

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EMMANUEL CARRION,

Plaintiff,

-v-

JOHN DOE 1, JOHN DOE 2, JOHN DOE 3,
and OFFICER BARRY,

Defendants.

16 Civ. 9403 (PAE) (DF)

OPINION &
ORDER

PAUL A. ENGELMAYER, District Judge:

On December 5, 2016, plaintiff Emmanuel Carrion, proceeding *pro se*, brought this § 1983 action alleging that the police had harassed, retaliated against, and beaten him. Dkt. 2 (“Compl.”) § V. Nearly four years later, however, this case has made little progress: The sole named defendant has not been served and neither party has filed any submissions since Carrion informed the Court that he had been released from custody, and of his new address, in November 2018.

On September 14, 2020, the Honorable Debra Freeman, United States Magistrate Judge, to whom this case is referred for general pretrial supervision, issued an order to show cause which carefully set forth the history of this case. Dkt. 35. The order noted that the nearly two-year lack of communication from Carrion “raises the question of whether [Carrion] still wishes to proceed with this action,” *id.* at 11, detailed the Court’s prior warnings to Carrion that his claims might be dismissed for failure to prosecute if he failed to pursue the action in earnest, *id.* at 5–6, and directed Carrion to explain, by September 28, 2020, why the case should be not be dismissed for failure to prosecute and failure to timely serve the only named defendant in this case, *id.* at 11, 13. Carrion did not respond or contact the Court in any way.

On October 20, 2020, three weeks after Carrion’s deadline to respond to the order to show cause had passed, Judge Freeman issued a Report and Recommendation, now pending before the Court, recommending that the Court dismiss this action for failure to prosecute or failure to timely serve, pursuant to Rule 41(b) or 4(m). Dkt. 36 (“Report”). The Report directed Carrion to file any objections within 14 days of service of the Report. To date, no objections have been filed. The Court incorporates by reference the summary of the facts and procedural history set forth in the Report and order to show cause. For the following reasons, the Court adopts the Report’s recommendation.

DISCUSSION

In reviewing a report and recommendation, a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). “To accept those portions of the report to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record.” *Ruiz v. Citibank, N.A.*, No. 10 Civ. 5950 (KPF), 2014 WL 4635575, at *2 (S.D.N.Y. Aug. 19, 2014) (quoting *King v. Greiner*, No. 02 Civ. 5810 (DLC), 2009 WL 2001439, at *4 (S.D.N.Y. July 8, 2009)); *see also, e.g., Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003).

As no party has submitted objections to the Report, review for clear error is appropriate. Careful review of Judge Freeman’s Report, and the thorough and well-reasoned order to show cause on which it relies, reveals no facial error in its conclusions. The Report is therefore adopted in its entirety. Because the Report explicitly states that “Plaintiff shall have fourteen (14) days from service of this Report to file written objections” and that “failure to file objections within fourteen (14) days will result in a waiver of objections and will preclude appellate review,” Report at 1–2, the parties’ failure to object operates as a waiver of appellate review. *See*

Caidor v. Onondaga Cnty., 517 F.3d 601, 604 (2d Cir. 2008) (citing *Small v. Sec'y of Health & Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989) (per curiam)).


CONCLUSION

For the foregoing reasons, the Court dismisses this action for failure to prosecute pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

The Clerk of Court is respectfully directed to close this case.

The Clerk of Court is also respectfully directed to mail this order to Carrion at the address on file.

SO ORDERED.



PAUL A. ENGELMAYER
United States District Judge

Dated: November 18, 2020
New York, New York