

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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GOVERNMENT EMPLOYEES INSURANCE CO., :
GEICO INDEMNITY CO., GEICO :
GENERAL INSURANCE COMPANY, and :
GEICO CASUALTY CO., :

Plaintiffs,

-against-

ROGER JACQUES, M.D., BAYVIEW :
MEDICAL CARE, P.C., JEAN CLAUDE :
COMPAS, M.D., NORTH EAST EMPIRE :
MEDICAL, P.C., ROCKAWAY FAMILY :
MEDICAL CARE, P.C., MODESTO :
FONTANEZ, M.D., EASTWESTERN :
NEUROLOGY, P.C., SAMIR HADDAD, M.D., :
MODERN NEUROLOGY, P.C., NEW AGE :
NEUROLOGY, P.C., NICOLAS EL-KHOURY, :
M.D., ST. DOMINICK MEDICAL SERVICES, :
P.C., ANTHONY DESANO, D.C., :
CHIROPRACTIC EXAM WORKS, P.C., GLENN :
WHITNEY, D.C., MSK WELLNESS, D.C., :
P.C., WOO YUP KANG, D.C., PACIFIC :
CHIROPRACTIC, P.C., JOSEPH GAMBINO, :
D.C., ABSOLUTE CHIROPRACTIC & :
WELLNESS, P.C., JJ & R CHIROPRACTIC, :
P.C., HAN NA KIM, P.T., PAWEL :
GIERUCKI, L.AC., SILVER NEEDLE :
ACUPUNCTURE, P.C., YOUNG PARK, L.AC., :
P.T., Y.S.P. PHYSICAL THERAPY, P.C., :
XIAO XU, L.AC., ULTIMATE HEALING :
ACUPUNCTURE, P.C., and JOHN DOE :
DEFENDANTS 1-10, :

Defendants.

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MATSUMOTO, United States District Judge:

On September 10, 2014, plaintiffs Government Employees
Insurance Co., GEICO Indemnity Co., GEICO General Insurance

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

14-CV-5299 (KAM) (VMS)

Company, and GEICO Casualty Co. (collectively, "GEICO" or "plaintiffs") commenced this action against defendants Roger Jacques, M.D. ("Dr. Jacques"); Bayview Medical Care, P.C. ("Bayview Medical"); Jean Clause Compas, M.D. ("Dr. Compas"); North East Empire Medical, P.C. ("North East Empire"); Rockaway Family Medical Care, P.C. ("Rockaway"); Modesto Fontanez, M.D. ("Dr. Fontanez"); Eastwestern Neurology, P.C. ("Eastwestern"); Samir Haddad ("Dr. Haddad"); Modern Neurology, P.C. ("Modern"); New Age Neurology, P.C. ("New Age"); Nicolas El-Khoury, M.D. ("Dr. El-Khoury"); St. Dominick Medical Services, P.C. ("St. Dominick"); Anthony Desano, D.C. ("Desano"); Chiropractic Exam Works ("Chiropractic"); Glenn Whitney, D.C. ("Whitney"); MSK Wellness, D.C., P.C. ("MSK"); Woo Kup Kang, D.C. ("Kang"); Pacific Chiropractic, P.C. ("Pacific Chiropractic"), Joseph Gambino, D.C. ("Gambino"); Absolute Chiropractic & Wellness, P.C. ("Absolute Chiropractic"); JJ & R Chiropractic, P.C. ("JJ & R Chiropractic"); Han Na Kim, P.T. ("Kim"); Pawel Gierucki, L.AC. ("Gierucki"); Silver Needle Acupuncture, P.C. ("Silver Needle"); Young Park, L.AC., P.T. ("Park"); Y.S.P. Physical Therapy ("YSP"); Xiao Xu ("Xu"); and Ultimate Healing Acupuncture, P.C. ("Ultimate Healing") (collectively, "Defendants") alleging that defendants engaged in a scheme to submit fraudulent claims for reimbursement

pursuant to New York's "no fault" insurance law in violation of the federal Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961 *et seq.*, as well as New York State common law fraud and unjust enrichment. (*See generally* Complaint ("Compl."), ECF No. 1.) The summons and complaint were served upon defendants Eastwestern, Haddad, Modern, New Age, and Ultimate Healing (collectively, "Defaulting Defendants") on September 25, 2014. (Executed Summons, ECF Nos. 9, 16, 17, 18, 33.) The Defaulting Defendants never appeared in this action, and on October 31, 2014, the Clerk of Court issued a Certificate of Default for each of the Defaulting Defendants. (Certificates of Default, ECF Nos. 51, 54, 55, 56, 60.)

Plaintiffs filed a renewed motion for entry of default judgment against the Defaulting Defendants on June 30, 2016.¹ (ECF Nos. 121-23.). Plaintiffs served the renewed motion for entry of default judgment on the Defaulting Defendants. (*See* Affidavit of Service, ECF No. 124.) On October 7, 2016, the court referred the motion for entry of default judgment to Magistrate Judge Vera M. Scanlon for a Report and Recommendation. (*See* Docket Entry dated October 7, 2016.)

¹ All other defendants have been dismissed from this action. (*See* ECF Nos. 3, 73, 84-85, 87-89, 111-112, 114, 125, 130-137.)

On February 13, 2017, Magistrate Judge Scanlon issued a Report and Recommendation (Report and Recommendation ("R&R"), ECF No. 139), in which she recommended that the court grant plaintiffs' motion for default judgment and find the Defaulting Defendants liable for fraud and unjust enrichment; enter a declaratory judgment that plaintiffs are not obligated to pay the outstanding fraudulent claims submitted by the corporate Defaulting Defendants, Modern, New Age, Eastwestern and Ultimate Healing; find Dr. Haddad liable for a substantive violation of RICO as well as for conspiracy to violate the civil RICO statute; and order judgment for plaintiffs in the amount of \$722,769.82, plus interest, to be allocated as follows: (1) Dr. Haddad and Modern to be jointly and severally liable for \$139,953.16; (2) Dr. Haddad and New Age to be jointly and severally liable for \$25,833.64; (3) Dr. Haddad to be liable individually for \$102,500.23; (4) Ultimate Healing to be liable for \$379,086.53; and (5) Eastwestern to be liable for \$75,396.26. on plaintiffs' state common law fraud claims. (R&R, ECF No. at 35-36.)

A district court reviewing a Report & Recommendation from a magistrate judge "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). "Failure to object to a

magistrate judge's report and recommendation within the prescribed time limit 'may operate as a waiver of any further judicial review of the decision, as long as the parties receive clear notice of the consequences of their failure to object.'" *Sepe v. New York State Ins. Fund*, 466 F. App'x 49, 50 (2d Cir. 2012) (quoting *United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir.1997)); see also *Almonte v. Suffolk Cnty.*, 531 F. App'x 107, 109 (2d Cir. 2013) ("As a rule, a party's failure to object to any purported error or omission in a magistrate judge's report waives further judicial review of the point." (quoting *Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003))); *Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C.*, 596 F.3d 84, 92 (2d Cir. 2010) ("[A] party waives appellate review of a decision in a magistrate judge's Report and Recommendation if the party fails to file timely objections designating the particular issue.").

Upon careful review of the unopposed Report and Recommendation, which was served on the Defaulting Defendants, and the plaintiffs' motion for default judgment, including their supporting affidavits and exhibits, the court finds no clear error in Judge Scanlon's well-reasoned, thorough and carefully calculated Report and Recommendation. Accordingly, the court adopts the Report and Recommendation in its entirety pursuant to

28 U.S.C. § 636(b)(1).

Accordingly, plaintiffs' motion for entry of default judgment against defendants Eastwestern Neurology, P.C., Samir Haddad, M.D., Modern Neurology, P.C., New Age Neurology, P.C., and Ultimate Healing Acupuncture, P.C., is **GRANTED** in the amount of **\$722,769.82**. The court **ORDERS** that:

1. Default judgment on liability be entered against all Defaulting Defendants as to plaintiffs' common law fraud and unjust enrichment claims;

2. It is declared that plaintiffs are not obligated to pay the outstanding fraudulent claims submitted by the corporate Defaulting Defendants Eastwestern Neurology, P.C., Modern Neurology, P.C., New Age Neurology, P.C., and Ultimate Healing Acupuncture, P.C.;

3. Default judgment be entered against Dr. Samir Haddad as to plaintiffs' RICO claims; and

4. Dr. Samir Haddad be held jointly and severally liable with each of Modern Neurology, P.C. and New Age Neurology, P.C.

The judgment in the amount of **\$722,769.82** is allocated as follows:

5. Dr. Samir Haddad and Modern Neurology, P.C. be jointly and severally liable for \$139,953.16, which includes \$74,101.40 in compensatory damages and \$65,851.76 in prejudgment interest, plus

\$16.24 per diem from February 14, 2017 until the date of entry of judgment; and

6. Dr. Samir Haddad and New Age Neurology, P.C. be jointly and severally liable for \$25,833.64, which includes \$15,327.61 in compensatory damages and \$10,506.03 in prejudgment interest, plus \$2.59 per diem from February 14, 2017 until the date of entry of judgment; and

7. Dr. Samir Haddad be liable for RICO damages in the amount of \$102,500.23, which represents trebled damages of \$222,304.20 for the fraudulent claims submitted through Modern Neurology, P.C. and \$45,982.83 for the fraudulent claims submitted through New Age Neurology, P.C. less the compensatory damages and prejudgment interest awarded against those entities;

8. Ultimate Healing Acupuncture, P.C. be liable for \$379,086.53, which includes \$230,777.88 in compensatory damages and \$148,308.65 in prejudgment interest, plus \$36.57 per diem from February 14, 2017 until the date of entry of judgment; and

9. Eastwestern Neurology, P.C., be liable for \$75,396.26, which includes \$53,092.18 in compensatory damages and \$22,304.08 in prejudgment interest, plus \$5.50 per diem from February 14, 2017 until the date of entry of judgment.

The Clerk of Court is respectfully directed to enter

judgment for plaintiff and against defendants Eastwestern Neurology, P.C., Samir Haddad, M.D., Modern Neurology, P.C., New Age Neurology, P.C., and Ultimate Healing Acupuncture, P.C. and close this case. Plaintiffs' counsel shall serve a copy of this Memorandum and Order and the Judgment on defendants, and note service on the docket.

SO ORDERED.

Dated: March 31, 2017
Brooklyn, New York

_____/s/_____
Hon. Kiyoo A. Matsumoto
United States District Judge