

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

FRANCISCO GARCIA, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	NO. 3:10-1069
	)	Judge Sharp/Bryant
ISA CONWAY, d/b/a C & M	)	
Construction	)	
	)	
Defendant.	)	

**TO: The Honorable Kevin H. Sharp**

**REPORT AND RECOMMENDATION**

Plaintiffs Francisco Garcia and Gregorio Lopez have filed their motion for entry of default judgment (Docket Entry No. 15) to which the defendant has not responded. This motion has been referred to the undersigned Magistrate Judge for report and recommendation (Docket Entry No. 4).

For the reasons stated below, the undersigned Magistrate Judge finds that plaintiffs' motion for entry of default judgment should be **granted**, and **recommends** that judgment in their favor be entered.

**Procedural History**

Plaintiffs Garcia and Lopez filed their complaint on November 12, 2010, seeking unpaid wages and overtime pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* ("FLSA"). In summary, plaintiffs allege that they were employed by defendant Conway in his construction business, and that defendant failed to

pay them wages required by law. Plaintiffs seek to recover their lost wages, overtime, and liquidated damages pursuant to 29 U.S.C. § 216(b). The record indicates that defendant Conway was personally served with a summons and complaint on November 18, 2010 (Docket Entry No. 5). After defendant Conway failed to appear or respond to the complaint, plaintiffs filed their motion for entry of default pursuant to Rule 55(a) of the Federal Rules of Civil Procedure (Docket Entry No. 7). The Clerk entered default against the defendant on December 27, 2010, after the defendant failed to appear or otherwise defend this case (Docket Entry No. 10).

Plaintiffs Garcia and Lopez have now filed their motion of entry of judgment by default (Docket Entry No. 15) supported by their respective declarations (Docket Entry Nos. 17 and 18) and a memorandum of law (Docket Entry No. 16).

#### **Analysis**

According to plaintiff Garcia's declaration, he was employed by defendant Conway and his company, C & M Construction, as a painter. Plaintiff Garcia states that he often worked more than 40 hours a week but that he was never paid an overtime premium. In addition, plaintiff Garcia states that he worked more than 115 hours for defendant, including 47.5 overtime hours, but was paid for only 15 hours at straight time rates. Plaintiff Garcia asserts that he is entitled to recover lost wages at the minimum wage rate of \$7.25 per hour for 100 hours (\$725.00) and an additional overtime premium at the rate of \$3.63 per hour for 47.5

hours (\$172.00) for a total of \$897.00, plus an additional, equal amount in liquidated damages for a total amount of \$1,794.00 (Docket Entry No. 17).

Plaintiff Lopez states in his declaration that he, too, was employed by defendant Conway and his company, C & M Construction, as a painter. Plaintiff Lopez declares that he worked over 300 hours for defendant, including at least 75 overtime hours, but was paid for only 69 hours at straight time rates. Plaintiff Lopez asserts that he is entitled to recover lost wages at the minimum wage rate of \$7.25 per hour for 231 hours (\$1,674.75) and overtime premiums at the rate of \$3.63 per hour for 75 hours (\$272.25) for a total of \$1,947.00, together with an additional, equal amount in liquidated damages for a total amount of \$3,894.00 (Docket Entry No. 18).

From the foregoing uncontroverted evidence, the undersigned Magistrate Judge finds that plaintiffs' motion for entry of judgment by default should be **granted**, and that judgment should be entered against defendant in favor of plaintiff Garcia for unpaid wages and overtime in the total amount of \$897.00 plus an additional equal amount in liquidated damages pursuant to 29 U.S.C. § 216(b) for a total amount of \$1,794.00 plus costs and a reasonable attorney's fee.

In addition, judgment by default should be entered in favor of plaintiff Lopez against defendant in the amount of \$1,947.00 in unpaid wages and overtime plus an additional equal

amount of unliquidated damages pursuant to 29 U.S.C. § 216(b) for a total amount of \$3,894.00 plus costs and a reasonable attorney's fee.

**RECOMMENDATION**

For the reasons stated above, the undersigned Magistrate Judge **RECOMMENDS** that plaintiffs' motion for entry of judgment by default be **GRANTED**, and that judgment be entered in favor of plaintiffs and against defendant Conway in the amounts stated above.

Under Rule 72(b) of the Federal Rules of Civil Procedure, any party has fourteen (14) days from service of this Report and Recommendation in which to file any written objections to this Recommendation, with the District Court. Any party opposing said objections shall have fourteen (14) days from receipt of any objections filed in this Report in which to file any responses to said objections. Failure to file specific objections within fourteen (14) days of receipt of this Report and Recommendation can constitute a waiver of further appeal of this Recommendation. Thomas v. Arn, 474 U.S. 140 (1985), reh'g denied, 474 U.S. 1111 (1986).

**ENTERED** this 8th day of July 2011.

s/ John S. Bryant \_\_\_\_\_  
JOHN S. BRYANT  
United States Magistrate Judge