UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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|---|---|
| SWISS SKIES AG, | |
| Plaintiff, | |
| -against- | |
| AIR LUXOR, S.A., | |
| Defendant. | |

**REPORT and RECOMMENDATION**

04 Civ. 9972 (RJS)(KNF)

KEVIN NATHANIEL FOX
UNITED STATES MAGISTRATE JUDGE

TO THE HONORABLE RICHARD J. SULLIVAN, UNITED STATES DISTRICT JUDGE

## I. INTRODUCTION

On December 17, 2004, Swiss Skies AG ("Swiss Skies") commenced the instant action against the defendant, Air Luxor, S.A. ("Air Luxor"), seeking: (1) an order compelling Air Luxor to arbitrate claims asserted against it, by Swiss Skies, before the American Arbitration Association ("AAA") in New York City; (2) a preliminary injunction, in aid of arbitration; and (3) costs, including reasonable attorneys' fees.[1] On February 10, 2009, your Honor entered default against Air Luxor, pursuant to Fed. R. Civ. P. 55, and referred the action to the undersigned for an inquest.

## II. BACKGROUND

Swiss Skies is a Swiss company, with its principal place of business in Zurich, Switzerland. Air Luxor is a Portuguese company, with its principal place of business in Lisbon, Portugal. Swiss

[1] In its complaint, the plaintiff asserts three claims as distinct "counts": (1) failure to arbitrate; (2) specific performance; and (3) tortious interference with prospective business relations. However, the plaintiff's complaint seeks no monetary damages – only injunctive relief – and is, in actuality, simply a petition to compel arbitration and a motion for a preliminary injunction. To the extent the plaintiff does not seek damages for tortious interference, but rather cites such alleged interference as a ground for seeking a preliminary injunction, see Compl. ¶¶ 63-64, the Court does not deem this a separate claim upon which relief may be granted.

Skies and Air Luxor entered a written Charter Services Agreement ("CSA" or "Agreement"), dated June 9, 2004. Pursuant to the CSA, Air Luxor agreed to provide commercial air passenger service between Paris, France, and Kabul, Afghanistan, for a period of six months, commencing December 10, 2004.[2] Swiss Skies agreed to market the service and sell tickets for the flights.

The parties' Agreement was conditioned on, inter alia, Air Luxor's "timely receipt of any required consents and approvals of all Governmental Entities and Aviation Authorities and landing facilities required to operate the Flights as a public charter carrier[.]" See CSA ¶ 5.2. Additionally, the Agreement contained a non-compete clause, whereby Air Luxor agreed not to provide air service, for itself or another airline, to Kabul, while the Agreement was operative and for two years after its termination or expiration. See CSA ¶ 8.7. In the event of a dispute between the parties, the CSA supplied a dispute resolution procedure, which provided, first, that the parties must attempt to resolve, among themselves, "any disputes which may arise under, out of, in connection with, or in relation to, [the] Agreement." CSA ¶ 8.6(i). However, if the parties were unable to reach resolution, "[a]ll disputes arising in connection with the Agreement . . . shall be finally settled by a panel of three arbitrators in accordance with the then current rules of conciliation and arbitration of the American Arbitration Association in New York City." CSA ¶ 8.6(ii).

According to Swiss Skies, Air Luxor breached the CSA by: (1) failing to obtain necessary approvals from the French government to commence flights to and from Paris; and (2) contracting with two other airlines – Lufthansa and Ariana Afghan Airlines – to provide direct passenger service from Frankfurt, Germany, to Kabul, commencing on or about December 1, 2004.

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[2] Under the terms of the original CSA, Air Luxor would commence operating flights on August 6, 2004, and cease on January 26, 2005. However, "[t]he tentative start date for the flights under the Agreement had to be repeatedly postponed from August 6, 2004 to the last tentative commencement date of December 10, 2004 because Air Luxor failed to obtain all necessary governmental approvals for the flights." Compl. ¶ 18.

On December 15, 2004, Swiss Skies filed its Notice of Arbitration and Statement of Claim with the AAA, asserting its breach of contract claims, and a claim for tortious interference with prospective business relations. Thereafter, on December 17, 2004, Swiss Skies filed its complaint with this court. On February 9, 2005, the Honorable Michael B. Mukasey, District Judge, denied Swiss Skies' motion for a preliminary injunction and ordered the parties to proceed to arbitration. Thereafter, the parties negotiated a settlement agreement, but failed to consummate it. During a November 3, 2005 conference, Judge Mukasey permitted the defendant's counsel to withdraw as counsel-of-record. Owing to Air Luxor's failure to retain new counsel since then, your Honor entered default against the defendant.

Following your Honor's entry of default, Swiss Skies submitted, inter alia, an inquest memorandum in support of its claim for damages. Swiss Skies seeks damages for the underlying breach of contract claims it has asserted before the AAA. Specifically, Swiss Skies seeks $542,800, in damages, for the defendant's alleged breach of the non-compete clause of the CSA, in addition to $8,680,568, in lost profits, for the remaining breaches. Moreover, Swiss Skies seeks attorneys' fees and costs totaling $132,358.62, and prejudgment interest on its breach of contract claims, at a rate of nine percent per annum, from December 10, 2005.

## III. DISCUSSION

### 1. Legal Standard

A party's default is deemed a concession of all well-pleaded-factual allegations, but "it is not considered an admission of damages." Greyhound Exhibitgroup, Inc. v. E.L.U.L. Realty Corp., 973 F.2d 155, 158 (2d Cir. 1992). When assessing the propriety of a damages award after a judgment by default is entered, a court "must be satisfied initially that the allegations of the complaint are 'well-pleaded.'" Levesque v. Kelly Commc'ns, Inc., No. 91 Civ. 7045, 1993 WL 22113, at *5 (S.D.N.Y.

Jan. 25, 1993) (quoting Trans World Airlines, Inc. v. Hughes, 449 F.2d 51, 63 [2d Cir. 1971]). If the allegations are well-pleaded, or, in other words, establish liability for a claim, "the quantum of damages remains to be established by proof unless the amount is liquidated or susceptible to mathematical computation." Flaks v. Koegel, 504 F.2d 702, 707 (2d Cir. 1974).

**2. Application**

**A. Petition to Compel Arbitration**

In its complaint, the plaintiff requests that the court compel Air Luxor to arbitrate the claims Swiss Skies has asserted against it, before the AAA, in accordance with the procedures set forth in the CSA.

The plaintiff seeks to compel arbitration under 9 U.S.C. § 206, which is part of Chapter 2 of the Federal Arbitration Act ("FAA"). See 9 U.S.C. § 201 et seq. Chapter 2 of the FAA implements The Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 3, and applies to arbitration agreements that are: (1) commercial; and (2) not "entirely between citizens of the United States." 9 U.S.C. §§ 201, 202. Under 9 U.S.C. § 206, a district court "may direct that arbitration be held in accordance with the agreement at any place therein provided for, whether that place is within or without the United States." See 9 U.S.C. § 203 (granting district courts original jurisdiction). "To determine whether to compel arbitration pursuant to Section 206, courts inquire whether the parties agreed to arbitrate, and, if so, whether the scope of that agreement encompasses the asserted claims." Motorola Credit Corp. v. Uzan, 388 F.3d 39, 49 (2d Cir. 2004)(internal quotations and citation omitted).

Swiss Skies has pleaded facts in its complaint sufficient to establish its entitlement to an order compelling arbitration. The CSA is a written commercial agreement between two entities that are not United States citizens. In the CSA, Swiss Skies and Air Luxor agreed to arbitrate "[a]ll

disputes arising in connection with the Agreement." The underlying dispute between the parties concerns Air Luxor's alleged breaches of the Agreement. Under these circumstances, it is appropriate to compel arbitration, in accordance with the procedure set forth in the CSA.[3]

In the inquest materials provided to the Court, the plaintiff appears to misapprehend the nature of the proceeding before the Court. Swiss Skies' complaint seeks only injunctive relief and recovery of costs and attorneys' fees. However, in its inquest materials, the plaintiff seeks monetary damages for the underlying claims, which it has asserted before the AAA. Pursuant to Fed. R. Civ. P. 54(c), "[a] default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings." See Silge v. Merz, 510 F.3d 157, 160 (2d Cir. 2007) (holding damages arising from a default judgment be limited to those specified in the "demand clause" of the complaint). Hence, to the extent the plaintiff's inquest materials seek relief not sought in the complaint, granting its request is neither warranted nor reasonable. See Mariac Shipping Co. Ltd. v. Meta Corp., No. 03 Civ. 5600, 2003 WL 22937687, at *1 (S.D.N.Y. Dec. 12, 2003) (granting default judgment to compel arbitration, but denying petitioner's request that it be permitted to nominate an arbitrator because such relief was not sought in its petition to compel arbitration). Awarding damages for the underlying claims asserted before the AAA runs afoul of Fed. R. Civ. P. 54(c) and alters the nature of the instant action.

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[3] On February 9, 2005, Judge Mukasey ordered the parties to proceed to arbitration. The previous day, Air Luxor filed its Answer and Counterclaims with the AAA. The plaintiff has provided the Court little information concerning the status of proceedings before the AAA, since the parties failed to consummate their settlement agreement in 2005. In his February 16, 2007 declaration, the plaintiff's counsel asserts that the arbitration cannot proceed while Air Luxor is unrepresented, and, similarly, suggests in his June 29, 2007 declaration that Air Luxor's failure to retain counsel has left the arbitration "at a standstill." While Swiss Skies, curiously, moved this court to strike the counterclaims asserted by Air Luxor before the AAA – a request your Honor denied – and moved for a judgment by default in this proceeding, there is no evidence that Swiss Skies has moved for entry of default in the arbitration proceeding or any indication it is unable to do so, pursuant to the applicable rules of the AAA.

**B. Preliminary Injunction**

In its complaint, Swiss Skies requests that the Court order "Air Luxor to specifically perform its obligations to obtain necessary governmental approvals, to provide charter aircraft for Swiss Skies' air passenger service between Paris and Kabul, and to cease and desist from violating its non-complete obligations . . . pending resolution of the disputes by arbitration, as expressly provided by the parties in the Agreement[.]"[4] Judge Mukasey denied the plaintiff's request, on February 9, 2005, prior to the defendant's default.

A party requesting a preliminary injunction must show "(1) irreparable harm; and (2) either (a) likelihood of success on the merits or (b) sufficiently serious questions going to the merits of the case to make them a fair ground for litigation and a balance of hardships tipping decidedly toward the party requesting preliminary relief." LaForest v. Former Clean Air Holding Co., Inc., 376 F.3d 48, 54 (2d Cir. 2004)(internal quotations and citations omitted). Where an adequate remedy at law exists, such as an award of monetary damages, a party does not suffer irreparable harm. See Oracle Real Estate Holdings v. Adrian Holdings Co., 582 F. Supp. 2d 616, 625 (S.D.N.Y. 2008).

The plaintiff's complaint fails to plead, sufficiently, irreparable harm. That Swiss Skies, in its inquest materials, demands millions of dollars in damages for the alleged breaches of contract underlying the instant case, demonstrates that monetary damages are an adequate remedy for its injuries. Additionally, it is implausible at this stage in the litigation – nearly six years after the plaintiff filed its complaint and approximately five years after the contract in dispute was set to expire – that the plaintiff will suffer irreparable harm absent the issuance of a preliminary injunction.

[4] Section 8.6(ii) of the CSA provides that "[s]ubmission to arbitration shall not preclude the Parties from seeking injunctive relief, if necessary, pending an award in arbitration."

Accordingly, it would be inappropriate to grant Swiss Skies this relief.

**C. Attorneys' Fees**[5]

In its complaint, the plaintiff seeks costs, including reasonable attorneys' fees. In its inquest memorandum, the plaintiff requests an award of $ 116,821.97 in attorneys' fees.

When fixing an appropriate amount to be awarded for attorneys' fees, courts in this circuit calculate the "presumptively reasonable fee," which is "the product of hours worked and an hourly rate." Arbor Hill Concerned Citizens Neighborhood Ass'n v. County of Albany & Albany County Bd. of Elections, 522 F.3d 182, 183 (2d Cir. 2008).

**I. Reasonable Hourly Rate**

The "reasonable hourly rate" used to calculate the presumptively reasonable fee is the "rate a paying client would be willing to pay . . . ." Id. at 190 (noting "a reasonable, paying client wishes to spend the minimum necessary to litigate the case effectively"). The rate is generally the prevailing rate charged in the district where the court sits. Id. at 183. However, in setting the reasonable hourly rate, the district court should consider a number of "case-specific variables," including, inter alia, the factors identified in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714, 717-719 (5th Cir. 1974). Id. at 190.[6]

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[5] Section 8.5 of the CSA provides that the parties' Agreement is governed by New York law and "[t]he prevailing party in any litigation between or among the Parties [] shall be entitled to an award of its reasonable attorneys' fees, reasonable costs of the investigation expenses and court costs in thus asserting its rights."

[6] "The twelve Johnson factors are: (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the level of skill required to perform the legal service properly; (4) the preclusion of employment by the attorney due to acceptance of the case; (5) the attorney's customary hourly rate; (6) whether the fee is fixed or contingent; (7) the time limitations imposed by the client or the circumstances; (8) the amount involved in the case and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the 'undesirability' of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases." Arbor Hill, 522 F.3d at 186-87 n.3 (citing Johnson, 488 F.2d at 717-719).

The plaintiff is represented by attorneys at the firm of Cowan, DeBaets, Abrahams & Sheppard LLP ("Cowan, DeBaets"), located in New York, New York. In support of its request for attorneys' fees, the plaintiff provided the Court with: (1) a number of invoices, from December 2004 through September 2007, and (2) attorney resumes and biographies. As an initial matter, it warrants noting that any individual identified in the invoices, but for whom no title or professional information was furnished – for example, Sonia Nieves and Lisa Digernes – is not entitled to recover fees, and therefore will not be discussed further in this opinion.

The following attorneys at Cowan, DeBaets devoted time to the instant litigation: (1) Ralph J. Sutton ("Sutton"); (2) Al Daniel, Jr. ("Daniel"); (3) Toby M.J. Butterfield ("Butterfield"); and (4) Matthew A. Kaplan ("Kaplan"). In calculating the presumptively reasonable fee, Sutton seeks an hourly rate of $375; Daniel, $375; Butterfield, $425; and Kaplan, $250.[7]

Sutton has represented "individual and corporate clients in intellectual property and business litigation" since 1991, and has been a partner at Cowan, DeBaets since 2003. Daniel, another partner at Cowan, DeBaets, has been admitted to practice in New York since 1989. He has "experience in copyrights, trademarks, entertainment-related matters . . . and commercial law." Butterfield has been admitted to practice in New York since 1992 and has been a partner at Cowan, DeBaets since 2003, handling "intellectual property, copyright, trademark, digital media and general commercial cases." Kaplan has been admitted to practice in New York since 2001, though he has

[7] Although Sutton billed Swiss Skies using an hourly rate of $250 initially, and ultimately billed at a rate of $410, he billed the majority of his hours worked at a rate of $375. Accordingly, the Court will rely on this figure in its assessment. Similarly, Daniel billed the majority of his hours at an hourly rate of $375 and Kaplan billed the majority of his time at an hourly rate of $250. Butterfield's hourly rate is the same on all applicable invoices.

represented clients in New Jersey since 1999. He has been an associate at Cowan, DeBaets since late 2004, representing clients in "copyright, trademark and commercial litigation matters."

Based on the Court's review of cases in this district, it appears the hourly rates requested by the attorneys – save Butterfield – are "in line with those prevailing in the community for similar services," Blum v. Stenson, 465 U.S. 886, 896 n.11, 104 S. Ct. 1541, 1547 n.11 (1984), but should nevertheless be reduced owing to certain case-specific variables. See Yea Kim v. 167 Nail Plaza, Inc., No. 05 Civ. 8560, 2009 WL 77876, at *8 (S.D.N.Y. Jan. 12, 2009) (finding the hourly fee range for "'seasoned litigators'" to be $254-381, when inflation is considered); Imbeault v. Rick's Cabaret Int'l Inc., No. 08 Civ. 5458, 2009 WL 2482134, at *4-5 (S.D.N.Y. Aug. 13, 2009) (awarding $400 hourly rate to partner with over 13 years' experience and $325 hourly rate to associate with 8 years' experience); Leyse v. Corporate Collection Servs., Inc., 545 F. Supp. 2d 334, 336 (S.D.N.Y. 2008) (awarding $225 per hour to attorney with 10 years' experience in consumer protection law). First, although this case has been pending for nearly six years, it has not been especially labor intensive. The parties were in active settlement discussions throughout 2005, but since the end of 2005, Air Luxor has been in default, requiring that Swiss Skies simply move for a judgment by default. Second, the petition filed by Swiss Skies is straightforward, presenting no novel questions of law or fact. Third, no information has been provided to the Court about the size of the firm or its reputation. Based on the attorney resumes the Court has reviewed, it appears the firm's expertise is intellectual property, though this case calls for a background in international commercial arbitration. Fourth, and perhaps most importantly, the plaintiff's counsel has been unable to obtain worthwhile results for its client in nearly six years. Admittedly, the plaintiff in this action is faced with an apparently uncooperative defendant; however, the delay can be partially attributed to the plaintiff's counsel conflating the proceedings before this court and the AAA.

In light of these circumstances, the following hourly rates appear more appropriate: (1) $300 for Sutton, Daniel and Butterfield; and (2) $200 for Kaplan.

**ii. Reasonableness of Hours Expended**

"In order to calculate the reasonable hours expended, the prevailing party's fee application must be supported by contemporaneous time records, affidavits, and other materials." McDonald ex rel Prendergast v. Pension Plan of the NYSA-ILA Pension Trust Fund, 450 F.3d 91, 96 (2d Cir. 2006). A court should exclude documented hours which are "excessive, redundant, or otherwise unnecessary." See Hensley v. Eckerhart, 461 U.S. 424, 434, 103 S. Ct. 1933, 1939-40 (1983). In excluding these hours, a "court has discretion simply to deduct a reasonable percentage of the number of hours claimed . . . ." Kirsch v. Fleet Street, Ltd., 148 F.3d 149, 173 (2d Cir. 1998) (finding no abuse of discretion in a 20% reduction in requested hours for "vagueness, inconsistencies, and other deficiencies in the billing records"); see McDonald, 450 F.3d at 97 (finding no error in 35% reduction in requested hours expended).

Based on the invoices, it appears Sutton expended 174.7 hours on the instant case; Daniel, 73.85 hours; Butterfield, 3.5 hours; and Kaplan, 141 hours. Bearing in mind **"**the district court examines the particular hours expended by counsel with a view to the value of the work product of the specific expenditures to the client's case," Luciano v. Olsten Corp., 109 F.3d 111, 116 (2d Cir. 1997), the Court finds that a reduction of each attorney's hours, by 30%, is reasonable and appropriate.

Within a week of filing the complaint in this court, two partners – Sutton and Daniel – had already spent 142 hours working on this case. Fed. R. Civ. P. 11 requires counsel to conduct "an inquiry reasonable under the circumstances" prior to filing a pleading with the Court. Given the nature of this action, which presents no novel questions of law or complicated facts, the amount of

time expended by the plaintiff's counsel is exorbitant. The bulk of work for this case occurred from the filing of the complaint, until November 2005, when the Court permitted the defendant's counsel to withdraw. Thereafter, all the plaintiff's attention turned to moving for default and damages. By the Court's count, the plaintiff's counsel spent approximately 80 hours on this endeavor. That appears to be an excessive amount of time to devote to a rather routine practice and, therefore, warrants reduction.

Although the docket sheet maintained for this action, by the Clerk of Court, reflects no activity in this case, from November 2005, until February 2007, the plaintiff has submitted an invoice from its counsel for work done between January and March 2006. It appears this work – apparently the plaintiff contemplated filing a motion to dismiss or for default judgment – yielded little by way of results for the client, as no such motion was filed until February 2007. Once filed, the plaintiff's motion was immediately denied, without prejudice, owing to the plaintiff's failure to comply with the presiding district judge's individual rules of practice and the Local Civil Rules of this court. In light of these circumstances, the hours billed by the plaintiff's counsel should be reduced to discount for work providing little to no value for the client.

Accordingly, the Court finds that the plaintiff is entitled to attorneys' fees of $72,672, as depicted in the following table:

| NAME | POSITION | RATE ($/hour) | TOTAL HOURS | TOTAL |
|---|---|---|---|---|
| Ralph J. Sutton | Partner | 300 | 122.29 | $ 36,687 |
| Al Daniel, Jr. | Partner | 300 | 51.70 | $ 15,510 |
| Toby M.J. Butterfield | Partner | 300 | 2.45 | $ 735 |
| Matthew A. Kaplan | Associate | 200 | 98.70 | $ 19,740 |
| **TOTAL** | | | | **$ 72,672** |

**D. Costs**

Pursuant to Fed. R. Civ. P. 54(d)(1), unless otherwise provided, costs "should be allowed to the prevailing party." The term "costs," as used in Fed. R. Civ. P. 54, "includes only the specific items enumerated in 28 U.S.C. § 1920." Whitfield v. Scully, 241 F.3d 264, 269 (2d Cir. 2001) (emphasis added). Section 1920 provides six categories of expenses that may be taxed as costs in federal court: (1) fees of the clerk and marshal; (2) fees for transcripts obtained for use in the case; (3) fees for printing and witnesses; (4) fees for exemplification and copies necessarily obtained for use in the case; (5) docket fees under 28 U.S.C. § 1923; and (6) compensation of interpreters and court-appointed experts.

The plaintiff seeks $ 15,536.65 in costs, to cover expenses incurred since the action's inception. The Court has reviewed each invoice submitted by the plaintiff and finds many of the "disbursements" therein lack descriptions from which the Court may discern whether they fall within one of the categories of taxable costs. See U.S. for Use and Benefit of Evergreen Pipeline Constr. Co., Inc. v. Merritt Meridian Constr. Corp., 95 F.3d 153, 173 (2d Cir. 1996) (finding no abuse of discretion in two-thirds reduction of photocopying costs where plaintiff did not "itemize those costs or explain why all those copies were necessary"). Moreover, many disbursements are simply not taxable costs. For example, the plaintiff's greatest single expenditure appears to have been on Lexis Nexis research. However, the Second Circuit Court of Appeals has determined that "computer research is merely a substitute for an attorney's time that is compensable under an application for attorneys' fees and is not a separately taxable cost." Id. Accordingly, no award for those costs is warranted.

Only the following disbursements offer clear descriptions and fall within the 28 U.S.C. § 1920 categories:

| DATE | DISBURSEMENT | AMOUNT |
|---|---|---|
| 12/17/2004 | SDNY/Clerk; Filing New Action | $ 150.00 |
| 12/21/2004 | Southern District Reporters Transcript hearing | $ 165.60 |
| 4/25/2005 | Southern District Reporters P.C.; Invoice # 0049546 Original, Diskette, Minuscript [sic] | $ 969.96 |
| n/a | 28 U.S.C. § 1923(a) docket fee | $ 20.00 |
| **TOTAL** | | **$1,305.56** |

**E. Prejudgment Interest**

Swiss Skies seeks prejudgment interest on any damages awarded in this action. As discussed above, the plaintiff is not entitled to any damages award from this court. Moreover, insofar as the plaintiff failed to seek prejudgment interest in its complaint, it is not entitled to such relief. See Fed. R. Civ. P. 54(c).

## IV. RECOMMENDATION

For the reasons set forth above, I recommend judgment by default be entered in the plaintiff's favor, as to count one of the complaint, and that the court direct Air Luxor to arbitrate the claims asserted against it, by Swiss Skies, before the AAA, in accordance with the procedures set forth in the CSA. I recommend further that the plaintiff be awarded $72,672 in reasonable attorneys' fees and $1,305.56 in costs.

* * *

The plaintiff shall serve a copy of this Report and Recommendation upon the defendant and submit proof of service to the Clerk of Court.

## V. FILING OF OBJECTIONS TO THIS REPORT AND RECOMMENDATION

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b)(2) of the Federal Rules of Civil Procedure, the parties shall have fourteen (14) days from service of this Report to file written objections. See

also Fed. R. Civ. P. 6. Such objections, and any responses to objections, shall be filed with the Clerk of Court, with courtesy copies delivered to the chambers of the Honorable Richard J. Sullivan, 500 Pearl Street, Room 640, New York, New York 10007, and to the chambers of the undersigned, 40 Centre Street, Room 540, New York, New York 10007. Any requests for an extension of time for filing objections must be directed to Judge Sullivan. FAILURE TO FILE OBJECTIONS WITHIN FOURTEEN (14) DAYS WILL RESULT IN A WAIVER OF OBJECTIONS AND WILL PRECLUDE APPELLATE REVIEW. See Thomas v. Arn, 474 U.S. 140, 470 (1985); IUE AFL-CIO Pension Fund v. Herrmann, 9 F.3d 1049, 1054 (2d Cir. 1993); Frank v. Johnson, 968 F.2d 298, 300 (2d Cir. 1992); Wesolek v. Canadair Ltd., 838 F.2d 55, 58-59 (2d Cir. 1988); McCarthy v. Manson, 714 F.2d 234, 237-38 (2d Cir. 1983).

Dated: New York, New York
August 13, 2010

Respectfully submitted,

KEVIN NATHANIEL FOX
UNITED STATES MAGISTRATE JUDGE