

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JON AUDINO,

Plaintiff,

v.

16-CV-796

DECISION AND ORDER

GLOBAL IVR SOLUTIONS, LLC, and

WORLDLINK SERVICES
CORPORATION,

Defendants.

On October 5, 2016, the plaintiff, John Audino, commenced this action. Docket Item 1. On June 22, 2018, Audino moved to strike the defendants' answer and for default judgment. Docket Item 45. On October 1, 2018, this Court referred this case to United States Magistrate Judge Leslie G. Foschio for all proceedings under 28 U.S.C. § 636(b)(1)(A) and (B) Docket Item 48. The defendants did not respond to Audino's motion. On May 13, 2019, Judge Foschio issued a Report and Recommendation ("R&R") finding that Audino's motion should be granted in part and denied as moot in part. Docket Item 49. The parties did not object to the R&R, and the time to do so now has expired. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a de novo review of those portions of a magistrate judge's recommendation to which a party objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72

requires a district court to review the recommendation of a magistrate judge to which no objections are raised. See *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

Although not required to do so in light of the above, this Court nevertheless has reviewed Judge Foschio's R&R as well as the parties' submissions to him. Based on that review and the absence of any objections, the Court accepts and adopts Judge Foschio's recommendation to grant Audino's motion in part and to deny it in part.

For the reasons stated above and in the R&R, the plaintiff's motion to strike the defendants' answer and for default judgment, Docket Item 45, is GRANTED in part and DENIED as moot in part. The case is referred back to Judge Foschio for further proceedings consistent with the referral order of October 1, 2018, Docket Item 48. Specifically, as recommended by Judge Foschio, the matter is "recommitted to [him] for an evidentiary hearing on the question of [Audino's] damages and a further Report and Recommendation." Docket Item 49 at 15.

SO ORDERED.

Dated: September 13, 2019
Buffalo, New York

s/ Lawrence J. Vilardo
LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE