

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

CELTIG, LLC, a Tennessee limited liability company;

Plaintiff,

v.

AARON A. PATEY, an individual; EVERGREEN STRATEGIES, LLC, a Nevada limited liability company; PSD INTERNATIONAL, LLC, a Utah limited liability company; and RELAY ADVANCED MATERIALS, INC., a Delaware Corporation;

Defendants.

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

Case No. 2:17-cv-01086

District Judge Jill N. Parrish

EVERGREEN STRATEGIES, LLC, a Nevada limited liability company; and RELAY ADVANCED MATERIALS, INC., a Delaware Corporation;

Counterclaimants,

v.

CELTIG, LLC, a Tennessee limited liability company;

Counterclaim-Defendant.

EVERGREEN STRATEGIES, LLC, a Nevada limited liability company; and RELAY ADVANCED MATERIALS, INC., a Delaware Corporation;

Counterclaim and
Third-Party Plaintiffs,

v.

BRENT BENJAMIN WOODSON; PHILLIP COX; MICHAEL GUNDERSON; DAVID NIELSON; IMPEL SALES, LLC, a Utah Limited Liability Company; and UTAH LAKE LEGACY COALITION LLC, a Utah limited liability company;

Third-Party Defendants.

Plaintiff Celtig, LLC brings this lawsuit against Defendants Aaron Patey, Evergreen Strategies, LLC, PSD International, LLC, and Relay Advanced Materials, Inc. (collectively “Defendants”) seeking damages and declaratory relief for alleged breach of contract. (ECF No. 17). Defendants filed counterclaims against Plaintiff and claims against two sets of third-party defendants, Utah Lake Legacy Coalition, LLC, Brent Benjamin Woodson, and David Nielson (collectively “ULLC Third-Party Defendants”), and Phillip Cox, Michael Gunderson, and Impel Sales, LLC (collectively “Impel Third-Party Defendants”). (ECF No. 22). The court referred this matter to Magistrate Judge Evelyn J. Furse pursuant to 28 U.S.C. § 636(b)(1)(A). (ECF No. 9). After a series of discovery disputes, both ULLC Third-Party Defendants and Impel Third-Party Defendants filed a “motion for entry of default judgment against all defendants and counterclaimants” (the “motions”). (ECF Nos. 154 and 158). Defendants filed a response in opposition to only the Impel Third-Party Defendants’ motion and Impel Third-Party Defendants replied. (ECF Nos. 166, 169).

After reviewing the parties’ briefing and holding oral argument on June 25, 2019, Judge Furse issued a Report and Recommendation advising this court to grant in part and deny in part the ULLC Third-Party Defendants’ and Impel Third-Party Defendants’ motions. (ECF Nos. 185, 186). Each report specified that, pursuant to Fed. R. Civ. P. 72(b)(2), the parties were to file any objections with the court within fourteen (14) days of service. The time to object expired on September 6, 2019, and the court has received no objections to the Report and Recommendation. Defendants’ failure to object waived any argument that the Report and Recommendation was in error. *See United States v. One Parcel of Real Prop.*, 73 F.3d 1057, 1060 (10th Cir. 1996). But the court notes that it need not apply this waiver rule as a procedural bar if “the interests of justice so dictate.” *Id.* (quoting *Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991)).

Having reviewed the Report and Recommendation and its conclusion that the Third-Party Defendants' motions should be granted in part and denied in part, the court concludes that the Report and Recommendation is not clearly erroneous and finds that the interests of justice do not warrant deviation from the waiver rule. Accordingly, the court ORDERS as follows:

1. The Report and Recommendation regarding the ULLC Third-Party Defendants' motion for default judgment (ECF No. 185) is ADOPTED IN FULL.
2. The Report and Recommendation regarding the Impel Third-Party Defendants' motion for default judgment (ECF No. 186) is ADOPTED IN FULL.
3. The court grants the motions by striking Defendants' Third-Party claims against the ULLC Third-Party Defendants and Impel Third-Party Defendants.

SO ORDERED September 9, 2019

BY THE COURT



Jill N. Parrish

United States District Court Judge