

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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BOSTON RESTAURANT ASSOCIATES,  
INC.,

Plaintiff,

-against-

MICHAEL WARD and REGINA'S  
FAMILY PIZZA INC. d/b/a REGINA  
CAFE & PIZZERIA,

Defendants.

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**MEMORANDUM AND ORDER**

Case No. 17-CV-5557-FB-RML

**BLOCK, Senior District Judge:**

On August 1, 2018, Magistrate Judge Levy issued a Report and Recommendation (“R&R”) recommending that plaintiff’s Motion for Default Judgment be denied. The R&R advised that “[a]ny objections to this Report and Recommendation must be filed . . . within fourteen (14) days,” and that “[f]ailure to file objections within the specified time waives the right to appeal the district court’s order.” R&R at 16. The R&R was served on all defendants at their last known address on August 1, 2018, making objections due by August 15, 2018.<sup>1</sup> To date, no objections have been filed.

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<sup>1</sup> On September 26, 2018, the notice mailed to defendant Michael Ward, Chief Executive Officer of Regina’s Family Pizza Inc. d/b/a Regina Café & Pizzeria was

Where clear notice has been given of the consequences of failure to object, and 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.”). The Court, however, will excuse the failure to object and 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 on the face of the R&R. Therefore, the Court adopts it without *de novo* review and denies plaintiff’s Motion for Default Judgment. The Clerk shall dismiss this action without prejudice.

**SO ORDERED.**

/S/ Frederic Block

FREDERIC BLOCK  
Senior United States District Judge

Brooklyn, New York  
December 3, 2018

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returned to sender as undeliverable. Given the outcome of the case, however, there is no prejudice against defendants here.