

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TIMOTEO XOCHIMITL,

14 Civ. 10234 (JGK)

Plaintiff,

ORDER

- against -

PITA GRILL OF HELL'S KITCHEN, INC,
ET AL.,

Defendants.

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DATE FILED: 11-21-16

JOHN G. KOELTL, District Judge:

The plaintiff, Timoteo Xochimitl, brought this action alleging unpaid wages in violation of the Fair Labor Standards Act ("FLSA") and the New York Labor Law ("NYLL"). The plaintiff successfully obtained settlements with various defendants, and also obtained a default judgment against the defendants Bennett Orfaly, Juan Manuel Perez, and East Meets West, LLC. The Court then referred this case to the Magistrate Judge for an inquest on damages related to the default judgment.

The Court has received the Report and Recommendation of Magistrate Judge Cott dated September 8, 2016. The Court has also reviewed the plaintiff's Objections dated September 26, 2016. No opposition has been received from the defendants. In view of the Objections, the Court has reviewed de novo the portions of the Report and Recommendation that have been objected to by the plaintiff. See Fed. R. Civ. P. 72(b). The Objections are without merit, and the Court adopts the Magistrate Judge's thorough Report and Recommendation.

The plaintiff raises only two specific objections. First, he objects to the Magistrate Judge's recommendation that the plaintiff should receive liquidated damages solely under either the FLSA or the NYLL, rather than both. The Court accepts the well-reasoned recommendation of the Magistrate Judge, which states that liquidated damages recoverable for a successful unpaid wages claim under both the FLSA and the NYLL should be limited to the statute that provides the greatest relief. See also Castillo v. RV Transp., Inc., No. 15 CIV. 0527 (LGS), 2016 WL 1417848, at *3 (S.D.N.Y. Apr. 11, 2016); Garcia v. JonJon Deli Grocery Corp., No. 13 CIV. 8835 (AT), 2015 WL 4940107, at *6 (S.D.N.Y. Aug. 11, 2015).

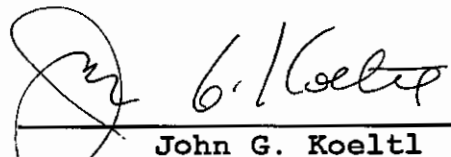
Second, the plaintiff objects to the recommendation that the attorney fee award be based on an hourly rate for attorney Michael Faillace of \$400 rather than \$425 per hour, and an hourly rate for attorney Joshua Androphy of \$300 rather than \$400. For the reasons explained in the Report and Recommendation, the Court adopts the well-reasoned recommendation of the Magistrate Judge.

The Clerk is directed to enter judgment in favor of the plaintiff and against the defendants Orfaly, Perez, and East Meets West, LLC in accordance with the Report and Recommendation.

Having entered judgment, the Clerk is also directed to close this case and to close all pending motions.

SO ORDERED.

**Dated: New York, New York
November 18, 2016**



**John G. Koeltl
United States District Judge**