

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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EMPIRE STATE CARPENTERS WELFARE,
PENSION, ANNUITY, APPRENTICESHIP,
CHARITABLE TRUST, LABOR
MANAGEMENT CORPORATION, and
SCHOLARSHIP FUNDS, and their BOARD OF
TRUSTEES,

ORDER
10-cv-3030 (ADS)(ETB)

Plaintiffs,

-vs.-

LEVI G. MITCHENER d/b/a MITCHENER
CONSTRUCTION,
Defendant.

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APPEARANCES:

Levy Ratner P.C.
Attorneys for the Plaintiffs
80 Eighth Avenue
8th Floor
New York, NY 10011-5126
By: Owen M. Rumelt, Esq., of Counsel

NO APPEARANCE:
Levi G. Mitchener d/b/a Mitchener Construction

SPATT, District Judge.

The Plaintiffs commenced this action on or about July 1, 2010, asserting claims against the Defendant for monetary relief under Section 502 of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), 29 U.S.C. §§ 1132. On October 17, 2011, the Court referred the matter to United States Magistrate Judge E. Thomas Boyle for a recommendation as to whether the motion for a default judgment should be granted, and if so, to determine what relief is appropriate, including reasonable attorney’s fees and costs. On April 25, 2012, Judge Boyle issued a thorough Report recommending that the Court grant judgment

against Levi G. Mitchener d/b/a Mitchener Construction and that the Plaintiffs be awarded damages as follows: (1) unpaid employee benefit contributions due and owing in the amount of \$58,148.41; (2) interest through April 25, 2012 in the amount of \$34,443.08, plus additional interest through the date of judgment entered, to be calculated at a rate of \$18.63 per day; (3) audit fees in the amount of \$5,805.83; (4) liquidated damages in the amount of \$5,814.84; (5) post-judgment interest, to be calculated pursuant to 28 U.S.C. § 1961; (6) attorney's fees in the amount of \$3,583.50; and, (7) costs in the amount of \$770.81. Thus, the sum total of the recommended judgment is \$108,566.52, plus additional interest through the date of judgment, as set forth above, and post-judgment interest, pursuant to 28 U.S.C. § 1961. To date, no objection has been filed to Judge Boyle's Report and Recommendation.

In reviewing a report and recommendation, a court "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). "To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record." Wilds v. United Parcel Serv., 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003) (citing Nelson v. Smith, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)). The Court has reviewed Judge Boyle's Report and finds it be persuasive and without any legal or factual errors. There being no objection to Judge Boyle's Report, the Court adopts the Report.

For the foregoing reasons, it is hereby:

ORDERED that Judge Boyle's Report and Recommendation is adopted in its entirety, and it is further

ORDERED that the Clerk of the Court is directed to enter a default judgment against the Defendant in the amounts recommended by Judge Boyle and set forth above, and it is further

ORDERED that the Clerk of the Court is respectfully directed to close this case.

SO ORDERED.

Dated: Central Islip, New York
May 24, 2012

/s/ Arthur D. Spatt
ARTHUR D. SPATT
United States District Judge