ Joseph F. Bianco
Joseph F. Bianco
United States District Judge

Dated: April 12, 2018
Central Islip, New York