

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

KEVIN PURNELL,

Plaintiff,

-against-

LORDES MARTINEZ and FRANCO
FRANTELLIZZI,

Defendants.

JOSEPH F. BIANCO, District Judge:

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ JAN 04 2017 ★

LONG ISLAND OFFICE

ORDER

15-CV-4869 (JFB)(ARL)

Before the Court is a Report and Recommendation (“R&R,” ECF No. 32) from Magistrate Judge Lindsay recommending that the Court grant defendant Lordes Martinez’s motion to dismiss (ECF No. 22) *pro se* plaintiff Kevin Purnell’s (“plaintiff”) claims against defendant Martinez. 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 December 5, 2016, at 12.) The R&R was served on plaintiff by mail on December 6, 2016. (ECF No. 33.) The date for filing any objections has thus 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 grants defendant Martinez’s motion to dismiss.

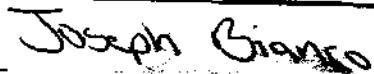
Where there are no objections, the Court may adopt the report and recommendation without *de novo* review. *See Thomas v. Arn*, 474 U.S. 140, 150 (1985) (“It does not appear that Congress intended to require district court review of a magistrate’s factual or legal conclusions, under a *de novo* or any 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. 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 defendant Martinez's motion to dismiss (ECF No. 22) is granted in its entirety, and plaintiff's claims against defendant Martinez are dismissed. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith, and therefore *informa pauperis* status is denied for the purpose of any appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED,



Joseph F. Bianco
United States District Judge

Dated: January 1, 2017
Central Islip, New York