

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Daniel A. Andrews, et al.,)	No. CV 12-346-TUC-RCC
Plaintiffs,)	ORDER
vs.)	
Triple R Distributing LLC, et al.,)	
Defendants.)	

Before the Court is Plaintiffs’ Motion for Default Judgment (Doc. 25) and Magistrate Judge Hector Estrada’s Report and Recommendation (R&R) (Doc. 40). The Court accepts and adopts Magistrate Judge Estrada’s R&R (Doc. 40) as the findings of fact and conclusions of law of this Court and grants Plaintiff’s Motion for Default Judgment (Doc. 25).

I. Background

This Court fully incorporates by reference the “Factual Background” section of the R&R into this order.

On October 19, 2012, Plaintiffs filed the pending motion for default judgment. Defendants have not responded. Magistrate Judge Estrada filed a R&R recommending that the Court grant Plaintiffs’ motion and enter default judgment against Defendants. Defendants did not file a response to the R&R within the allotted time.

1 **II. Discussion**

2 The duties of the district court in connection with a R & R are set forth in Rule 72 of
3 the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1). The district court may
4 “accept, reject, or modify the recommended disposition; receive further evidence; or return
5 the matter to the magistrate judge with instructions. FED.R.CIV.P. 72(b)(3); 28 U.S.C. §
6 636(b)(1).

7 Where the parties object to a R & R, “[a] judge of the [district] court shall make a *de*
8 *novo* determination of those portions of the [R & R] to which objection is made.” 28 U.S.C.
9 § 636(b)(1); *see Thomas v. Arn*, 474 U.S. 140, 149-50, 106 S.Ct. 466, 88 L.Ed.2d 435 (1985).
10 When no objection is filed, the district court need not review the R & R *de novo*. *Wang v.*
11 *Masaitis*, 416 F.3d 992, 1000 n. 13 (9th Cir.2005); *United States v. Reyna-Tapia*, 328 F.3d
12 1114, 1121-22 (9th Cir.2003) (en banc). Therefore to the extent that no objection has been
13 made, arguments to the contrary have been waived. *McCall v. Andrus*, 628 F.2d 1185, 1187
14 (9th Cir.1980) (failure to object to Magistrate's report waives right to do so on appeal); *see*
15 *also*, Advisory Committee Notes to Fed.R.Civ.P. 72 (citing *Campbell v. United States Dist.*
16 *Court*, 501 F.2d 196, 206 (9th Cir.1974) (when no timely objection is filed, the court need
17 only satisfy itself that there is no clear error on the face of the record in order to accept the
18 recommendation).

19 The Court will not disturb a Magistrate Judge's Order unless his factual findings are
20 clearly erroneous or his legal conclusions are contrary to law. 28 U.S.C. § 636(b)(1)(A).
21 “[T]he magistrate judge's decision ... is entitled to great deference by the district court.”
22 *United States v. Abonce-Barrera*, 257 F.3d 959, 969 (9th Cir.2001). A failure to raise an
23 objection waives all objections to the magistrate judge’s findings of fact. *Turner v. Duncan*,
24 158 F.3d 449, 455 (9th Cir. 1998). A failure to object to a Magistrate Judge’s conclusion “is
25 a factor to be weighed in considering the propriety of finding waiver of an issue on appeal.”
26 *Id.* (internal citations omitted).

27
28 Defendants have not objected to the R&R, which relieves the Court of its obligation

1 to review. *See United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir.2003); *Thomas*
2 *v. Arn*, 474 U.S. 140, 149, 106 S.Ct. 466, 88 L.Ed.2d 435 (1985) (“[Section 636(b)(1)] does
3 not ... require any review at all ... of any issue that is not the subject of an objection.”);
4 Fed.R.Civ.P. 72(b)(3) (“The district judge must determine de novo any part of the magistrate
5 judge's disposition that has been properly objected to.”). However, even after a *de novo*
6 review of the record, this Court agrees with the Judge Estrada’s recommendation. The Court
7 considers the R&R to be thorough and well-reasoned and will therefore adopt the R&R (Doc.
8 40).

9 Accordingly,

10 **IT IS HEREBY ORDERED** that Magistrate Judge Estrada’s Report and
11 Recommendation (Doc. 40) is hereby **ACCEPTED** and **ADOPTED** as the findings of fact
12 and conclusions of law by this Court.

13 **IT IS FURTHER ORDERED** granting Plaintiffs’ Motion for Default Judgment
14 (Doc. 25). The Clerk shall enter judgment in favor of Plaintiffs and close this case.

15 **IT IS FURTHER ORDERED** that Plaintiffs DANIEL A. ANDREWS, an individual
16 doing business as DAN ANDREWS FARMS; REYNOLDS PACKING COMPANY, INC.
17 doing business as M & R COMPANY, a California corporation; ATB PACKING
18 COMPANY, a partnership; and NATURAL FLAVOR PRODUCE, LLC, a limited liability
19 company are entitled to immediate entry of default judgment against Defendants TRIPLE R
20 DISTRIBUTING, LLC, a limited liability company; and DANIEL A. ROMERO, an
21 individual, jointly and severally, as follows, all of which qualifies for trust protection under
22 the trust provisions of Perishable Agricultural Commodities Act (“PACA”) [7 U.S.C. §499e,
23 et seq.]:

24 (i) Principal in the cumulative amount of \$130,184.90 [\$30,055.50 in the case of
25 Plaintiff DANIEL A. ANDREWS, an individual doing business as DAN ANDREWS
26 FARMS; \$58,638.25 in the case of Plaintiff REYNOLDS PACKING COMPANY, INC.
27
28

1 doing business as M & R COMPANY, a California corporation; \$32,593.80 in the case of
2 Plaintiff ATB PACKING COMPANY, a partnership; and \$8,897.35 in the case of Plaintiff
3 NATURAL FLAVOR PRODUCE, LLC, a limited liability company];

4 (ii) Pre-judgment finance charge to Plaintiff REYNOLDS PACKING COMPANY,
5 INC. doing business as M & R COMPANY, a California corporation through and including
6 October 19, 2012 in the amount of \$32,067.02;

7 (iii) Attorney's fees and costs to Plaintiffs in the amount of \$7,557.10 [\$2,327.82 in
8 the case of Plaintiff DANIEL A. ANDREWS, an individual doing business as DAN
9 ANDREWS FARMS; \$4,540.71 in the case of Plaintiff REYNOLDS PACKING
10 COMPANY, INC. doing business as M & R COMPANY, a California corporation; and
11 \$688.57 in the case of Plaintiff NATURAL FLAVOR PRODUCE, LLC, a limited liability
12 company];

13 (iv) Post-judgment finance charge at the rate of 18% per annum to Plaintiff
14 REYNOLDS PACKING COMPANY, INC. doing business as M & R COMPANY, a
15 California corporation; and
16

17 (v) Post-Judgment interest at the at the current post-judgment rate per annum pursuant
18 to 28 U.S.C. §1961 from the date of the entry of this Judgment until paid in full to Plaintiff
19 DANIEL A. ANDREWS, an individual doing business as DAN ANDREWS FARMS;
20 Plaintiff ATB PACKING COMPANY, a partnership; and Plaintiff NATURAL FLAVOR
21 PRODUCE, LLC, a limited liability company.

22 **IT IS HEREBY ORDERED** that this judgment is entered pursuant to Fed.R.Civ.P.
23 Rule 54(b) and 55(b)(2).

24 DATED this 21st day of March, 2013.

25
26
27
28



Raner C. Collins
United States District Judge