

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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NAJELA DRICE,

Plaintiff,

**MEMORANDUM & ORDER**  
15-CV-395 (MKB) (MDG)

v.

MY MERCHANT SERVICES, LLC and JOSE A.  
VALERIO,

Defendants.

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MARGO K. BRODIE, United States District Judge:

On January 26, 2015, Plaintiff Najela Drice commenced the above-captioned action against Defendants My Merchant Services, LLC and Jose A. Valerio alleging violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* (“Title VII”), the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* (“FLSA”), the New York Labor Law, N.Y. Lab. Law § 650 *et seq.* (“NYLL”), and the New York City Human Rights Law, N.Y.C. Admin. Code § 8-107 *et seq.* (“NYCHRL”). (Compl., Docket Entry No. 1.) Although properly served with the summons and Complaint, (Docket Entry Nos. 4, 5), Defendants have failed to appear in this action. Plaintiff sought and obtained the entry of default against My Merchant Services, LLC and Jose A. Valerio. (Docket Entry No. 8.) Plaintiff subsequently moved for a default judgment. (Mot. for Default J., Docket Entry No. 9.) On April 22, 2015, the Court referred this matter to Magistrate Judge Marilyn D. Go for a report and recommendation. (Order dated Apr. 22, 2015.)

By report and recommendation dated March 4, 2016 (the “R&R”), Judge Go recommended that the Court grant Plaintiff’s motion for a default judgment against Defendants

in the amount of \$25,432.48, comprised of: (1) \$300.00 in unpaid wages, (2) \$1500.00 in back pay, (3) \$20,000 for emotional distress, (4) \$505.42 in prejudgment interest on the unpaid wages,<sup>1</sup> (5) \$2.73 in prejudgment interest on the back pay,<sup>2</sup> (6) \$2500 in attorneys' fees, and (7) \$624.33 in costs. (R&R 25.) 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 timely to a magistrate judge's report may operate as a waiver of any further judicial 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) (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." (first citing *Cephas*, 328 F.3d at 107; and then citing *Mario v. P & C Food Markets, Inc.*, 313 F.3d 758, 766 (2d Cir. 2002))).

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<sup>1</sup> Judge Go also recommended that the Court award prejudgment interest on the unpaid wages at the rate of \$0.74 per day from March 21, 2016 until the entry of judgment. (R&R 25.)

<sup>2</sup> Judge Go also recommended that the Court award prejudgment interest on the back pay at the rate of \$0.004 per day from March 21, 2016 until the entry of judgment. (R&R 25.)

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). Plaintiff's motion for a default judgment against Defendants My Merchant Services, LLC and Jose A. Valerio 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 31, 2016  
Brooklyn, New York