

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JERRY CANKAT,

Plaintiff,

MEMORANDUM AND ORDER

-against-

15-cv-4730 (FB) (SMG)

NOISETTE CAFÉ INC., and 24-21
STEINWAY STREET REALTY CORP.,

Defendants.

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*Appearances:**For Plaintiff:*W. MARILYNN PIERRE
W. Marilynn Pierre, Esq., LMSW
535 5th Avenue, 4th Floor
New York, New York 10017*For Defendant 24-21 Steinway Street
Realty Corp.:*KATIE L. BIRELEY
31-10 37th Avenue, Suite 500
Long Island City, New York 11101TARA DEMETRIADES
1076 Wolver Hollow Road
Oyster Bay, New York 11771**BLOCK, Senior District Judge:**

On September 27, 2016, Magistrate Judge Steven M. Gold (“MJ”) issued a Report and Recommendation (“R&R”) recommending that plaintiff’s Motion for Default Judgment against both Noisette Café Inc. (“Café”) and 24-21 Steinway Street Realty Corp. (“Steinway”) (collectively, “defendants”) be granted. The R&R was docketed on September 27, 2016. To date, no objection from the Café has been filed, and more than thirty-five days have passed.

Where there are no objections, the Court may adopt the R&R without de novo

review. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985); *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.”). This Court, however, will conduct de novo review if it appears that the magistrate judge may have committed plain error. *See Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F.3d 162, 174 (2d Cir. 2000). No such error appears here. Accordingly, as to Café only, the Court adopts the R&R without de novo review and grants plaintiff’s Motion for Default Judgment.

However, since the R&R, Steinway has responded. In fact, on October 6, 2016, Steinway and plaintiff submitted a joint stipulation in which the latter formally withdrew his motion against the former and agreed to treat any prospective answer as timely. Accordingly, this Court declines to adopt the R&R as to *Steinway* and, with plaintiff’s acquiescence, will deny his Motion for Default Judgment as to this defendant.

SO ORDERED.

/S/ Frederic Block
FREDERIC BLOCK
Senior United States District Judge

Brooklyn, New York
January 3, 2017