

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
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JOSE ALMANZAR, individually and on behalf of other :
similarly situated, :

Plaintiffs, :

14-CV-7850 (VEC) (DCF)

-against- :

ORDER

1342 ST. NICHOLAS AVENUE RESTAURANT CORP., :
and PIPE RODRIGUEZ, :

Defendants. :

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VALERIE CAPRONI, United States District Judge:

Plaintiff Jose Almanzar filed this putative collective action pursuant to the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201 *et seq.*, and New York Labor Law (“NYLL”), §§ 190 and 650, *et seq.*, to recover unpaid wages, liquidated and statutory damages, prejudgment interest, and attorneys’ fees and costs. On February 1, 2016, this Court entered default judgment against Defendants 1342 St. Nicholas Avenue Restaurant Corporation (“Restaurant”) and Pipe Rodriguez (“Rodriguez”) (collectively, “Defendants”) as to liability. Dkt. 71. This Court referred this case to Magistrate Judge Freeman for an inquest on damages and attorneys’ fees and ordered Plaintiff’s counsel to submit revised documentation relative to his request for attorneys’ fees that deleted fees and expenses associated with counsel’s repeated mistakes in effectuating service on Defendants. Dkt. 71. On November 7, 2016, Magistrate Judge Freeman submitted a thorough and well-reasoned report and recommendation (“R&R”). Dkt. 76. Plaintiff objected to the R&R solely on the basis that the R&R did not award liquidated damages under both the FLSA and NYLL. Dkt. 77. On March 1, 2017, Plaintiff withdrew his objections to the R&R in light of *Chowdhury v. Hamza Express Food Corp.*, 666 F. App’x 59 (2d Cir. 2016). Dkt. 80. For the following reasons, the R&R is ADOPTED in its entirety.

DISCUSSION

In reviewing 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)(C). When, as here, no party objects to the Magistrate Judge’s report and recommendation the court may accept the report and recommendation provided that “there is no clear error on the face of the record.” *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985); Fed. R. Civ. P. 72(b) advisory committee’s note. Under a clear-error standard of review, “[s]o long as there is a basis in the evidence for a challenged inference, [the court] do[es] not question whether a different inference was available or more likely.” *United States v. Freeman*, 443 F. App’x 664, 666 (2d Cir. 2011) (footnote omitted) (quoting *Siewe v. Gonzales*, 480 F.3d 160, 168 (2d Cir. 2007)). Careful review of the R&R reveals that there is no facial error in its conclusions. The Court notes, however, that the Magistrate Judge was arguably unduly charitable in her recommendation relative to attorneys’ fees inasmuch as Plaintiff’s counsel failed to comply with her order relative to the required attorneys’ fees submission. *See* R&R at 7.

Finding no clear error, the Court adopts the R&R. Accordingly, the Court hereby directs that judgment be entered against Defendants Restaurant and Rodriguez, jointly and severally, as follows:

1. Damages in the amount of \$48,283, representing:
 - a. \$21,641.50 in unpaid wages;
 - b. \$21,641.50 in liquidated damages under the NYLL; and
 - c. \$5,000.00 in statutory damages under the NYLL;
2. Prejudgment interest in the amount of:
 - a. \$4,557.17 up to March 9, 2016; and

- b. Additional prejudgment interest at the rate of nine percent per annum on the principal amount of \$26,198.67, to be calculated by the Clerk of Court from March 10, 2016, to the date of this Order;
3. Attorneys' fees in the amount of \$7,226.25; and
4. Costs in the amount of \$400.

The Clerk of Court is respectfully directed to close this case.

SO ORDERED.

Date: March 30, 2017
New York, New York



VALERIE CAPRONI
United States District Judge