

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
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U.S. DISTRICT COURT E.D.N.Y.
★ **SEP 05 2018** ★
LONG ISLAND OFFICE

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CHARLES A. FEHRENBACH, :
 :
 Plaintiff, :
 :
 -against- :
 LEE ZELDIN, et al., :
 :
 Defendants. :
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ORDER
17-CV-5282 (JFB)(ARL)

JOSEPH F. BIANCO, District Judge:

On August 6, 2018, Magistrate Judge Arlene R. Lindsay issued a Report and Recommendation (the "R&R," ECF No. 43) recommending that the Court grant the motion to dismiss filed by defendants Facebook, Inc. and Mark Zuckerberg (collectively, "defendants"). The R&R recommends that the Court not grant plaintiff leave to amend the claims against defendants, given that "nothing in the papers . . . suggest[s] that a valid claim may be stated against Zuckerberg or Facebook." (*Id.* at 11.) On August 6, 2018, defendants filed an affirmation stating that they served the R&R on plaintiff via email (and that plaintiff and defendants had consented to service by email). (ECF No. 44.) The R&R instructed that any objections to the R&R be submitted within fourteen (14) days of service of the R&R, *i.e.*, by August 20, 2018. (R&R at 11.) 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 R&R in its entirety and grants the motion to dismiss all claims as brought against defendants Facebook and Zuckerberg.

Where there are no objections to a report and recommendation issued by a magistrate judge, 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 Complaint, the motion papers, 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 the motion to dismiss (ECF No. 21) is granted, and all claims as to defendants Facebook and Zuckerberg are dismissed with prejudice.

IT IS FURTHER ORDERED that defendants serve a copy of this Order on plaintiff.

SO ORDERED.

Joseph Bianco

JOSEPH F. BIANCO
UNITED STATES DISTRICT JUDGE

Dated: September 5, 2018
Central Islip, NY