

UNITED STATES DISTRICT COURT
 FOR THE EASTERN DISTRICT OF NORTH CAROLINA
 WESTERN DIVISION
 No. 5:16-CV-911-BR

EDDI ROBERTO CASTRO BRUNO,)	
et al.,)	
)	
Plaintiffs,)	
)	
v.)	
JUAN ARMANDO ROSSI, et al.,)	
)	
Defendants.)	
)	

ORDER

This matter is before the court on Eddi Roberto Castro Bruno, Abraham Toledo Duarte, and Elber Victorio Pardo’s (“plaintiffs”) motion for default judgment and assessment of damages as to defendants Rossi Group, Inc., Rossi Restaurant Group, Inc., Rossi Consolidated, Inc., and Rossi NC, Inc. (collectively “corporate defendants”). (DE # 25.) Plaintiffs’ claim against non-defaulting defendant Juan Armando Rossi (“Rossi”) remains pending before the court, although the action as to him is stayed pending his bankruptcy proceeding.

Plaintiffs seek default judgment, namely actual and liquidated damages, pursuant to Rule 55(b)(2), for corporate defendants’ violations of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 207. (See Mem. Supp. Default J., DE # 26, at 20–21.) However,

[i]n multi-defendant cases, where liability has been alleged as joint and several, in order to avoid inconsistent judgments, default judgment should be reserved until the action is resolved on the merits against non-defaulting defendants so that if plaintiff loses on the merits, the complaint should then be dismissed against defaulting and non-defaulting defendants.

Rodriguez v. Irwin, No. 7:10-CV-102-FL, 2011 WL 737316, at *6 n.5 (E.D.N.C. Feb. 23, 2011); see e.g., Frow v. De La Vega, 82 U.S. 552, 554 (1872); United States ex rel. Hudson v. Peerless Ins. Co., 374 F.2d 942, 944 (4th Cir. 1967); Phoenix Renovation Corp. v. Gulf Coast

Software, Inc., 197 F.R.D. 580, 583 (E.D. Va. 2000). Because plaintiffs bring their FLSA claim jointly and severally against all defendants, (Compl., DE # 1, at 8-9), and defendant Rossi is not in default, plaintiffs' motion for default judgment and assessment of damages is DENIED WITHOUT PREJUDICE.

This 13 May 2019.



W. Earl Britt
Senior U.S. District Judge