

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ANTONIO TEJADA, ANDRES EDGARDO
LARROCA FRANCO and ALICIA
SANTOS, on behalf of themselves,
individually, and on behalf of all others
similarly situated,

Plaintiffs,

-against-

LA SELECTA BAKERY, INC. and RAFAEL
REYNOSO, individually,

Defendants.

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AMON, United States District Judge:

Plaintiffs Antonio Tejada, Andres Edgardo Larroca Franco, and Alicia Santos (“Plaintiffs”) bring this action individually and on behalf of all others similarly situated against La Selecta Bakery, Inc. and Rafael Reynoso (“Defendants”), seeking damages and equitable relief for unpaid overtime and minimum wage violations pursuant to the Fair Labor Standards Act and New York Labor Law. (D.E. # 19 (“Am. Compl.”).) Three former employees of the Defendants, Evelyn Jacinto, Araceli Perez, and Adan Tejada (the “Opt-in Plaintiffs”), have filed consent to join forms purporting to join this action as opt-in plaintiffs. (D.E. # 8, 9, 15.) Although the Amended Complaint contains general collective action and class allegations, it does not specifically name the Opt-in Plaintiffs or articulate their claims. (See Am. Compl.) Plaintiffs have not moved for class certification under either § 216(b) of the FLSA or Federal Rule of Civil Procedure 23.

Defendants have failed to appear in this action or respond to the Amended Complaint, resulting in the Clerk’s entry of default pursuant to Federal Rule of Civil Procedure 55(a). (D.E. dated May 8, 2018.) Plaintiffs have moved—on behalf of themselves and the Opt-in Plaintiffs—

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U.S. DISTRICT COURT E.D.N.Y.
U.S. DISTRICT COURT E.D.N.Y.
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NOT FOR PUBLICATION
ORDER
17-CV-5882 (CBA) (RER)

for default judgment against the Defendants. (D.E. # 29.) The Court referred this motion to the Honorable Ramon E. Reyes, Jr., United States Magistrate Judge, for a Report and Recommendation (“R&R”). (D.E. dated Feb. 6, 2019.) On May 1, 2019, Magistrate Judge Reyes issued a thorough and well-reasoned 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 Plaintiffs leave to file an amended complaint that includes the claims of the Opt-in Plaintiffs. (D.E. # 21 (“R&R”) at 3–4.)

No party has objected to the R&R, and the time for doing so has passed. When deciding whether to adopt a report and recommendation, 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 and citation omitted).

The Court has reviewed the record and, finding no clear error, adopts the R&R as the opinion of the Court. Accordingly, the Court denies the motion for default judgment without prejudice to renewal, and grants the Plaintiffs leave to file an amended complaint that includes the claims of the Opt-in Plaintiffs.

SO ORDERED.

Dated: May 31, 2019
Brooklyn, New York

s/Carol Bagley Amon

Carol Bagley Amon
United States District Judge