

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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PATRICK COLLINS, INC.,

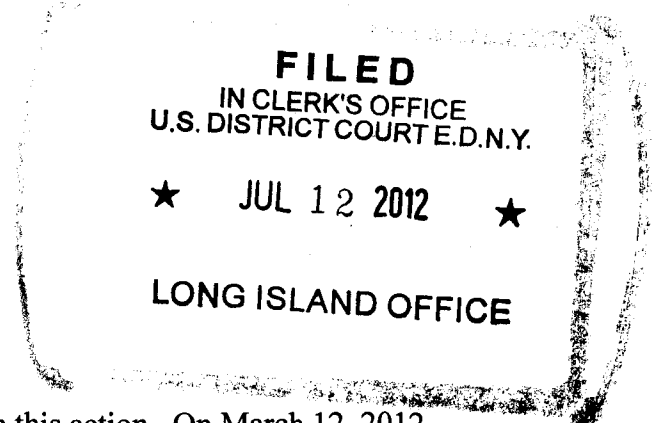
Plaintiff,

– against –

JOHN DOES 1-11,

Defendants.
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ORDER
12-CV-1153(JFB)(ARL)



JOSEPH F. BIANCO, District Judge:

On March 8, 2012, plaintiff filed the complaint in this action. On March 12, 2012, plaintiff filed a motion for leave to serve third party subpoenas prior to a Rule 26(f) conference. On May 15, 2012, the Court referred the motion to Magistrate Judge Arlene R. Lindsay for a Report and Recommendation.

On May 31, 2012, Magistrate Judge Lindsay issued a Report and Recommendation recommending that, “[B]ased on the well-articulated reasons set forth in *In re BitTorrent*, 2012 WI 1570765 at *9-15, dismissal of the claims against all but the first named defendant is appropriate and recommends that the Complaint be dismissed, *sua sponte*, and without prejudice, as to all defendants except the individual designated as John Doe 1.” (ECF No. 5.) To date, although the deadline for objections has expired, no objections have been filed.¹

When a party submits a timely objection to a report and recommendation, the district

¹On July 6, 2012, plaintiff filed a motion for an extension of time to file summons and serve John Doe 1. (ECF No. 6.) In that motion, plaintiff stated “On May 31, 2012, Plaintiff was granted leave to serve a third party subpoena on John Doe 1's ISP, Cablevision [DE#4]. (*Id.*) On July 9, 2012, Magistrate Judge Lindsay granted plaintiff's request.

judge will review the parts of the report and recommendation to which the party objected under a *de novo* standard of review. *See* 28 U.S.C. § 636(b)(1)(C) (“A judge of the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.”); Fed. R. Civ. P. 72(b)(3) (“The district judge must determine *de novo* any part of the magistrate judge’s disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.”). Where clear notice has been given of the consequences of failure to object, and 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 waiver of further judicial review of the magistrate’s decision.”). However, because the failure to file timely objections is not jurisdictional, the district judge can 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 v. Arn*, 474 U.S. at 155)).

Although no objections have been filed and thus *de novo* review is not required, the Court has conducted a *de novo* review of the Report and Recommendation in an abundance of caution and HEREBY ADOPTS the well-reasoned and thorough Report and Recommendation.

IT IS ORDERED that the complaint is dismissed without prejudice as to all defendants except the individual designated as John Doe 1, for the reasons articulated by Magistrate Judge Lindsay.

SO ORDERED.

~~JOSEPH F. BIANCO~~
~~UNITED STATES DISTRICT JUDGE~~

Dated: July ¹²~~11~~, 2012
Central Islip, NY