

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JESUS RAMIREZ GUZMAN,)	
)	
Plaintiff,)	
)	
v.)	Case No. 3:08-0957
)	Judge Echols
)	
GREEN PASTURES FARMS, INC.,)	
)	
Defendant.)	

ORDER

This is an action under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et seq.*, in which the Magistrate Judge has issued a Report and Recommendation ("R & R") (Docket Entry No. 14) recommending that Defendant's unopposed Motion for Summary Judgment be granted. (Docket Entry No. 11). The R & R was issued on June 4, 2009, and Plaintiff has filed no objections thereto, even though he was informed in the R & R that any objections needed to be filed within ten (10) days of receipt of the R & R (Docket Entry No. 14 at 3-4).

Where, as here, no objections are made to the R & R, "[t]he district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions." Fed.R.Civ.P. 72(b).

Defendant's Motion for Summary Judgment is premised solely on its contention that Plaintiff's Complaint is untimely. The record shows that Plaintiff's employment with Defendant was terminated on

May 3, 2006, he received his final paycheck on May 5, 2006, and that paycheck cleared Defendant's checking account on May 9, 2006. However, suit was not filed until August 29, 2008.¹

As the Magistrate Judge properly noted, the FLSA generally has a two year statute of limitations unless there is a willful violation, in which case a three year statute of limitations applies. 29 U.S.C. § 255(a). "A cause of action is deemed to accrue, as a general rule, 'at each regular payday immediately following the work period during which the services were rendered for which the wage or overtime compensation is claimed.'" Hughes v. Region VII Area Agency on Aging, 542 F.3d 169, 187 (6th Cir. 2008)(citation omitted).

In this case, Plaintiff's Complaint contains no allegations of willful conduct and therefore the two year statute of limitations applies. Plaintiff was last paid on May 5, 2006 and the check cleared on May 9, 2006. His Complaint, which was not filed until August 29, 2008, is untimely.

Accordingly, the Court hereby rules as follows:

(1) The Report and Recommendation (Docket Entry No. 14) is hereby ACCEPTED and APPROVED;

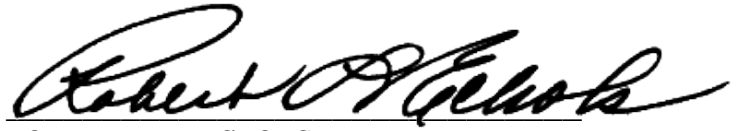
(2) Defendant's Motion for Summary Judgment (Docket Entry No. 11) is hereby GRANTED; and

(3) This case is hereby DISMISSED WITH PREJUDICE.

¹Suit was filed on that date in the General Sessions Court of Williamson County and removed by Defendant to this Court on September 26, 2008.

Entry of this Order on the docket shall constitute entry of a final judgment in accordance with Federal Rules of Civil Procedure 58 and 79(a).

It is SO ORDERED.

A handwritten signature in black ink, appearing to read "Robert L. Echols", written in a cursive style.

ROBERT L. ECHOLS
UNITED STATES DISTRICT JUDGE