

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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

★ **AUG 04 2016** ★

LONG ISLAND OFFICE

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ARYE SACHS,

Plaintiff,

-against-

DR. RICHARD A. MATANO, MD,

Defendant.  
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ORDER  
15-CV-6049(JFB)(AKT)

JOSEPH F. BIANCO, District Judge:

Before the Court is a Report and Recommendation (“R&R”) from Magistrate Judge Tomlinson recommending that the Court grant the defendant’s motion to dismiss and deny defendant’s motion for sanctions. 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 July 15, 2016, at 24.) 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 grants the defendant’s motion to dismiss plaintiff’s complaint and denies the defendant’s motion for sanctions.<sup>1</sup>

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

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<sup>1</sup> The Court notes that, although the *res judicata* issue was raised for the first time in the reply, plaintiff had the opportunity to contest that issue by filing objections to the R&R, and chose not to do so. Thus, he has been given sufficient notice and opportunity to respond to that issue.

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's motion to dismiss the plaintiff's complaint is granted and defendant's motion for sanctions is denied. The Clerk of the Court is directed to close the case.

SO ORDERED.

s/ Joseph F. Bianco

Joseph F. Bianco  
United States District Judge

Dated: August 4, 2016  
Central Islip, New York