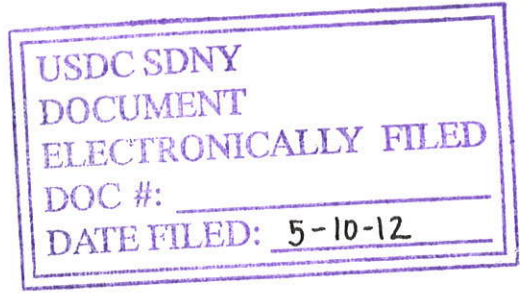


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



\_\_\_\_\_ :  
JAIME GUAMAN and VIRGILIO QUINDE, :  
individually and on behalf of all other similarly :  
situated, :  
:

Plaintiffs, :

-against- :

RODNEY EDDIE, et al., :  
:

Defendants. :  
\_\_\_\_\_  
:

11 Civ. 3838 (VB) (LMS)

REPORT AND  
RECOMMENDATION

ORIGINAL

TO: THE HONORABLE VINCENT BRICCETTI,  
UNITED STATES DISTRICT JUDGE

This action was commenced on June 6, 2011, by Jaime Guaman (hereinafter, "Guaman") and Jose Naulaguari (hereinafter, "Naulaguari"), individually and on behalf of all others similarly situated, against Defendants Rodney Eddie (hereinafter, "Eddie"), Blue Print Carpentry, Inc., Blue-Line Framing Contractor, Inc., Woodstone Carpentry, Inc., Gatehouse Carpentry, and Framed Structures, Inc. (hereinafter collectively, "Corporate Defendants"), alleging violations of the Fair Labor Standards Act and the New York Labor Law due to Defendants' failure to pay Plaintiffs certain wages. See Docket # 1.

On August 3, 2011, Plaintiffs filed a Motion for Entry of Default against the Corporate Defendants. Docket #'s 13-17.<sup>1</sup> The parties thereafter entered into a stipulation wherein the defaults were vacated, Defendant Eddie and the Corporate Defendants admitted service, and all

<sup>1</sup> Service of the Complaint on Eddie had been attempted to no avail. See Docket #'s 8, 9, 11. Having executed service on the Corporate Defendants, Plaintiffs initially moved for entry of default against the Corporate Defendants only. Docket #'s 13-14.

Defendants were granted an extension of time to answer the Complaint. Docket # 18.

Defendants filed an Answer to the Complaint on September 12, 2011. Docket # 20. Thereafter, with Defendants' consent, Plaintiffs filed an Amended Complaint substituting Plaintiff Virgilio Quinde (hereinafter, "Quinde") for named Plaintiff Naulaguari in the caption. Docket # 27. The substance of the claims remained the same. See id. Defendants filed an Answer to the Amended Complaint on December 14, 2011. Docket # 28.

On January 17, 2012, the Court granted Defendants' counsel's motion to withdraw. Docket # 39. Following Your Honor's granting of leave for Plaintiffs to file a Second Amended Complaint, on March 16, 2012, Plaintiffs filed a Second Amended Complaint adding Proline Carpentry, Inc., as a Defendant in this action. Docket #'s 42, 45.

On March 27, 2012, Plaintiffs filed a Motion for Partial Default Judgment<sup>2</sup> as to all Defendants except for Proline Carpentry, Inc.<sup>3</sup> Docket #'s 46-67, 73-74, 76. None of the Defendants submitted a response to Plaintiffs' Motion for Partial Default Judgment, nor did Defendants ever file an Answer to Plaintiffs' Second Amended Complaint. On May 2, 2012, after Proline Carpentry's time to answer the Second Amended Complaint had expired, Plaintiffs filed an application for entry of default against Defendant Proline Carpentry, Inc. Docket # 78. Your Honor referred this matter to me for a Report and Recommendation with respect to Plaintiffs' motion for default against Defendant Eddie and the Corporate Defendants, Plaintiffs' application for entry of default against Proline Carpentry, and for appropriate damages, if any, to be awarded to Plaintiffs. Docket # 77.

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<sup>2</sup> Plaintiff Luis Morocho does not seek default judgment. See Docket # 65 at 1.

<sup>3</sup> On March 27, 2012, Proline Carpentry's time to answer the Second Amended Complaint had not yet expired.

The undersigned reviewed Plaintiffs' submissions, which included a Memorandum of Law and accompanying affidavits and exhibits. Docket #'s 46-67, 73-74, 76. For the reasons stated below, I conclude, and respectfully recommend that Your Honor should conclude, that default should be entered against all of the Defendants, and that Plaintiffs should be awarded a total amount of \$501,065.80 in damages for unpaid wages and overtime, liquidated damages, and pre-judgment interest.<sup>4</sup> The breakdown of damages as to each Plaintiff is set forth below. I also conclude, and respectfully recommend that Your Honor should conclude, that Plaintiffs should be awarded \$105,852.46 in attorneys' fees and costs.

**I. PLAINTIFFS' ALLEGATIONS**

In the Complaint, and in subsequent Amended Complaints, Plaintiffs Juan Alvarado (hereinafter, "Alvarado"), Luis Carchi (hereinafter, "Carchi"), Guaman, Juan Carlos Guaman (hereinafter, "Juan Guaman"), Walter Guaman (hereinafter, "Walter Guaman"), Daniel Huanga (hereinafter, "Huanga"), Hernan Murillo (hereinafter, "Murillo"), Naulaguari, Cain Ortiz (hereinafter, "Cain Ortiz"), Luis Ortiz (hereinafter, "Luis Ortiz"), Ivan Yorgi Quinde (hereinafter, "Ivan Quinde"), Quinde, Juan Tacuri (hereinafter, "Tacuri"), Luis Tenelanda (hereinafter, "Tenelanda"), Angel Tuapante (hereinafter, "Tuapante"), Luis Uyaguari (hereinafter, "Luis Uyaguari"), and Pedro Uyaguari (hereinafter, "Pedro Uyaguari"), allege that Defendant Eddie and the Corporate Defendants violated the Fair Labor Standards Act (hereinafter, "FLSA") and the New York Labor Law (hereinafter, "NYLL") by failing to pay them certain wages. See Docket #'s 1, 27, 45. Specifically, Plaintiffs allege that they were employed by Defendants as laborers, and that Defendants failed to pay them overtime wages

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<sup>4</sup> The undersigned has carefully scrutinized Plaintiffs' records and calculations of damages owed, and I find the requested amounts to be reasonable and accurate.

throughout their employment and failed to pay them any wages at all for certain periods in the winter of 2010 - 2011. See id.

## II. DISCUSSION

### A. ENTRY OF DEFAULT

Pursuant to Rule 55(a) of the Fed. R. Civ. P., "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default." FED. R. CIV. P. 55(a). Plaintiffs' commenced this action on June 6, 2011, against Defendant Eddie and the Corporate Defendants. Docket # 1. On September 12, 2011, Defendants filed an Answer to the Complaint. Docket # 20. On December 1, 2011, Plaintiffs filed an Amended Complaint substituting Plaintiff Quinde for named Plaintiff Naulaguari in the caption. Docket # 27. The substance of the claims remained the same. See id. Defendants filed an Answer to the Amended Complaint on December 14, 2011. Docket # 28.

On January 3, 2012, Defendants' counsel filed a motion to withdraw. Docket #'s 32-33. Two days later, the undersigned scheduled an in-person conference for January 13, 2012. Docket # 35. In that scheduling notice, the Court made clear that the individually named defendant - Eddie - was to appear at the January 13, 2012, conference, stating "[t]he individual defendant must appear at that conference," in addition to his counsel who were seeking withdrawal.<sup>5</sup> Id.

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<sup>5</sup> The scheduling notice was sent to Defendants' counsel who were instructed to advise Defendant Eddie that he was to appear in-person at the January 13, 2012, conference. At the January 13, 2012, conference, Defendants' counsel represented that they had advised Eddie of the Court's directive.

While counsel appeared at the January 13, 2012, conference, Eddie failed to appear.<sup>6</sup> At the conclusion of the January 13, 2012, conference, the Court granted defense counsel's request to withdraw, and the Court scheduled a follow-up conference for February 14, 2012. The Court also advised the parties that the undersigned would be issuing an Order with respect to the presence of Eddie and/or counsel at the February 14, 2012, conference.

The Court's January 17, 2012, Order was sent to Defendant Eddie at the address provided on Eddie's January 13, 2012, correspondence to the Court.<sup>7</sup> The Order stated that "the individual defendant is required either to appear [at the February 14, 2012, conference] or have counsel present on his behalf. The individual defendant is hereby notified that he is permitted to represent himself *pro se* in defending this matter, but the law requires that the corporate defendants must have counsel to represent them." See Docket # 39. The Court warned Eddie that "[a] failure of the corporate Defendants to appear by counsel no later than February 14, 2012, will result in the Court granting permission to Plaintiffs to seek default judgment against those corporate defendants," and that "[a] failure of the individual Defendant to appear, either in person or by counsel, will also result in the Court granting permission to Plaintiffs to seek default judgment against the individual defendant." See id.

Neither Eddie nor counsel on behalf of Eddie or the Corporate Defendants appeared at

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<sup>6</sup> The Court received a letter sent via facsimile by Defendant Eddie the morning of the January 13, 2012, conference alerting the Court that Eddie would be unable to attend the conference because he was "out of state." Eddie also advised the Court that he was "extremely confused with the situation" with respect to his counsel, that he was told not to attend the conference without counsel, and that he was under the mistaken belief that Defendants' counsel had no longer represented him. See January 13, 2012, letter attached hereto.

<sup>7</sup> This was the same address that Eddie's relieved counsel provided to the Court as Eddie's last known address.

the February 14, 2012, conference, see February 14, 2012, Minute Entry, at which time the undersigned granted Plaintiffs permission to move for default against Defendant Eddie and the Corporate Defendants. See id.

Meanwhile, on January 5, 2012, Plaintiffs filed a motion to submit a Second Amended Complaint, which Your Honor granted on March 5, 2012. Docket #'s 37-38, 42. On March 16, 2012, Plaintiffs requested entry of default against Defendant Eddie and the Corporate Defendants, and Plaintiffs also filed their Second Amended Complaint adding Proline Carpentry, Inc. as a Defendant. Docket #'s 43-45. On March 27, 2012, Plaintiffs filed a Motion for Partial Default Judgment<sup>8</sup> against Defendant Eddie and the Corporate Defendants.<sup>9</sup> Docket #'s 46-67, 73-76.

On March 28, 2012, after having received a letter from Defendant Eddie requesting additional time to secure counsel, the undersigned issued an Order. Docket # 70. In light of all of the circumstances in the case, including Defendant Eddie's persistent delay in responding to the Court's mandates, the Court concluded that no further extensions of time would be granted. See id. The Court wrote in the Order that the individual defendant had known of the need to obtain new counsel since at least January 3, 2012,<sup>10</sup> and that he had been cautioned of the consequences of failing to obtain representation. See id. There was no evidence that he had

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<sup>8</sup> Plaintiff Luis Morocho does not seek default judgment. See Docket # 65 at 1.

<sup>9</sup> On March 27, 2012, Defendant Proline Carpentry's time to answer the Second Amended Complaint had not expired.

<sup>10</sup> The date on which defense counsel served their motion to withdraw.

made any effort to do so.<sup>11</sup> See id. The deadlines for Defendant Eddie and the Corporate Defendants to file an answer to the Second Amended Complaint was set as April 12, 2012, and the deadline to file a response to Plaintiffs' default judgment motion was set as April 17, 2012. See id. Eddie and the Corporate Defendants failed to answer the Second Amended Complaint, and they failed to file a response to Plaintiffs' request for entry of default or to Plaintiffs' motion for partial default judgment.

Thus, in light of Defendant Eddie's and the Corporate Defendants' failure to answer the operative pleading, and their failure to participate in this litigation, I conclude, and respectfully recommend that Your Honor should conclude, that the Clerk of the Court should enter default against Defendant Eddie and the Corporate Defendants. See Parise v. Riccelli Haulers, Inc., 672 F. Supp. 2d 72, 74 (N.D.N.Y. 1987) (granting default judgment for failure to answer amended complaint notwithstanding that defendant had answered the original complaint). I also conclude, and respectfully recommend that Your Honor should conclude, that the Clerk of the Court should enter default against Defendant Proline Carpentry, Inc., for its failure to answer the Second Amended Complaint or to appear in this action in any way.

**B. DAMAGES**

Upon the default of a party, a court must accept as true all factual allegations in the complaint, except those relating to damages. House v. Kent Worldwide Mach. Works, Inc., 359 F. App'x 206, 207 (2d Cir. 2010) (citing Au Bon Pain Corp. v. Artect, Inc., 653 F.2d 61, 65 (2d Cir. 1981)). In determining the amount of damages to be awarded, "under Rule 55(b)(2), 'it [is] not necessary for the District Court to hold a hearing, as long as it [has] ensured that there [is] a

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<sup>11</sup> Plaintiffs' counsel had also expressed concern to the Court that there was some reason to believe that Defendant Eddie may have been dissipating assets. See Docket # 70.

basis for the damages specified in the default judgment.' " Transatlantic Marine Claims Agency, Inc. v. Ace Shipping Corp., 109 F.3d 105, 111 (2d Cir. 1997) (quoting Fustok v. ContiCommodity Servs., Inc., 873 F.2d 38, 40 (2d Cir.1989)). The Court has not conducted a hearing on damages in this case because Plaintiffs have submitted sworn affidavits and exhibits detailing the specific damages sought by each Plaintiff from which the Court can assess damages.

The following findings are based on the moving papers submitted by Plaintiffs, as well as the allegations set forth in the Second Amended Complaint, which together establish the defaulting Defendants' liability. These sources demonstrate that Defendants failed to pay Plaintiffs overtime wages and failed to pay them any wages at all for certain periods of time in 2010 - 2011. See Docket #'s 46-67.

#### **Unpaid Wages and Unpaid Overtime**

Under Federal law, "no employer shall employ any of his [or her] employees . . . for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed." 29 U.S.C. § 207(a)(1). New York State law also mandates overtime pay. Cohen v. Gerson Lehrman Group, Inc., 09 Civ. 4352 (PKC), 2011 U.S. Dist. LEXIS 104551, at \*9 (S.D.N.Y. Sept. 15, 2011).<sup>12</sup> Under New York law, "[a]n employer shall pay an employee for overtime at a wage rate of one and one-half times the employee's regular rate in the manner and methods provided in and subject to" the FLSA. 12 N.Y.C.R.R. § 142 - 2.2. Under the FLSA, an employee's regular hourly rate for a typical week is calculated by

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<sup>12</sup> In the spirit of Local Civil Rule 7.1(c), a copy of all unpublished opinions is attached to the copy of this Order which is sent to Defendant Eddie.



dividing the employee's total weekly compensation by the number of hours for which that compensation was intended. 29 C.F.R. § 778.112; Yang v. ACBL Corp., 427 F. Supp. 2d 327, 338 (S.D.N.Y. 2005) (citation omitted). New York has adopted this same calculation method. Yin v. Kim, 07-CV-1236 (DLI)(JO), 2008 U.S. Dist. LEXIS 118533, at \*10 (E.D.N.Y. Mar. 7, 2008) (citation omitted).

In addition to overtime wages for work spent in excess of forty hours per week, Plaintiffs are also entitled to wages that they were never paid for work performed *within* the forty hour workweek, as an agreed term of their employment. An employer's failure to timely pay its employees for their work, as claimed by Plaintiffs in this case, entitles the employees to sue for their unpaid wages. See N.Y. LABOR LAW § 198(1); see also Epelbaum v. Nefesh Achath B'Yisrael, Inc., 237 A.D.2d 327, 330 (2<sup>nd</sup> Dep't 1997). Unlike the FLSA, New York State law entitles a successful plaintiff to collect the full amount of wages contractually owed, not just the statutory minimum wage for the hours worked. N.Y. LABOR LAW § 191(1)(a)(i).

Where a defendant has defaulted, "plaintiffs' recollection and estimates of hours worked are presumed to be correct." Chen v. Jenna Lane, Inc., 30 F. Supp. 2d 622, 624 (S.D.N.Y. 1998) (citations omitted). Defendants have defaulted, and they have failed to provide any employment records to show the extent of Plaintiffs' work. Accordingly, Plaintiffs' sworn recollections of their hours and wages suffice to establish their damages.

An employee must raise a claim under the FLSA within two years of an employer's non-willful violation, or within three years of a willful violation. See 29 U.S.C. § 255(a). A violation is willful under the FLSA when the employer "either knew or showed reckless disregard for the matter of whether its conduct was prohibited by the statute." Herman v. RSR Sec. Servs., Ltd., 172 F.3d 132, 141 (2d Cir. 1999) (citation omitted). Defendants have failed to

file an Answer to the Second Amended Complaint, have failed to respond to the entry of default against them, and have failed to submit a response to Plaintiffs' Motion for Partial Default Judgment, and, as Plaintiffs allege willfulness in their motion papers, I conclude, and respectfully recommend that Your Honor should conclude, that Defendants' violations were willful. See Cao v. Wu Liang Ye Lexington Restaurant, Inc., 08 Civ. 3725, 2010 U.S. Dist. LEXIS 109373, at \*4 (S.D.N.Y. Sept. 30, 2010) ("[D]efendants defaulted and thus plaintiffs' allegations that the FLSA violations were willful are deemed admitted."). Under New York State law, employees have six years to raise claims for unpaid wages. N.Y. LABOR LAW § 663(1), (3).

In accordance with Federal and New York State law, I conclude, and respectfully recommend that Your Honor should conclude, that Plaintiffs have established that Alvarado should be awarded \$5,489.25, Carchi should be awarded \$4,290.00, Guaman should be awarded \$60,200.00, Juan Guaman should be awarded \$29,767.50, Walter Guaman should be awarded \$46,385.00, Huanga should be awarded \$2,898.00, Murillo should be awarded \$2,403.00, Naulaguari should be awarded \$47,132.50, Cain Ortiz should be awarded \$8,524.00, Luis Ortiz should be awarded \$9,121.50, Ivan Quinde should be awarded \$3,619.50, Quinde should be awarded \$3,591.00, Tacuri should be awarded \$6,096.00, Tenelanda should be awarded \$1,651.00, Tuapante should be awarded \$8,827.25, Luis Uyaguari should be awarded \$4,586.25, and Pedro Uyaguari should be awarded \$1,920.00, in unpaid wages and unpaid overtime.

#### **Liquidated Damages**

Under the FLSA, an employee can be awarded liquidated damages in an amount equal to 100% of the amount owed for minimum wage and overtime violations. 29 U.S.C. § 216(b). Claims for liquidated damages under the FLSA must be brought within two years of a non-

willful violation or within three years of a willful violation. 29 U.S.C. § 255(a). The FLSA "does not authorize the court to decline to award liquidated damages, in whole or in part, unless the employer has established its good-faith, reasonable-basis defense." Brock v. Wilamowsky, 833 F.2d 11, 20 (2d Cir. 1987). As discussed, *supra*, I conclude, and respectfully recommend that Your Honor should conclude, that Defendants' violations were willful and not made either reasonably or in good faith. Therefore, the three-year statute of limitations applies to Plaintiff's FLSA liquidated damages claims.

Under New York State law, "unless the employer proves a good faith basis to believe that its underpayment of wages was in compliance with the law," claims for liquidated damages may be asserted up to six years after the alleged violations. N.Y. LABOR LAW § 663(1), (3). While the current rate of liquidated damages under New York law is 100%, Plaintiffs' concede that during the period of their claims, the rate was 25%. See N.Y. LABOR LAW § 663(1); Docket # 65 at 9 n. 5.

Plaintiffs seek liquidated damages under both the FLSA and the NYLL for their unpaid overtime and wages. The Second Circuit has distinguished the purpose of liquidated damages pursuant to the FLSA and the NYLL, thereby permitting courts, in their discretion, to award both. See Herman, 172 F.3d at 142 ("[l]iquidated damages are not a penalty exacted by the law, but rather compensation to the employee occasioned by the delay in receiving wages due caused by the employer's violation of the FLSA.") (citation omitted); Reilly v. NatWest Mkts. Grp. Inc., 181 F.3d 253, 265 (2d Cir. 1999) (under NYLL, liquidated damages "constitute a penalty to deter an employer's willful withholding of wages due.") (citation and quotation marks omitted). I conclude, and respectfully recommend that Your Honor should conclude, that the Court should award liquidated damages under both the FLSA and the NYLL. Thus, I recommend that the

Court should award Plaintiffs 100% in liquidated damages under the FLSA and 25% in liquidated damages under the NYLL for those unpaid wages and overtime that fall within the three-year window covered by the FLSA, and 25% in liquidated damages under the NYLL for those unpaid wages and overtime that fall outside the three-year period covered by the FLSA, but that fall within the six-year period covered by the NYLL.

In accordance with the FLSA and the NYLL, I therefore conclude, and respectfully recommend that Your Honor should conclude, that Plaintiffs have established that Alvarado should be awarded \$6,257.06, Carchi should be awarded \$4,984.50, Guaman should be awarded \$47,568.75, Juan Guaman should be awarded \$23,527.88, Walter Guaman should be awarded \$38,411.64, Huanga should be awarded \$2,416.50, Murillo should be awarded \$2,559.75, Naulaguari should be awarded \$33,100.63, Cain Ortiz should be awarded \$10,655.00, Luis Ortiz should be awarded \$11,401.88, Ivan Quinde should be awarded \$2,880.88, Quinde should be awarded \$2,873.75, Tacuri should be awarded \$7,164.00, Tenelanda should be awarded \$1,517.75, Tuapante should be awarded \$10,549.56, Luis Uyaguari should be awarded \$5,732.81, and Pedro Uyaguari should be awarded \$2,400.00, in liquidated damages.

#### **Pre-Judgment Interest**

Under New York State law, Plaintiffs are entitled to an award of pre-judgment interest for that portion of unpaid wages for which [they are] being compensated under state law. N.Y.C.P.L.R. § 5001 (Consol. 2012).<sup>13</sup> New York law also provides for pre-judgment interest at a statutory rate of 9% per annum. *Id.* at § 5004.

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<sup>13</sup> Under Federal law, "[i]t is well settled that in an action for violations of the Fair Labor Standards Act prejudgment interest may not be awarded in addition to liquidated damages." *Brock v. Superior Care, Inc.*, 840 F.2d 1054, 1064 (2d Cir. 1988).

I conclude, and respectfully recommend that Your Honor should conclude, that Plaintiffs have established that Alvarado should be awarded \$56.49, Carchi should be awarded \$38.91, Guaman should be awarded \$12,827.68, Juan Guaman should be awarded \$6,516.19, Walter Guaman should be awarded \$9,568.51, Huanga should be awarded \$142.84, Murillo should be awarded \$52.99, Naulaguari should be awarded \$11,871.98, Ivan Quinde should be awarded \$196.27, Quinde should be awarded \$192.77, Tacuri should be awarded \$43.99, Tenelanda should be awarded \$64.94, and Tuapante should be awarded \$45.56, in pre-judgment interest.<sup>14</sup>

**C. ATTORNEYS' FEES AND COSTS**

In a separate filing, Plaintiffs filed an application for attorneys' fees and costs in conjunction with their motion for partial default judgment. Docket #'s 73-74, 76. Neither Defendant Eddie nor the Corporate Defendants responded to Plaintiffs' submission.

Under the FLSA, "[t]he court . . . shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action." 29 U.S.C. § 216(b). Attorneys' fees and costs are also allowed under NYLL. N.Y. LABOR LAW § 198, 663(1). The Second Circuit has made clear that "any attorney [] who applies for court-ordered compensation in this Circuit for work done [] must document the application with contemporaneous time records. These records should specify, for each attorney, the date, the hours expended, and the nature of the work done." New York State Assoc. for Retarded Children, Inc. v. Carey, 711 F.2d 1136, 1147-148 (2d Cir. 1983). In their moving papers, Plaintiffs have provided the requisite contemporaneous time records.

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<sup>14</sup> Plaintiffs have calculated that Cain Ortiz, Luis Ortiz, Luis Uyaguari, and Pedro Uyaguari are not to be awarded pre-judgment interest. The Court does not disturb those calculations.

Both the Supreme Court and the Second Circuit have "held that the lodestar - the product of a reasonable hourly rate and the reasonable number of hours required by the case - creates a presumptively reasonable fee." Millea v. Metro-North R.R. Co., 658 F.3d 154, 166 (2d Cir. 2011) (citations and quotation marks omitted). "While the lodestar is not always conclusive, its presumptive reasonability means that, absent extraordinary circumstances, failing to calculate it as a starting point is legal error." Id. The hourly rates used in determining a fee award should be "what a reasonable, paying client would be willing to pay." Arbor Hill Concerned Citizens Neighborhood Ass'n v. Cnty. of Albany, 522 F.3d 182, 184 (2d Cir. 2008). This rate should be "in line with those [rates] prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation." Blum v. Stenson, 465 U.S. 886, 895-96 n.11 (1984). "[T]he fee applicant has the burden of showing by satisfactory evidence - in addition to the attorney's own affidavits - that the requested hourly rates are the prevailing market rates." Farbotko v. Clinton Cnty. of N.Y., 433 F.3d 204, 209 (2d Cir. 2005) (citation and quotation marks omitted).

Plaintiffs request the following hourly rates: Dan Getman - \$550 an hour; Michael Sweeney - \$440 an hour; Matthew Dunn - \$310 an hour; Lesley Tse and Carol Richman- \$275 an hour each ; Paralegal and IT Specialist Michael Russo - \$195 an hour; Paralegals - \$135 an hour; and Plaintiffs bill clerical work at \$50 an hour. See Docket # 74 at 14-15. Having reviewed both the evidence submitted by the parties and the hourly rates recently approved by courts in this District for FLSA cases, the Court finds that the proposed hourly rates submitted by Plaintiffs are within the reasonable range, with the exception of the proposed rates for Richman and Russo. See Allende v. Unitech Design, Inc., 783 F. Supp. 2d 509, 514 (S.D.N.Y. 2011) (awarding hourly rate of \$450 and \$300 for a partner and an associate who had both

graduated in 2001, \$275 for an associate who had graduated in 2007, and \$125 for law clerks); Cao, 2010 U.S. Dist. LEXIS 109373, at \*24 (in FLSA case, rates of \$400 for partners, \$350 for litigation counsel, \$300 for associates with three to seven years experience, and \$200 for associates with one to two years experience were consistent); Wong v. Hunda Glass Corp., 09 Civ. 4402 (RLE), 2010 U.S. Dist. LEXIS 90736, at \*8 (S.D.N.Y. Sept. 1, 2010) ("the range of fees in this District for civil rights and employment law litigators with approximately ten years' of experience is between \$250 and \$350 per hour"); Saunders v. City of N.Y., 07 Civ. 830 (SAS), 2009 U.S. Dist. LEXIS 115366, at \*29-31 (S.D.N.Y. Dec. 9, 2009) (awarding hourly rate of \$425 for partners with eighteen and sixteen years of experience, \$300 for associate who had graduated law school in 2001, and \$275 for associates who had graduated law school in 2005 and 2006); N.Y. Dist. Council of Carpenters Pension Fund v. Perimeter Interiors, Inc., 657 F. Supp. 2d 410, 424 (S.D.N.Y. 2009) (granting \$150 per hour for paralegals); Chan v. Sung Yue Tung Corp., 03 Civ. 6048 (GEL), 2007 U.S. Dist. LEXIS 33883, at \*12 (S.D.N.Y. May 7, 2007) (paralegal rates of between \$50 and \$150 are reasonable).

### **Dan Getman**

Dan Getman requests \$550 an hour for the 1.5 hours he worked on this matter. See Docket # 74 at 14. Mr. Getman received his Juris Doctor from Yale Law School in 1984. Docket # 76 at 10. He has approximately 28 years of legal experience since graduating from law school. Id. He is admitted to practice in all New York State courts, and he is a member of the bars of the Supreme Court, the Second and Ninth Circuit Courts of Appeals, and all of the federal district courts in the State of New York, among other courts across the country. Id. at 10-11. Mr. Getman has experience in wage-and-hour cases since 1989, and he has acted as lead counsel on a number of class and/or collective actions. Id. at 11-12.

While Mr. Getman's requested hourly rate appears to be on the high side of the rate range for FLSA cases, the Court is reluctant to reduce Mr. Getman's requested rate due to the minimal number of hours billed (1.5 hours) by Mr. Getman on this matter and the minimal impact any reduction would have on the overall calculation of attorneys' fees. Thus, I conclude, and respectfully recommend that Your Honor should conclude, that Mr. Getman's rate of \$550 an hour for the 1.5 hours billed is reasonable.

**Michael Sweeney**

Michael Sweeney requests \$440 an hour for the 155.4 hours he worked on this matter. See Docket # 74 at 14. Mr. Sweeney graduated *cum laude* from Fordham Law School, receiving his Juris Doctor in June 1996. See Docket # 76 at 6. Upon graduation, he was inducted into the Order of the Coif. Id. He served as law clerk to the late Honorable Lee P. Gagliardi, who served as a District Judge in this District. Id. Mr. Sweeney then helped establish an international human rights program at Fordham Law School, and joined Debevoise & Plimpton in 1998. Id. at 6-7. He participated in several asbestos related trials while employed at Debevoise, and he directed the law firm's political asylum program. Id. at 7. He has handled numerous wage-and-hour cases in federal court, many of them involving class litigation. Id. at 9-10. Based on Mr. Sweeney's experience, and rates awarded in comparable cases in this District, I conclude, and respectfully recommend that Your Honor should conclude, that Mr. Sweeney's rate of \$440 an hour is reasonable.

**Matthew Dunn**

Matthew Dunn requests \$310 an hour for the .3 hours he worked on this matter. See Docket # 74 at 14. Mr. Dunn received his Juris Doctor from Lewis and Clark Law School in 2003. See Docket #76 at 12. He is admitted to practice in all New York State courts, and the



United States District Courts for the Southern, Eastern, and Northern Districts of New York. Id. at 13. Mr. Dunn joined Getman & Sweeney as an associate in 2007, having previously worked as an associate at a small firm. Id. From December, 2006, through May, 2009, Mr. Dunn worked as a part-time public defender in the Ulster County Public Defender's office. Id. Since joining Getman & Sweeney, Mr. Dunn has worked on several labor related cases, including class and collective actions. Id. Based on Mr. Dunn's experience, and rates awarded in comparable cases in this District, I conclude, and respectfully recommend that Your Honor should conclude, that Mr. Dunn's rate of \$310 an hour is reasonable.

**Lesley Tse**

Lesley Tse requests \$275 an hour for the 5.6 hours she worked on this matter. See Docket # 74 at 14. Ms. Tse graduated from Fordham Law School in 2006. See Docket # 76 at 14. She began her legal career as a staff attorney in the Housing Unit at Nassau/Suffolk Law Services, and then began working as a staff attorney in the same unit at Manhattan Legal Services. Id. at 14-15. After becoming Deputy Director of that Unit in 2011, she joined Getman & Sweeney where she has litigated class and collective action cases brought under the FLSA, NYLL, and other state labor laws. Id. at 15. Based on Ms. Tse's experience, and rates awarded in comparable cases in this District, I conclude, and respectfully recommend that Your Honor should conclude, that Ms. Tse's rate of \$275 an hour is reasonable.

**Carol Richman**

Plaintiffs request an hourly rate of \$275 for the .2 hours of work performed by Carol Richman. See Docket # 74 at 14. However, Plaintiffs fail to provide the Court with a description of Ms. Richman's experience and her biography is not available on the Getman & Sweeney website. As the Court has no basis to assess the requested award, I conclude, and

respectfully recommend that Your Honor should conclude, that the total award for attorneys' fees and costs should be reduced by the \$55.00 billed for Ms. Richman's services.

**Paralegals, IT Specialist, and Clerical**

Plaintiffs request \$135 an hour for the 227.4 hours of worked performed on this case by Getman & Sweeney's five paralegals, and they request \$195 an hour for the 3.2 hours of work performed on this case by Getman & Sweeney's IT Specialist. See Docket # 74 at 14-15. Plaintiffs also request \$50 per hour for clerical work performed. Id. at 15. Based on the experience of the paralegals, as provided in the moving papers and the Getman & Sweeney website, and rates awarded in comparable cases in this District, I conclude, and respectfully recommend that Your Honor should conclude, that the paralegal rate of \$135 an hour, and the clerical rate of \$50 per hour, is reasonable.

With respect to Plaintiffs' request of \$195 per hour for Michael Russo, a paralegal at Getman & Sweeney with experience in information technology, "[l]awyers often use litigation support specialists and receive reimbursement for such services when awarded attorneys' fees." J.S. Nicol, Inc. v. Peking Handicraft, Inc., 03 Civ. 1548 (GBD)(AJP), 2008 U.S. Dist. LEXIS 82085, at \*64 (S.D.N.Y. Oct. 17, 2008) (citations omitted); see also BD v. DeBuono, 177 F. Supp. 2d 201, 204 (S.D.N.Y. 2001) (reimbursing attorneys' for use of a "trial preparation consultant" who, among other tasks, "provided technological assistance"). Plaintiffs cite to one case for the proposition that an award of \$200 for paralegals with specialized knowledge is reasonable. See Docket # 74 at 12. However, in Nat'l Ass'n for Specialty Food Trade, Inc. v. Construct Data Verlag AG, the court awarded \$200 per hour for a "senior paralegal," not a paralegal with "specialized knowledge" as Plaintiffs suggest. 04 Civ. 2983 (DLC)(KNF), 2006 U.S. Dist. LEXIS 89148, at \*18 (S.D.N.Y. Dec. 11, 2006). Plaintiffs have not persuaded the

undersigned that \$195 per hour for services performed by Russo is reasonable. As such, I conclude, and respectfully recommend that Your Honor should conclude, that the hourly rate for the 3.2 hours of work performed by Russo should be reduced to \$135 per hour - a reasonable amount, and the requested amount, for paralegal and litigation support services.

Next, the Court assesses the reasonableness of the time expended by the attorneys and support staff. "To assess the reasonableness of the time expended by an attorney, the court must look first to the time and work as they are documented by the attorney's records." Santa Fe Natural Tobacco Co. v. Spitzer, 00 Civ. 7274 (LAP), 00 Civ. 7750 (LAP), 2002 U.S. Dist. LEXIS 5384, at \*7 (S.D.N.Y. Mar. 29, 2002) (citation omitted). The party seeking fees bears the burden of establishing that the number of hours for which compensation is sought is reasonable. Cruz v. Local Union No. 3 of the I.B.E.W., 34 F.3d 1148, 1160 (2d Cir. 1994). Plaintiffs have satisfied their burden. They have provided contemporaneous time records detailing the number of hours spent into tenths of an hour segments, and they have provided descriptions of the work completed during those times. See Docket # 76, Exh. 1A-H. After a careful review of the contemporaneous time records, I conclude, and respectfully recommend that Your Honor should conclude, that the amount of time documented by Plaintiffs' records is reasonable.

Thus, I conclude, and respectfully recommend that Your Honor should conclude, that Plaintiffs should be awarded \$105,852.46 in attorneys' fees and costs.

### **CONCLUSION**

For the reasons stated above, I conclude, and respectfully recommend that Your Honor should conclude, that:

- (1) the Clerk of the Court should enter default against all of the Defendants pursuant to Fed. R. Civ. P. 55(a);

- (2) a judgment should be entered against the Defendants, jointly and severally, awarding Plaintiffs the amount of \$501,065.80. The judgment should be entered as follows: Plaintiff Alvarado should be awarded \$11,802.80, Carchi should be awarded \$9,313.41, Guaman should be awarded \$120,596.43, Juan Guaman should be awarded \$59,811.56, Walter Guaman should be awarded \$93,307.76, Huangá should be awarded \$5,457.34, Murillo should be awarded \$5,015.74, Naulaguari should be awarded \$92,105.10, Cain Ortiz should be awarded \$19,179.00, Luis Ortiz should be awarded \$20,523.38, Ivan Quinde should be awarded \$6,696.65, Quinde should be awarded \$6,657.52, Tacuri should be awarded \$13,303.99, Tenelanda should be awarded \$3,233.69, Tuapante should be awarded \$19,422.37, Luis Uyaguari should be awarded \$10,319.06, and Pedro Uyaguari should be awarded \$4,320.00, in total damages for unpaid wages and overtime, liquidated damages, and pre-judgment interest; and,
- (3) Plaintiffs should be awarded \$105,852.46 in attorneys' fees and costs, which is inclusive of the reduction for Ms. Richman's and Mr. Russo's services.

**NOTICE**

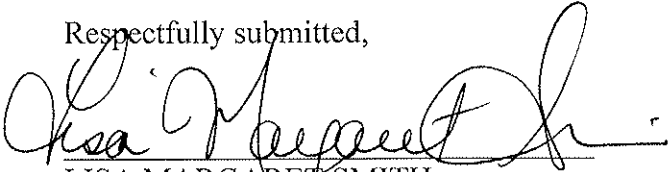
Pursuant to 28 U.S.C. § 636(b)(1), as amended, and Fed. R. Civ. P. 72(b), the parties shall have fourteen (14) days, plus an additional three (3) days, pursuant to Fed. R. Civ. P. 6(d), or a total of seventeen (17) days, see Fed. R. Civ. P. 6(a), from the date hereof, to file written objections to this Report and Recommendation. Such objections, if any, shall be filed with the Clerk of the Court with an extra copy delivered to the chambers of the undersigned.

Failure to file timely objections to this Report and Recommendation will preclude later appellate review of any order of judgment that will be entered.

Requests for extensions of time to file objections must be made to Judge Briccetti and should not be made to the undersigned.

Dated: May 10, 2012  
White Plains, New York

Respectfully submitted,



LISA MARGARET SMITH  
United States Magistrate Judge  
Southern District of New York

Copies of the foregoing Report and Recommendation have been sent to the following:

The Honorable Vincent Briccetti

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Rodney Eddie  
32 Walnut Street  
New Windsor, NY 12553

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1/13/12

United States District Court  
Southern District of New York  
300 Quarropas St.  
White Plains, NY 10601

Dear Honorable Lisa Margaret Smith;


Good morning Your Honor. I am writing you this morning, in order to inform you, that I am confused regarding the case. I was under the impression I was released as a client from Lewis and Greer. I received a letter that stated they were no longer able to represent me. This is why I had been looking for a new Lawyer.

I have interviewed several Lawyers, and every one explains the same thing. We need more time to provide necessary documents and proof supporting the case on my behalf, than what was given to me originally. I have been told it may take 6 to 8 months, which I did not have with Lewis and Greer. I have provided them with numerous documents and answers to many questions. I am extremely confused with the situation we are in at this point.

I am working out of state right now, and cannot make todays court appearance for I was told not to without council. Because I was under the impression I was released as a client, as Lewis and Greer sent me a letter stating they can no longer represent me, I did not know they were going to step in for me today.

Please forgive me as I did not understand, and would like to have an extension given on my behalf regarding the case. I do appreciate your time, and I look forward to hearing from you at your earliest convenience. Have a great day.

Sincerely,



Rod Eddie  
President