

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
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ELECTRONICALLY FILED
DOC #:
DATE FILED: 10/26/17

NERISSA MUNSON,

Plaintiff,

15 Civ. 425 (DAB)

ADOPTION OF REPORT &
RECOMMENDATION

v.

JASON DIAMOND, et al.,

Defendants.

-----X
DEBORAH A. BATTS, United States District Judge.

This matter is before the Court upon the June 1, 2017 Report and Recommendation of United States Magistrate Judge Barbara Moses ("Report"). Judge Moses's Report recommends that the Court award \$15,000.00 in compensatory damages for emotional distress, \$30,000.00 in punitive damages, \$52,750.00 in attorneys' fees, and \$4,271.41 in costs to Plaintiff, all to be assessed against Defendant Preserve 24 LLC, and that the Default Judgment be vacated against Defendants Aegis Holding LLC, Aegis Holding Houston LLC, and Metropolitan Coffee & Concessions LLC. (Report at 1, 25.)

Pursuant to 28 U.S.C. § 636(b)(1)(C), "[w]ithin fourteen days after being served with a copy [of a Magistrate Judge's Report and Recommendation], any party may serve and file written objections to such proposed findings and recommendations" 28 U.S.C. § 636(b)(1)(C); see also Fed. R. Civ. P. 72(b)(2). The district court may adopt those portions of the report to

which no timely objection has been made, so long as there is no clear error on the face of the record. See 28 U.S.C. § 636(b) (1) (A); Wilds v. United Parcel Serv., Inc., 262 F.Supp.2d 163, 169 (S.D.N.Y. 2003).

In this case, Plaintiff sought and the Court granted an extension to file objections to Judge Moses's Report and Recommendation. However, no party ultimately filed objections. Accordingly, the Court reviews the Report and Recommendation for clear error.


Having reviewed the Report and Recommendation and finding no clear error on the face of the record, it is hereby ORDERED AND ADJUDGED as follows:

1. The Report and Recommendation of United States Magistrate Judge Barbara Moses dated June 1, 2017 be and the same hereby is APPROVED, ADOPTED, and RATIFIED by the Court in its entirety;
2. Pursuant to Magistrate Judge Moses's recommendation, Plaintiff shall be awarded \$15,000.00 in compensatory damages for emotional distress, \$30,000.00 in punitive damages, \$52,750.00 in attorneys' fees, and \$4,271.41 in costs, for a total of \$102,021.41, all to be assessed against Defendant Preserve 24 LLC, for a total of \$118,705.09; and
3. The Default Judgment against Defendants Aegis Holding LLC, Aegis Holding Houston LLC, and Metropolitan Coffee & Concessions LLC shall be vacated.

The remaining issue in this case is the liability of Jason Diamond and John Parlatore (together, "Individual Defendants"). To date, Plaintiff has not served Diamond. (See Report at 2 n.2.). Plaintiff's counsel has suggested that he may discontinue prosecution against Parlatore, but no discontinuance has been filed to date. (Id. at 2 n.3.) If Plaintiff fails TO SHOW CAUSE by affidavit why she has not served Individual Defendants within 21 days of the date of this Order, this case shall be dismissed as against them for failure to prosecute. See Lyell Theatre Corp. v. Loews Corp., 682 F.2d 37, 42 (2d Cir. 1982) ("[T]he authority of a federal trial court to dismiss a plaintiff's action with prejudice because of his failure to prosecute cannot seriously be doubted." (quoting Link v. Wabash R.R. Co., 370 U.S. 626, 629 (1962))); see also Report at 25.

SO ORDERED.

DATED: New York, NY
October 23, 2017


Deborah A. Batts
United States District Judge