David D. Lin, Esq. (DL-3666)
Justin Mercer, Esq. (JM-1954)
LEWIS & LIN, LLC
45 Main Street, Suite 608
Brooklyn, NY 11201
Tel: (718) 243-9323
Fax: (718) 243-9326
david@ilawco.com
justin@ilawco.com

Counsel for Defendants-Counterclaimants

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BMADDOX ENTERPRISES LLC, Plaintiff, v. MILAD OSKOUIE, OSKO M LTD, and PLATINUM AVENUE HOLDINGS PTY, LTD, Defendants.	Case No. 1:17-cv-01889-RA-HBP
MILAD OSKOUIE and PLATINUM AVENUE HOLDINGS PTY, LTD, Counterclaimants, v. BMADDOX ENTERPRISES LLC and BRANDON MADDOX, Counterdefendants.	

DEFENDANTS' RESPONSE TO PLAINTIFF'S AND COUNTERCLAIM DEFENDANTS' OBJECTIONS TO REPORT AND RECOMMENDATION OF MAGISTRATE JUDGE PITMAN

September 29, 2017

Pursuant to Fed. R. Civ. P. 72 Defendants Milad Oskouie ("Mr. Oskouie"), Osko M Ltd ("OML") and Platinum Avenue Holdings Pty, Ltd. ("Platinum," collectively with Mr. Oskouie and OML, "Defendants"), by their attorneys, Lewis & Lin LLC, hereby submit to this this Court Defendants' Response to Plaintiff BMaddox Enterprises, LLC's ("BME's") to Magistrate Judge Pitman's Report and Recommendation to dissolve the Asset Restraining Order currently in place (Doc. 58) ("R&R").

LEGAL STANDARD OF REVIEW

Because the motion under consideration seeks only to dissolve a temporary restraining order, and not to dispose of any party's claim or defense, Judge Pitman's R&R may only be set aside if it is "clearly erroneous or contrary to law." Fed. R. Civ. P. 72(a); 28 U.S.C. § 636(b)(1)(A). Even if the R&R concerned a dispositive motion, however, a party must make "specific written objections to the proposed findings and recommendations" in order to trigger de novo review—and only as to "those portions of the report or specified proposed findings or recommendations to which objection is made." Fed. R. Civ. P. 72(b)(2); 28 U.S.C. § 636(b)(1)(B). "When a party makes only conclusory or general objections, or simply reiterates the original arguments, the Court will review the Report strictly for clear error." *Terry v. Corp. for Nat'l & Cmty. Serv.*, No. 15-CV-9660 (RA), 2017 WL 3448015 (S.D.N.Y. Aug. 11, 2017), at *1 (citations omitted). "[O]bjections that are merely perfunctory responses argued in an attempt to engage the district court in a rehashing of the same arguments set forth in the original [papers] will not suffice to invoke de novo review." *Id.* If the party makes "only conclusory or general arguments, or simply reiterates the original arguments, the Court will review the Report strictly for clear error." *Sacks v. Gandhi Eng'g, Inc.*, 999 F. Supp. 2d 629, 632 (S.D.N.Y. 2014).

Finally, the Court should reject, as untimely, arguments not raised before the Magistrate

Judge. *See Hollaway v. Colvin*, No. 14-CV-5165(RA), 2016 WL 1275658, at *2 (S.D.N.Y. Mar. 31, 2016) ("In addition to those portions of the Objections copied verbatim, Plaintiff raises three arguments. They are, however, untimely in that they are aimed not at the Report but at portions of the ALJ's decision not raised before the Magistrate Judge.") *citing Flores v. Keane*, 211 F. Supp. 2d 426, 444 (S.D.N.Y. 2001).

ARGUMENT

I. Magistrate Judge Pitman Used the Correct Legal Standard, Thus the R&R is Not Contrary to Law

Plaintiff claims that Magistrate Judge Pitman's R&R is "contrary to law" because the cases referenced in the R&R to recite the *legal standard* on a motion to dissolve an *ex parte* asset freeze had different fact patterns than the instant matter. This is not an error in law. In fact, Plaintiffs do not dispute the fact that Magistrate Judge Pitman's articulated and applied the correct legal standard in making his determination. Instead, Plaintiff's simply disagree with the result. There is not legal error and the R&R is not contrary to law.

II. Plaintiff Rehashes the Same Arguments Raised and Rejected by Magistrate Judge Pitman

Plaintiff has not met its burden at this stage of the proceeding to demonstrate that Magistrate Judge Pitman's determinations were clearly erroneous.

First, Plaintiff claims that Magistrate Judge Pitman erred by determining that Plaintiff had not submitted *evidence* of its claims of dissipation beyond attorney arguments and unsworn statements, when there was other "information put on record in Defendant Oskouie's several declarations" that apparently support its claims. (Opposition at 4). In fact, Plaintiff had not submitted affidavits or other evidentiary material with its opposition. Thus, Magistrate Judge Pitman's determination that Plaintiff's Opposition lacked admissible evidence is not erroneous.

Next, Plaintiff claims that that Magistrate Judge Pitman erred because it "disagrees" with his determinations as to the sufficiency of its "evidence" it did present. (Opposition at 5-6). Plaintiff simply rehashes the argument that it has shown irreparable harm in connection with its copyright infringement claim, without articulating any sort of harm on the issue of dissipation *in an effort to frustrate a judgment*. Similarly, Plaintiff rehashes its claims of comingling assess as "evidence" to frustrate a judgment, without stating how Magistrate Judge Pitman got anything wrong with Plaintiff's argument the first time around. Plaintiff's failure to obtain the information it claims *may* support its *argument* of dissipation, when it has had the ability to obtain same for months, is not only the same issue every litigant would have, but is also no reason to claim that Magistrate Judge Pitman's determinations were erroneous. In other words, Plaintiff's "objections" are "merely perfunctory responses argued in an attempt to engage the district court in a rehashing of the same arguments," and should be rejected. *See Terry v*2017 WL 3448015, at *1.

III. Plaintiff's New Argument that Defendants are Insolvent because Plaintiff Does Not Know how much money Defendants have is Untimely and Nonsensical

As a last ditch effort to maintain the asset freeze, Plaintiff introduces a new argument. First, Plaintiff only argued (vehemently) before Magistrate Judge Pitman that Defendants were threatening to dissipate assets, not on the brink of insolvency. Having accepted defeat on that argument, Plaintiff doubles down and claims that that Defendants must be insolvent because they do not know how much money Defendants have, generally. That argument is both improper, as it is untimely, and is classic circular reasoning that should be rejected. As stated above, it is not Defendants' burden to demonstrate their financial position to support Plaintiff's asset freeze. Under plaintiff's theory, if Defendants have money, they must be "hiding" it, because if Defendants were not hiding money, it would appear in their payment processors accounts. Thus,

they are insolvent. Plaintiff's argument makes no sense. In reality, Plaintiff has not shown anything warranting a continued worldwide asset freeze, whether on the basis of dissipation or insolvency.

CONCLUSION

Based on the foregoing, Defendants defer to the analysis presented by Judge Pitman in his well-reasoned R&R and respectfully request that the Court dissolve the Asset Restraining Order.

DATED this 29th day of September 2017,

Respectfully Submitted:

LEWIS & LIN, LLC

By: */s/ David D. Lin*
David D. Lin, Esq.
Justin Mercer, Esq.

Attorneys for Defendants/Counterclaimants