

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PEDRO CABRERA

Plaintiff,

-v-

NANCY A. BERRYHILL, COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

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17-CV-6803 (PAE) (HBP)

OPINION AND ORDER

PAUL A. ENGELMAYER, District Judge:

Plaintiff Pedro Cabrera brings this action pursuant to section 205(g) of the Social Security Act, 42 U.S.C. § 405(g), seeking judicial review of a final decision of the Commissioner of Social Security (the “Commissioner”) denying his application for supplemental security income (“SSI”) and disability insurance (“DIB”). The Commissioner moved for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c). Before the Court is the January 16, 2019 Report and Recommendation of the Hon. Henry B. Pitman, United States Magistrate Judge, recommending that the Court grant the Commissioner’s motion. *See* Dkt. 16 (the “Report”). For the following reasons, the Court adopts the Report in full.

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). When specific objections are made, “[t]he district judge must determine *de novo* any part of the magistrate judge’s disposition that has been properly objected to.” Fed. R. Civ. P. 72(b)(3); *United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997). To accept

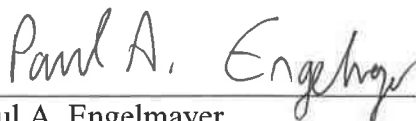
those portions of the report to which no timely objection has been made, “a district court need only satisfy itself that there is no clear error on the face of the record.” *King v. Greiner*, No. 02 Civ. 5810 (DLC), 2009 WL 2001439, at *4 (S.D.N.Y. July 8, 2009) (citing *Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003)); see also *Edwards v. Fischer*, 414 F. Supp. 2d 342, 346–47 (S.D.N.Y. 2006) (citation omitted).

Because neither Cabrera nor the Commissioner has submitted objections to the Report, review for clear error is appropriate. Careful review of Judge Pitman’s thorough and well-reasoned Report reveals no facial error in its conclusions; the Report is therefore adopted in its entirety. The Report explicitly states that failure to object within fourteen days will result in a waiver of objections and will preclude appellate review. Report at 38-39. Accordingly, the failure to object operates as a waiver of appellate review. See *Caidor v. Onondaga Cty.*, 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 reasons articulated in the Report, the Court grants the Commissioner’s motion for judgment on the pleadings. The Clerk of Court is directed to terminate the motions pending at docket number 16 and to close this case.

SO ORDERED.


Paul A. Engelmayer
United States District Judge

Dated: March 5, 2019
New York, New York