

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

LUIS ZURITA,

Plaintiff,

-against-

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

12-CV-3874 (KAM) (MDG)

BERGEN PIZZA INCORPORATED, AND
CONSTANTINO MAYOA RODRIGUEZ, and any
other entities affiliated with or
controlled by BERGEN PIZZA
INCORPORATED and/or CONSTANTINO MOYAO
RODRIGUEZ.

Defendants.

-----X

MATSUMOTO, United States District Judge:

On August 3, 2012, plaintiff Luis Zurita commenced this action against defendants Bergen Pizza Incorporated ("Bergen Pizza") and Constantino Mayoa Rodriguez. (ECF No. 1, Complaint ("Compl.")). Bergen Pizza and Rodriguez were served with the Summons and Complaint on August 15, 2012 and August 29, 2012, respectively. (See ECF Nos. 4, 6, Affidavits of Service.) Plaintiff alleges that defendants violated New York Labor Law and sections 206 and 207 of the Fair Labor Standards Act ("FLSA") by failing to pay him minimum wages, overtime wages, and spread of hours compensation during his employment as a cook and food preparer at Bergen Pizza from January 2010 to May 2011. (See generally, Compl.)

Neither defendant has filed any submission or otherwise communicated with the court since May 6, 2014. By order dated April 2, 2015, the court struck defendants' answers and directed the Clerk of Court to enter default against Bergen Pizza and Rodriguez. (ECF No. 29, Order Adopting Report and Recommendation.) The Clerk of Court issued a certificate of default against defendants on April 23, 2015. (See Clerk's Entry of Default dated 4/23/15.) Plaintiff moved for entry of default judgment against defendants on May 26, 2015. (ECF No. 32, Motion for Default Judgment.) On October 8, 2015, the court referred plaintiff's motion for default judgment to Magistrate Judge Marilyn D. Go for a Report and Recommendation. (See Order Referring Motion dated 10/8/15.)

On March 1, 2016, Judge Go issued a Report and Recommendation in which she recommended the court award plaintiff default judgment in the amount of \$86,509.21. (ECF No. 38, Report and Recommendation ("R&R").) This amount includes minimum wages of \$21,160.44; overtime wages of \$12,687.56; spread of hours pay of \$3,552.50; liquidated damages under the FLSA of 33,848.00; liquidated damages under the New York Labor Law of \$1,154.56; attorneys' fees of \$20,230.47 and costs of \$875.68; less \$7,000 to account for amounts defendants paid to plaintiff as partial satisfaction of an earlier

settlement agreement between the parties that defendants eventually breached. (*Id.* at 28-29.)

The Report and Recommendation, which was mailed to defendants on March 1, 2016, notified the parties of the right to file written objections by March 18, 2016. (R&R at 29.) The period for filing objections has now expired, and no objections to Judge Go's R&R have been filed.

In reviewing a Report and Recommendation, the district court "may accept, reject, or modify, in whole or part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). Where no objection to the Report and Recommendation has been filed, the district court "need only satisfy itself that there is no clear error on the face of the record." *Urena v. New York*, 160 F. Supp. 2d 606, 609-10 (S.D.N.Y. 2001) (quoting *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)).

Upon careful consideration of the record and Judge Go's thorough and well-reasoned Report and Recommendation, the court finds no clear error and hereby affirms and adopts the Report and Recommendation in its entirety as the opinion of the court.

Plaintiff is awarded minimum wages of \$21,160.44; overtime wages of \$12,687.56; spread of hours pay of \$3,552.50; liquidated damages under the FLSA of 33,848.00; liquidated

damages under the New York Labor Law of \$1,154.56; attorneys' fees of \$20,230.47 and costs of \$875.68; minus a \$7,000 offset for amounts defendants paid to plaintiff before defendants breached the settlement agreement. Accordingly, judgment should be entered for plaintiff and against defendants in the amount of \$86,509.21. The Clerk of Court is respectfully requested to mail a copy of the judgment and this Order to defendants, note service on the docket, and close this case.

SO ORDERED.

Dated: Brooklyn, New York
March 21, 2016

/s/
KIYO A. MATSUMOTO
United States District Judge