

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ **AUG 04 2017** ★
BROOKLYN OFFICE

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EDUARDO MALDONADO LOPEZ, on behalf
of himself and all others similarly situated

Plaintiff,

-against-

CAJMANT, LLC, WHEATFIELD DISTRIBUTORS
LLC, JOHN SCHMIDT, ROSE SCHMIDT,
MARCELO CAJAMARCA and ROBERT W. VOGLER

Defendants.

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TOWNES, United States District Judge:

In February 2015, plaintiff Eduardo Maldonado Lopez commenced this action pursuant to the Fair Labor Standards Act of 1938, 29 U.S.C. § 201 *et seq.* (“FLSA”), New York common law, and New York Labor Law, alleging that the defendants violated those laws by failing to provide overtime pay and making illegal deductions from employees’ paychecks. In October 2016, after Defendant Robert W. Vogler failed to answer the Second Amended Complaint or respond to any discovery demands, Plaintiff moved for entry of default against him pursuant to Fed. R. Civ. P. 37. (Rec. No. 50). Magistrate Judge Reyes denied the motion for failure to comply with the rule’s notice requirements, but stated in his Memorandum & Order that “Vogler [was] deemed on notice of the consequences of continued non-compliance with discovery orders.” (Rec. No. 51). Afterwards, Vogler continued to refuse all communication with Plaintiff or respond to any discovery requests. Plaintiff once again moved for entry of default under Rule 37. (Rec. No. 59). Judge Reyes issued a report and recommendation (“R&R”) recommending entering default against Defendant Vogler in light of Vogler’s continued refusal to participate in this litigation and the notice provided to Vogler by this Court’s previous order.

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

15-CV-593 (SLT)(RER)

The R&R specified that objections were due by June 2, 2017, and advised defendant that “[f]ailure to file timely objections may waive the right to appeal the District Court’s order.” (May 17, 2017 ECF entry) (citing cases). Plaintiff’s counsel promptly provided notice to both addresses appearing on the instant motion. (Rec. Doc. 60). The Court has not received any objections to date.

A district court is not required to review the factual or legal conclusions of a magistrate judge as to those portions of a report and recommendation to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 150 (1985). Nonetheless, when no objections are filed, many courts seek to satisfy themselves “that there is no clear error on the face of the record.” Fed. R. Civ. P. 72(b) advisory committee note (1983 Addition); *see also Edwards v. Town of Huntington*, No. 05 Civ. 339 (NGG) (AKT), 2007 WL 2027913, at *2 (E.D.N.Y. July 11, 2007). Accordingly, this Court has reviewed the R&R for clear error on the face of the record. The Court finds no clear error, and therefore adopts the R&R in its entirety as the opinion of the Court pursuant to 28 U.S.C. § 636(b)(1).

CONCLUSION

For the reasons stated above, Magistrate Judge Reyes’ Report and Recommendation dated May 17, 2017, is adopted in its entirety and the instant motion (Rec. Doc. 59) is **GRANTED** and the Clerk of Court is respectfully directed to enter default against Defendant Robert W. Vogler.

SO ORDERED.

/s/ Sandra L. Townes
SANDRA L. TOWNES
United States District Judge

Dated: August 3, 2017
Brooklyn, New York