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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
LONG ISLAND OFFICE

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ROBERT K. BOCKSEL,

Plaintiff,

ORDER

-against-

14-CV-6015 (SJF)(SIL)

DG3 NORTH AMERICA, INC.,

Defendant.

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FEUERSTEIN, District Judge:

Pending before the Court is a Report and Recommendation of the Honorable Steven I. Locke, United States Magistrate Judge, dated February 12, 2016 (“the Report”), (1) recommending that the motion of defendant DG3 North America, Inc. (“defendant”) seeking summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure be granted in part and denied in part; and (2) advising the parties, *inter alia*, (a) that “[a]ny objections to th[e] Report . . . must be filed with the Clerk of the Court within fourteen (14) days of receipt of th[e] [R]eport,” (Report at 29), and (b) that a “[f]ailure to file objections within the specified time waives the right to appeal. . . ,” (*id.*) (citing 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a), 72; Ferrer v. Woliver, No. 05-3696, 2008 WL 4951035, at * 2 (2d Cir. Nov. 20, 2008); Beverly v. Walker, 118 F.3d 900, 902 (2d Cir. 1997); and Savoie v. Merchants Bank, 84 F.3d 52, 60 (2d Cir. 1996)). A copy of the Report was served upon the attorneys of record for the parties via ECF on February 12, 2016. (Doc. No. 42). No party has filed any objection to the Report, nor sought an extension of time to do so. For the reasons set forth herein, Magistrate Judge Locke’s Report is accepted in its entirety and, for the reasons set forth in the Report, defendant’s motion for summary judgment is granted in part and denied in part.

I. DISCUSSION

A. Standard of Review

Any party may serve and file written objections to a report and recommendation of a magistrate judge within fourteen (14) days after being served with a copy thereof. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). Any portion of such a report and recommendation to which a timely objection has been made is reviewed *de novo*. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). The court, however, is not required to review the factual findings or legal conclusions of the magistrate judge as to which no proper objections are interposed. See Thomas v. Arn, 474 U.S. 140, 150, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985). Specifically, where, as here, the parties “received clear notice of the consequences of the failure to object” to a report and recommendation, Frank v. Johnson, 968 F.2d 298, 300 (2d Cir. 1992) (quotations and citation omitted), their “failure to object timely to [that] report waives any further judicial review of the report.” Id.; see also Caidor v. Onondago County, 517 F.3d 601, 604 (2d Cir. 2008); Roldan v. Racette, 984 F.2d 85, 89 (2d Cir. 1993).

“Although this rule applies equally to counseled and *pro se* litigants, it is ‘a nonjurisdictional waiver provision whose violation [the Court] may excuse in the interests of justice.’” King v. City of New York, Dep’t of Corr., 419 F. App’x 25, 27 (2d Cir. Apr. 4, 2011) (quoting Roldan, 984 F.2d at 89); see also DeLeon v. Strack, 234 F.3d 84, 86 (2d Cir. 2000). “Such discretion is exercised based on, among other factors, whether the defaulted argument has substantial merit or, put otherwise, whether the magistrate judge committed plain error in ruling against the defaulting party.” Spence v. Superintendent, Great Meadow Corr. Facility, 219 F.3d 162, 174 (2d Cir. 2000); accord King, 419 F. App’x at 27.

B. Review of Report

Although the Report provided the parties with the requisite “express warning” of the consequences of a failure to timely file objections thereto, Caidor, 517 F.3d at 603, neither party filed any objections to the Report, nor sought an extension of time to do so. Accordingly, the parties have “waive[d] any further judicial review of the findings contained in the [R]eport.” Spence, 219 F.3d at 174.

As the Report is not plainly erroneous, the Court will not exercise its discretion to excuse the parties’ default in filing timely objections to the Report in the interests of justice. Accordingly, the Report is accepted in its entirety and, for the reasons set forth therein, the branches of defendant’s motion seeking summary judgment dismissing plaintiff’s claims in the amended complaint pursuant to Rule 56 of the Federal Rules of Civil Procedure is granted; plaintiff’s claims in the amended complaint are dismissed in their entirety with prejudice; and the branch of defendant’s motion seeking summary judgment on its counterclaim against plaintiff pursuant to Rule 56 of the Federal Rules of Civil Procedure is denied.

III. Conclusion

For the reasons set forth herein, Magistrate Judge Locke’s Report is accepted in its entirety, and, for the reasons set forth therein, the branches of defendant’s motion seeking summary judgment dismissing plaintiff’s claims in the amended complaint pursuant to Rule 56 of the Federal Rules of Civil Procedure is granted; plaintiff’s claims in the amended complaint are dismissed in their entirety with prejudice; and the branch of defendant’s motion seeking summary judgment on its counterclaim against plaintiff pursuant to Rule 56 of the Federal Rules

of Civil Procedure is denied. There being no just reason for delay, the Clerk of the Court shall enter judgment dismissing plaintiff's claims against defendant in their entirety with prejudice pursuant to Rule 54(b) of the Federal Rules of Civil Procedure. The parties shall appear in Courtroom 1010 at the Central Islip Courthouse, located at 100 Federal Plaza, Central Islip, New York 11722, for a status conference before me **on March 16, 2016 at 11:00 a.m.**

SO ORDERED.

/s/
SANDRA J. FEUERSTEIN
United States District Judge

Dated: March 1, 2016
Central Islip, New York