

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
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U.S. DISTRICT COURT E.D.N.Y.
★ DEC 18 2013 ★

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MARIO CHARVAC,

Plaintiff,

- against -

M&T PROJECT MANAGERS OF NEW YORK, INC.,

Defendant.

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AMON, Chief United States District Judge.

BROOKLYN OFFICE

NOT FOR PUBLICATION
MEMORANDUM & ORDER
12-CV-05637 (CBA) (RER)

On November 15, 2012, plaintiff Mario Charvac commenced this action on behalf of himself and all other similarly situated individuals against defendant M&T Project Managers of New York, Inc. (“M&T”). Charvac filed suit pursuant to the Fair Labor Standards Act, 29 U.S.C. §§ 201–19, and the New York Labor Law, N.Y. Lab. Law §§ 650–65, seeking to recover unpaid wages, overtime compensation, and “spread of hours” premium, as well as liquidated damages, prejudgment and postjudgment interest, and attorneys’ fees. (Compl. at 12-13.) The complaint also seeks a declaratory judgment that M&T’s pay practices are illegal and requests that the Court enjoin M&T from engaging in such unlawful practices. (*Id.* at 12.) On December 28, 2013, Charvac’s attorney filed Consent to Join forms on behalf of Estuardo Charvac, Jose G. Patzan, and Jose V. Patzan (the “opt-in plaintiffs”), each of whom purported to join the suit pursuant to 29 U.S.C. § 216(b). (Docket Entries 4-7.) Charvac has neither sought conditional certification for the collective action, nor has he amended his complaint to add the claims of the opt-in plaintiffs.

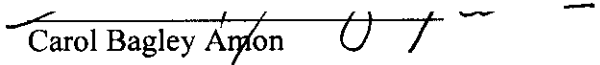
M&T did not respond to the complaint, and on March 13, 2013, upon Charvac’s request, the Clerk of the Court entered default against M&T. On May 3, 2013, Charvac, along with the three opt-in plaintiffs, moved for a default judgment, seeking unpaid overtime wages, liquidated

damages, and attorneys' fees and costs. The Court referred the matter to Magistrate Judge Ramon E. Reyes, Jr., for report and recommendation. On October 31, 2013, Magistrate Judge Reyes issued a Report and Recommendation ("R&R") recommending that the Court (1) deny the motion for default judgment in its entirety without prejudice to renewal, as the opt-in plaintiffs are not entitled to default judgment based on a complaint in which they are not named, and (2) sua sponte grant Charvac leave to file an amended complaint that includes the claims of the opt-in plaintiffs.

No party has objected to the R&R, and the time for doing so has passed; Charvac and the opt-in plaintiffs, however, filed an amended complaint on December 13, 2013. When deciding whether to adopt an R&R, a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). To accept those portions of the R&R to which no timely objection has been made, "a district court need only satisfy itself that there is no clear error on the face of the record." Jarvis v. N. Am. Globex Fund, L.P., 823 F. Supp. 2d 161, 163 (E.D.N.Y. 2011) (internal quotation marks omitted). The Court has reviewed the record and, finding no clear error, hereby adopts Magistrate Judge Reyes's R&R as the opinion of the Court. Accordingly, the Court denies the motion for default judgment without prejudice to renewal, and nunc pro tunc grants Charvac leave to file an amended complaint that includes the claims of the opt-in plaintiffs.

SO ORDERED.

Dated: Brooklyn, New York
December 18, 2013

s/Carol Bagley Amon

Carol Bagley Amon
Chief United States District Judge