

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

NAKIA L. DERRICK,

Plaintiff,

v.

UNION PACIFIC RAILROAD COMPANY,  
ET. AL.,

Defendants.

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CIVIL ACTION NO. 2:23-CV-498-RWS-RSP

**ORDER**

Before the Court is Defendant Union Pacific Railroad’s Motion to Dismiss Based on Statute of Limitations (Docket No. 3) and the Magistrate Judge’s<sup>1</sup> order requiring Plaintiff to complete service on Defendant Power Secure, Inc. by May 15, 2024 (Docket No. 7).

The present action, which was removed from state court, was filed on September 19, 2023. Docket No. 1. The report found that Plaintiff’s negligence claim arises from an accident that occurred on June 29, 2019 but the statute of limitations for negligence is 2 years. *See* Docket No. 9 at 1; *see also, e.g.*, Docket No. 1-1 ¶¶ 3.1, 4.3. Further, Plaintiff failed to comply with an order requiring the timely completion of service on Defendant Power Secure, Inc. *Id.* Based on these facts, the Magistrate Judge issued a report recommending that Union Pacific Railroad’s motion to dismiss be granted and further recommending dismissal of the Defendant Power Secure for failure to prosecute. Docket No. 9.

Because no objections have been received, Plaintiff is barred from *de novo* review by the District Judge of the Magistrate Judge’s proposed findings, conclusions and recommendations and,

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<sup>1</sup> The case was referred to United States Magistrate Judge Roy S. Payne.

except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the District Court. *See Duarte v. City of Lewisville, Texas*, 858 F.3d 348, 352 (5th Cir. 2017); *Arriaga v. Laxminarayan*, Case No. 4:21-CV-00203-RAS, 2021 WL 3287683, at \*1 (E.D. Tex. July 31, 2021).

The Court has reviewed the pleadings in this case and the Report of the Magistrate Judge. Upon such review, the Court has determined the report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918 (1989) (where no objections to a Magistrate Judge’s report are filed, the standard of review is “clearly erroneous, abuse of discretion and contrary to law.”). Accordingly, it is

**ORDERED** that the report of the Magistrate Judge (Docket No. 9) is **ADOPTED** as the opinion of the District Court. It is further

**ORDERED** that Defendant Union Pacific Railroad’s Motion to Dismiss Based on Statute of Limitations (Docket No. 3) is **GRANTED** and Plaintiff’s case against Defendant Union Pacific Railroad is **DISMISSED WITH PREJUDICE**. It is further

**ORDERED** that Plaintiff’s case against Defendant Power Secure is **DISMISSED WITHOUT PREJUDICE** for failure to prosecute pursuant to Federal Rule of Civil Procedure 4(m).

**So ORDERED and SIGNED this 3rd day of July, 2024.**

  
ROBERT W. SCHROEDER III  
UNITED STATES DISTRICT JUDGE