

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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 JAMIE RIO MARTINEZ, :  
 :  
 Plaintiff, :  
 :  
 -against- :  
 :  
 ACCELERANT MEDIA, LLC, ACCELERANT :  
 MEDIA CORPORATION, and CHET :  
 STOJANOVICH, :  
 :  
 Defendants. :  
 :  
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MEMORANDUM DECISION  
AND ORDER

20 Civ. 9366 (GBD) (OTW)

GEORGE B. DANIELS, United States District Judge:

Plaintiff Jamie Rio Martinez brings this action against Defendants Accelerant Media, LLC, Accelerant Media Corporation, and Chet Stojanovich, seeking damages for breach of contract, breach of the implied covenant of good faith and fair dealing, fraud/fraudulent inducement, and unjust enrichment. (R. & R. (“Report”), ECF No. 84, at 1; Pl.’s Inquest Mem., ECF No. 72, at 10–16.) This Court granted Plaintiff’s Motion for Default Judgment on October 24, 2022, and referred the case to Magistrate Judge Ona T. Wang for an inquest on damages. (ECF Nos. 65, 66.) Before this Court is Magistrate Judge Wang’s January 19, 2024 Report and Recommendation recommending that Plaintiff be awarded damages for breach of contract and fraud/fraudulent inducement, as well as interest and costs. (Report at 15.) No party filed objections to the Report. Having reviewed the Report for clear error, this Court ADOPTS the Report in its entirety except for a minor mathematical adjustment.

A reviewing court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). When there are no objections to a magistrate judge’s report, a district judge reviews the report for clear error. *See*

*Edwards v. Fischer*, 414 F. Supp. 2d 342, 346–47 (S.D.N.Y. 2006); Fed. R. Civ. P. 72(b) advisory committee’s note to 1983 addition. Clear error is present when, “upon review of the entire record, [the court is] left with the definite and firm conviction that a mistake has been committed.” *Brown v. Cunningham*, No. 14-CV-3515 (VEC) (MHD), 2015 WL 3536615, at \*4 (S.D.N.Y. June 4, 2015) (quoting *United States v. Snow*, 462 F.3d 55, 72 (2d Cir. 2006)).

After a comprehensive and careful inquest, Magistrate Judge Wang properly determined that Plaintiff provided adequate support for his entitlement to full restitution for breach of contract and fraud/fraudulent inducement,<sup>1</sup> as well as to prejudgment interest, post-judgment interest, and costs. As stated in the Report, Defendants Accelerant Media Corporation and Chet Stojanovich should be held jointly and severally liable to Plaintiff.<sup>2</sup> (Report at 15.) This Court awards Plaintiff the damages recommended by the Report as modified below<sup>3</sup> and ADOPTS the remainder of the Report in its entirety.

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<sup>1</sup> For the reasons stated in the Report, Plaintiff is entitled only to restitution, not to the revenue payments he would have received under the contract had the business been legitimate and generated revenue. (Report at 9–11.) In addition, Plaintiff is not entitled to judgment on his unjust enrichment claim or his breach of the implied covenant of good faith claim because these claims are duplicative of the breach of contract claim. (*Id.* at 6 n.4, 7 n.6.)

<sup>2</sup> As to Defendant Accelerant Media, LLC, Plaintiff “has not met his burden to assert subject matter jurisdiction” over the limited liability company. (Report at 5 n.3.) This Court has subject matter jurisdiction in this case because the parties are diverse and the amount in controversy exceeds \$75,000. (*Id.* at 4.) However, diversity for a limited liability company is assessed based on the citizenship of each of its members, and Plaintiff “has not alleged the citizenship of any of the members” of Accelerant Media, LLC. (*Id.* at 5 n.3.) As a result, this Court adopts the Report’s recommendation to dismiss Accelerant Media, LLC from this action. (*See id.*)

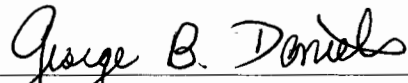
<sup>3</sup> The only error in the Report occurs on page eleven, where the amount of damages awarded as restitution for service payments on Plaintiff’s property is initially stated as \$116,210.45 but changed to \$116,201.45 in the next sentence. (*See* Report at 11.) \$116,210.45 is the correct figure, as it equals Plaintiff’s monthly service fee of \$2,192.65 multiplied by the 53 months he paid the fee (\$2,192.65 per month x 53 months = \$116,210.45). (*See* Decl. Jamie Rio Martinez in Supp. of Inquest Mem., ECF No. 73, ¶ 15.) Using the correct service payment figure, the total restitution is \$613,918.31, rather than \$613,909.31. Prejudgment interest also must be recalculated based on the correct restitution amount. The prejudgment interest from November 26, 2017, through November 28, 2022, the date of Plaintiff’s filing his inquest papers, is \$276,717.37 (\$613,918.31 x 0.09 per year x [1828 days/365 days per year]). (*See* Report at 13–14.)

## CONCLUSION

For the reasons stated in the Report, Defendants Accelerant Media Corporation and Chet Stojanovich are jointly and severally liable to Plaintiff for \$613,918.31 in breach of contract and fraud/fraudulent inducement damages; prejudgment interest of \$276,717.37 plus additional prejudgment interest from November 28, 2022, through the date of judgment at a rate of \$151.38 per day; post-judgment interest in accordance with 28 U.S.C. § 1961(a) from the date of judgment until the date the judgment is paid; and \$857.67 in court costs incurred with respect to Defendant Accelerant Media Corporation and \$794.14 with respect to Defendant Stojanovich. Defendant Accelerant Media, LLC is dismissed. The Clerk of Court is directed to close this case.<sup>4</sup>

Dated: March 26, 2024  
New York, New York

SO ORDERED.

  
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GEORGE B. DANIELS  
United States District Judge

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Prejudgment interest from November 28, 2022, through the date of judgment should be \$151.38 per day (\$613,918.31 x .09 per year / 365 days per year). (*See id.*)

<sup>4</sup> As of the date of this Order, this Court is simultaneously mailing a copy of this decision to Defendants Accelerant Media, LLC, Accelerant Media Corporation, and Chet Stojanovich at the following addresses:

- Accelerant Media, LLC | c/o United States Corporation Agents, Inc. | 7014 13<sup>th</sup> Avenue, Suite 202 | Brooklyn, NY 11228
- Accelerant Media Corporation | c/o United States Corporation Agents, Inc. | 221 N. Broad Street, Suite 3A | Middletown, DE 19709
- Chet Stojanovich | 105 Duane Street, Apt 20F | New York, NY 10007
- Chet Stojanovich # 91440-054 | FCI Terminal Island | Federal Correctional Institution | PO Box 3007 | San Pedro, CA 90733