

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

MARIA GONZALEZ, Individually)
and as the Natural Guardian of)
NELSON ROMERO, a Minor, and)
SALMA GONZALEZ,)

Plaintiffs,)

v.)

No. 3:15CV290-PPS/MGG

ADT LLC,)
ADT SECURITY SERVICES, INC.,)
ADT SECURITY SERVICES, LLC,)
ADT SECURITY SYSTEMS, INC.,)
TYCO INTEGRATED SECURITY LLC,)
and ERIC HARDISTY,)

Defendants.)

OPINION AND ORDER

The Gonzalez family plaintiffs filed a motion seeking default judgment as a discovery sanction. [DE 118.] The motion, memorandum in support and exhibits were filed under seal, along with a motion requesting permission to seal those documents. [DE 117, 118, 119.] I referred the motion for default judgment to Magistrate Judge Gotsch, who had presided over the discovery in this case, for a report and recommendation. [DE 122.] Judge Gotsch issued a thorough and thoughtful R&R on November 15, 2018, recommending that the motion for default judgment be denied. [DE 137.] Judge Gotsch also recommended the partial denial and partial grant of the plaintiffs' motion to seal, specifically recommending that plaintiffs be ordered to refile

their motion, memorandum and exhibits, filing only certain exhibits under seal and filing other exhibits in redacted form. [DE 137 at 24.]

The R&R contained a notice, in bold print, that the parties were given 14 days after being served with the R&R to “file specific, written objections to the proposed findings and/or recommendations,” citing Fed.R.Civ.P. 72(b). [DE 137 at 24.] The notice also contained this warning: “**FAILURE TO FILE OBJECTIONS WITHIN THE SPECIFIED TIME WAIVES THE RIGHT TO APPEAL THE DISTRICT COURT’S ORDER.**” [*Id.*] Because the R&R was served on counsel electronically on November 16, the day after its issuance, any objections were due no later than November 30.

On November 30, defendants re-filed their motion for default judgment and memorandum in support, unsealed, along with certain unsealed and redacted exhibits. [DE 138, 139, 140.] This appears to have been done in compliance with Judge Gotsch’s recommended disposition of the motion to seal. No objections to the R&R have been filed. As the R&R warned, “[i]f a party fails to object to a magistrate judge’s report and recommendation in the district court, in this Circuit he waives appellate review of both factual and legal questions.” *Johnson v. Zema Systems Corp.*, 170 F.3d 734, 739 (7th Cir. 1999). The express notice included in the R&R supports the waiver of “the right to contest a magistrate judge’s conclusions” where a party fails to present an objection to the district court. *Tumminaro v. Astrue*, 671 F.3d 629, 633 (7th Cir. 2011).

Having failed to file objections within the meaning of §636(b)(1)(C) or Rule 72(b)(2), the Gonzalezes thereby waive objection to Judge Gotsch’s findings and

analysis. *U.S. ex rel. McCandliss v. Sekendur*, 631 Fed.Appx. 447, 451 (7th Cir. 2015). See also *Flint v. City of Belvidere*, 791 F.3d 764, 769 (7th Cir. 2015). “If no party objects to the magistrate judge’s action, the district judge may simply accept it.” *Schur v. L.A. Weight Loss Centers, Inc.*, 577 F.3d 752, 760 (7th Cir. 2009) (emphasis in original). The R&R can be adopted both because no objections to it have been filed and because it contains no clear error. I have carefully reviewed the R&R. Judge Gotsch’s consideration of the contentious history of discovery between these parties is detailed and careful, and his analysis of the request for relief is thoughtful and reasonable. I find no basis to second-guess or reconsider the soundness of his conclusion that default judgment is not warranted as a sanction in this case.

ACCORDINGLY:

Pursuant to 28 U.S.C. §636, Magistrate Judge Gotsch’s Report and Recommendation [DE 137] is ACCEPTED AND ADOPTED.

Plaintiffs’ Motion for Default Judgment Pursuant to Rule 37 and Request for Other Discovery Sanctions [DE 118, 138] is DENIED.

Plaintiffs’ Motion to Seal Pleadings [DE 117] is GRANTED IN PART AND DENIED IN PART as detailed in the Report and Recommendation.

ENTERED this 21st day of December, 2018.

 /s/ Philip P. Simon
JUDGE
UNITED STATES DISTRICT COURT