

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
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U.S. DISTRICT COURT E.D.N.Y.

★ **AUG 31 2017** ★

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SETH FEUER, et al.,

LONG ISLAND OFFICE

Plaintiffs,

-against-

ORDER
14-CV-5388 (JFB)(SIL)

CORNERSTONE HOTELS CORP., et al.,

Defendants.
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JOSEPH F. BIANCO, District Judge:

Before the Court is a Report and Recommendation (“R&R,” ECF No. 76) from Magistrate Judge Locke recommending that the Court (1) grant plaintiffs’ motion for partial summary judgment (ECF No. 55); and (2) deny defendant Naeem Butt’s cross-motions to amend and for summary judgment. The R&R instructed that any objections to the R&R be submitted within fourteen (14) days of service of the R&R. (See R&R, dated August 4, 2017, at 33-34.) On August 7, 2017, plaintiffs served a copy of the R&R on defendants (ECF No. 77), and the date for filing any objections has accordingly since expired. Defendants have not filed any objections to the R&R. For the reasons set forth below, the Court adopts the thorough and well-reasoned R&R in its entirety, grants plaintiffs’ motion for summary judgment, and denies defendant Butt’s cross-motions to amend and for summary judgment.

Where there are no objections, the Court may adopt the report and recommendation without *de novo* review. See *Thomas v. Arn*, 474 U.S. 140, 150 (1985) (“It does not appear that Congress intended to require district court review of a magistrate’s factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings.”); see also *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."); *cf.* 28 U.S.C. § 636(b)(1)(c) and Fed. R. Civ. P. 72(b)(3) (requiring *de novo* review after objections). However, because the failure to file timely objections is not jurisdictional, a district judge may still excuse the failure to object in a timely manner and exercise its discretion to decide the case on the merits to, for example, prevent plain error. *See Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003) ("[B]ecause the waiver rule is non jurisdictional, we 'may excuse the default in the interests of justice.'" (quoting *Thomas*, 474 U.S. at 155)).

Although defendants have waived any objection to the R&R and thus *de novo* review is not required, the Court has conducted a *de novo* review of the R&R in an abundance of caution. Having conducted a review of the full record and the applicable law, and having reviewed the R&R *de novo*, the Court adopts the findings and recommendations contained in the well-reasoned and thorough R&R in their entirety. Accordingly, IT IS HEREBY ORDERED that plaintiffs' motion for partial summary judgment is granted in its entirety, and the Court finds that:

- (1) Defendant Cornerstone Hotels Corp. is a covered employer under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et seq.*, as well as plaintiffs' employer under the FLSA and the New York Labor Law ("NYLL"), N.Y. Lab. Law § 190 *et seq.*;
- (2) Defendant Butt is individually liable as an employer under the FLSA and NYLL;
- (3) Defendants are liable for failing to provide wage notices and statements to plaintiffs as required under NYLL §§ 195(1) and 195(3); and
- (4) Plaintiffs are entitled to summary judgment on defendants' second and ninth affirmative defenses.

IT IS FURTHER ORDERED that defendant Butt's cross-motions to amend and for summary judgment are denied in their entirety.

IT IS FURTHER ORDERED that the parties shall participate in a conference call with the Court on Tuesday, September 12, 2017 at 4:30 p.m. to discuss scheduling a trial in this action and the status of defendant Cornerstone Hotels Corp. At the time of the conference, counsel for plaintiffs shall initiate the call and, once all parties are on the line, shall contact Chambers at (631) 712 5670.

SO ORDERED.


JOSEPH F. BIANCO
UNITED STATES DISTRICT JUDGE

Dated: August 31, 2017
Central Islip, NY