

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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

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MANUEL ZHISPON,

★ MAR 19 2019 ★

Plaintiff,

LONG ISLAND OFFICE

-against-

ORDER
15-CV-1475 (JFB)(GRB)

STRONG CONSTRUCTION OF NEW YORK
NEW YORK CORP.,

Defendant.
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JOSEPH F. BIANCO, District Judge:

On February 27, 2019, Magistrate Judge Gary R. Brown issued a Report and Recommendation (the "R&R"), recommending that the Court grant plaintiff's motion money damages and award damages in the total amount of \$86,597.27, as well as pre-judgment interest at a rate of \$12.59 *per diem* from February 16, 2012 until the date of this Order. The R&R was served on defendant Strong Construction of New York Corp. ("defendant") on February 28, 2019. (ECF No. 19.) The R&R instructed that any objections to the R&R be submitted within fourteen (14) days of service of the R&R. The date for filing any objections has thus expired, and no party has filed an objection to the R&R. For the reasons set forth below, the Court adopts the R&R in its entirety, grants plaintiff's motion for damages, and awards plaintiff damages in the total amount of \$86,597.27 (consisting of \$51,048.48 in principal damages, \$33,048.79 in liquidated damages, and \$2,500 in statutory damages), plus pre-judgment interest at a rate of \$12.59 *per diem* from February 16, 2012 until the date of this Order.

Where there are no objections, the Court may adopt a 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)).

No party has objected to the R&R. Having conducted a review of the full record and the applicable law, and having reviewed the R&R for clear error, the Court adopts the findings and recommendations contained in the R&R in their entirety. Accordingly,

IT IS HEREBY ORDERED that plaintiff’s motion for damages (ECF No. 24) is granted.

IT IS FURTHER ORDERED that plaintiff is awarded damages in the total amount of \$86,597.27, plus *per diem* pre-judgment interest at a rate of \$12.59 from February 16, 2012, until the date of this Order.

IT IS FURTHER ORDERED that plaintiff shall serve a copy of this Order on defendant and file proof of service with the Court.

~~S/O~~ ORDERED.

S/ JOSEPH F BIANCO

JOSEPH F. BIANCO
UNITED STATES DISTRICT JUDGE

Dated: March ¹⁹, 2019
Central Islip, New York