UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

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RAFAEL MORALES, FERNANDO MIRANDA, HORLANDO MONTES and GERARDO ROJAS,

Plaintiffs,

MEMORANDUM & ORDER 14-CV-7290 (MKB) (MDG)

V.

B&M GENERAL RENOVATION INC., dba B&M GENERAL RENOVATION, MICHAEL LUONG and THERESA LUONG,

		ıts.

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MARGO K. BRODIE, United States District Judge:

Plaintiff Rafael Morales commenced the above-captioned action on December 15, 2014, against Defendants B&M General Renovation, Inc. ("B&M"), Michael Luong and Theresa Luong. (Compl., Docket Entry No. 1.) On February 17, 2015, an Amended Complaint added Fernando Mirando, Horlando Montes and Gerardo Rojas, who had opted-in to the collective action, as Plaintiffs along with Morales. (Docket Entry No. 14.) Plaintiffs allege violations of the Fair Labor Standards Act, 29 U.S.C. § 201 et seq. ("FLSA"), and the New York Labor Law, N.Y. Lab. Law § 650 et seq. ("NYLL"). Although properly served with the summons and Amended Complaint, (Docket Entry Nos. 15, 16, 17), Defendants have failed to appear in this action. Plaintiffs sought and obtained a notice of default against B&M, Michael Luong and Theresa Luong. (Docket Entry Nos. 18, 20.) Plaintiffs subsequently moved for a default judgment. (Docket Entry No. 26.) On June 18, 2015, the Court referred this matter to Magistrate Judge Marilyn D. Go for a report and recommendation. (Order dated June 18, 2015.)

recommended that the Court grant Plaintiffs' motion for a default judgment against Defendants in the amount of \$545,800.87, calculated as follows: (1) \$79,358.00 in favor of Morales (consisting of \$24,786.00 in overtime wages, \$24,786.00 in liquidated damages pursuant to the FLSA, \$24,786.00 in liquidated damages pursuant to the NYLL, and \$5,000, for failure to provide various wage notices, pursuant to the NYLL); (2) \$241,680.56 in favor of Miranda (consisting of \$81,081.00 in overtime wages, \$70,065.00 in liquidated damages pursuant to the FLSA, \$81,081.00 in liquidated damages pursuant to the NYLL, \$5,000, for failure to provide various wage notices, pursuant to the NYLL, and \$4,453.56 in prejudgment interest<sup>1</sup>); (3) \$159,791.00 in favor of Montes (consisting of \$51,597.00 in overtime wages, \$51,597.00 in liquidated damages pursuant to the FLSA, \$51,597.00 in liquidated damages pursuant to the NYLL, and \$5,000, for failure to provide various wage notices, pursuant to the NYLL); (4) \$55,985.00 in favor of Rojas (consisting of \$16,995.00 in overtime wages, \$16,995.00 in liquidated damages pursuant to the FLSA, \$16,995.00 in liquidated damages pursuant to the NYLL, and \$5,000, for failure to provide various wage notices, pursuant to the NYLL); (5) \$8343.00 in attorneys' fees; and (6) \$643.31 in costs. (R&R 23, 34–35.) Judge Go also recommended an award of statutory post-judgment interest. (Id. at 26.) No party has objected to the R&R and the time for doing so has passed.

A district court reviewing a magistrate judge's recommended ruling "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)(C). "[F]ailure to object to a magistrate judge's report and recommendation within the prescribed time limit may operate as a waiver of any further judicial

<sup>&</sup>lt;sup>1</sup> Judge Go also recommended that the Court award prejudgment interest to Miranda at the rate of \$2.67 per day from March 31, 2016 until the entry of judgement. (R&R 26.)

review of the decision, as long as the parties receive clear notice of the consequences of their

failure to object." Eustache v. Home Depot U.S.A., Inc., 621 F. App'x 86, 87 (2d Cir. 2015)

(internal quotation marks omitted) (quoting *United States v. Male Juvenile*, 121 F.3d 34, 38 (2d

Cir. 1997)); see also Almonte v. Suffolk Cty., 531 F. App'x 107, 109 (2d Cir. 2013) ("As a rule, a

party's failure to object to any purported error or omission in a magistrate judge's report waives

further judicial review of the point." (quoting Cephas v. Nash, 328 F.3d 98, 107 (2d Cir. 2003)));

Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C., 596

F.3d 84, 92 (2d Cir. 2010) ("[A] party waives appellate review of a decision in a magistrate

judge's report and recommendation if the party fails to file timely objections designating the

particular issue." (citing *Cephas*, 328 F.3d at 107)).

The Court has reviewed the unopposed R&R and, finding no clear error, the Court adopts

Judge Go's R&R in its entirety pursuant to 28 U.S.C. § 636(b)(1). Plaintiffs' motion for a

default judgment against B&M, Michael Luong and Theresa Luong is granted. The Clerk of

Court is directed to enter judgments in the amounts set forth above, and to close this case.

SO ORDERED:

s/ MKB

MARGO K. BRODIE

United States District Judge

Dated: March 29, 2016

Brooklyn, New York

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