

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
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U.S. DISTRICT COURT E.D.N.Y.

★ MAR 06 2017 ★

LONG ISLAND OFFICE

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KYLE D. ANDERSON,

Plaintiff,

-against-

DARBY, Officer Badge #3767, LUDEWIG,
officer, and PAZ, Sgt. Badge #26

Defendants.
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ORDER
CV 15-635 (JFB)(GRB)

JOSEPH F. BIANCO, District Judge:

Before the Court is a Report and Recommendation (“R&R,” ECF No. 59) from Magistrate Judge Brown recommending that the Court grant defendants Darby, Ludewig, and Paz’s (“defendants”) motions for summary judgment (ECF No. 29). 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 February 13, 2017, at 10.) The Court mailed the R&R to plaintiff on February 13, 2017, and the date for filing any objections has accordingly since expired. *See Sherlock v. Montefiore Med. Ctr.*, 84 F.3d 522, 525 (2d Cir. 1996) (“Normally it is assumed that a mailed document is received three days after its mailing.”). Plaintiff has not filed any objections to the R&R. Therefore, for the reasons set forth below, the Court adopts the thorough and well-reasoned R&R in its entirety and grants defendants’ motion for summary judgment.

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). Because the failure to file timely objections is not jurisdictional, however, 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 objections 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 defendants' motion for summary judgment is granted.

SO ORDERED
Joseph Bianco

Joseph F. Bianco
United States District Judge

Dated: March 6, 2017
Central Islip, New York