

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-20779-CIV-SEITZ/O'SULLIVAN

JUAN ESTRADA *et al.*,

Plaintiffs,

v.

PORCAO RIO'S LLC. *et al.*,Defendants.
_____ /**ORDER AFFIRMING AND ADOPTING REPORT AND RECOMMENDATION [DE 37]
AND GRANTING MOTION FOR FINAL DEFAULT JUDGMENT [DE 20]**

THIS MATTER is before the Court on the Report and Recommendation ("Report") [DE 37] of the Honorable John J. O'Sullivan, United States Magistrate Judge, to which no objection was filed. Judge O'Sullivan recommends that the Plaintiffs' Motion for Final Default Judgment [DE 20] be granted in part and that final default judgment be entered in the amount of \$161,666.17 plus \$13,836.00 in attorney's fees and costs. The Court agrees with Judge O'Sullivan's analysis and will adopt the substance of the Report for the reasons stated in the Report.

On March 16, 2010, Plaintiffs commenced this action against Defendants Porcao Rio's LLC, Steak in Foods & Beverages, Inc., Ancar Business, LLC, Porcao Group, LLC and Jadiel Pires for unpaid overtime, back wages and liquidated damages under the Fair Labor Standards Act, 29 U.S.C. 201, *et seq.* [See DE 1 ¶ 4]. Defendants Porcao Rio's LLC, Steak in Foods & Beverages, Inc., Ancar Business, LLC and Porcao Group, LLC ("Defendants") were served with a copy of the summons and complaint on March 19, 2010 and March 22, 2010. [See DE 8-11]. The Defendants did not respond to the complaint, and on April 12, 2010, Plaintiffs moved for a Clerk's entry of default, which was entered on April 13, 2010. [See DE 12, 18].

On October 12, 2010, Plaintiffs filed a Motion for Final Default Judgment [DE 20], which

was referred to Judge O'Sullivan [DE 27] for an evidentiary hearing. On December 16, 2010, Judge O'Sullivan held an evidentiary hearing at which Plaintiffs Juan Estrada, Ramiro Sarria, Jose Costa, Ruben Flores, Martha Menchero, Vagner Duarte, Candido Roda, Jorge Orozco, Jorge Vega, Yahima Thompson and Maria Guevara ("Plaintiffs") testified on their own behalf to support their claims. Plaintiffs submitted payroll records and Plaintiffs' counsel submitted an attorney fee ledger. Luis Medina, Oscar Gaitan, Henry Martinez, Maria Rodriguez, Gustavo Collazo, Jaime Estrada, Joel Montero, Evandro Teixeira and Ronny Franco were not present at the evidentiary hearing. Defendants did not appear at the hearing.

Based on the evidence presented at the hearing, Judge O'Sullivan recommends that a Final Default Judgment be entered in favor of Plaintiffs Juan Estrada, Ramiro Sarria, Jose Costa, Ruben Flores, Martha Menchero, Vagner Duarte, Candido Rodas, Jorge Orozco, Jorge Vega, Yahima Thompson and Maria Guevara and against defendants Porcao Rio's LLC, Steak in Foods & Beverages, Inc. and Porcao Group, LLC in the amount of \$161,666.17; that Plaintiffs be awarded attorneys' fees in the amount of \$12,960.00, based upon 64.8 hours reasonably expended at a reasonable rate of \$200.00 an hour; and that Plaintiffs be awarded costs in the amount of \$876.00. The Court has carefully reviewed, *de novo*, the record and fully agrees with Judge O'Sullivan's recommendation. Upon review and noting that no objections have been filed, it is hereby

ORDERED that

(1) The Report and Recommendation [DE 37] is AFFIRMED AND ADOPTED.

(2) Plaintiffs' Motion for Final Default Judgment [DE 20] is GRANTED IN PART.

(3) The Motion for Final Default Judgment [DE 20] is GRANTED as to Plaintiffs Juan Estrada, Ramiro Sarria, Jose Costa, Ruben Flores, Martha Menchero, Vagner Duarte, Candido Rodas, Jorge Orozco, Jorge Vega, Yahima Thompson and Maria Guevara.

(4) By separate order the Court shall enter judgment in favor of Plaintiffs Juan Estrada, Ramiro Sarria, Jose Costa, Ruben Flores, Martha Menchero, Vagner Duarte, Candido Rodas, Jorge Orozco, Jorge Vega, Yahima Thompson and Maria Guevara and against Defendants Porcao Rio's LLC, Steak in Foods & Beverages, Inc. and Porcao Group, LLC in the amount of \$161,666.17; attorneys' fees in the amount of \$12,960.00; and costs in the amount of \$876.00.

(5) The Motion for Final Default Judgment [DE 20] is DENIED as to Defendant Ancar Business, LLC. Plaintiffs shall recover nothing from Defendant Ancar Business LLC, and the action against Defendant Ancar Business, LLC is DISMISSED.

(6) The Motion for Final Default Judgment [DE 20] is DENIED as to Plaintiffs Luis Medina, Henry Martinez, Maria Rodriguez, Gustavo Collazo, Jaime Estrada, Joel Montero, Evandro Teixeira and Ronny Franco.

(7) The actions of Plaintiffs Luis Medina, Henry Martinez, Maria Rodriguez, Gustavo Collazo, Jaime Estrada, Joel Montero, Evandro Teixeira and Ronny Franco are DISMISSED WITHOUT PREJUDICE for failure to prosecute. Plaintiffs Luis Medina, Henry Martinez, Maria Rodriguez, Gustavo Collazo, Jaime Estrada, Joel Montero, Evandro Teixeira and Ronny Franco shall take nothing from this action.

(8) This CASE IS CLOSED.

(9) All pending motions not otherwise ruled upon are DENIED AS MOOT.

DONE AND ORDERED at Miami, Florida, this 31st day of January, 2011.


PATRICIA A. SEITZ
UNITED STATES DISTRICT JUDGE

cc: Judge O'Sullivan
Counsel of Record