UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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JEFFREY CALLIER and MAAC ROGERS, on behalf of themselves and other similarly situated current and former employees employed by defendants,

Plaintiffs,

-against-

SUPERIOR BUILDING SERVICES, INC., SUPERIOR FACILITY SERVICES, CORP., and KENDALL HARRINGTON,

Defendants,
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REPORT AND RECOMMENDATION

09-CV-4590 (ILG) (JMA)

A P P E A R A N C E S:

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AZRACK, **United States Magistrate Judge:**

On October 26, 2009, plaintiffs Jeffrey Callier and Maac Rogers (collectively, "plaintiffs") filed the instant complaint against defendants Superior Building Services, Inc., Superior Facility Services, Corp., (collectively, "corporate defendants"), and Kendall Harrington. Compl. 1, ECF No. 1. Plaintiffs allege violations of the Fair Labor Standards Act ("FLSA") and New York Labor Law ("NYLL"). Id. ¶¶ 1–2. All defendants were served with the summons and complaint but failed to respond or otherwise appear. ECF Nos. 2, 3, 5. On April 29, 2010, the Honorable I. Leo Glasser granted plaintiffs' motion for default judgment as to liability and referred the case to me for a report and recommendation as to damages. Default J. 1, ECF No. 9.

For the reasons discussed below, I respectfully recommend that the Court enter judgment against defendants in the total amount of $32,962.75. For Callier, this consists of $7,752.87 in unpaid overtime wages, $9,211.09 in liquidated damages, and $1,625.78 in prejudgment interest. For Rogers, this consists of $561.36 in unpaid overtime wages, $701.70 in liquidated damages, and $79.83 in prejudgment interest. The total amount also includes my recommendation of $12,412.12 in attorneys' fees and $618 in costs.

I. FACTUAL BACKGROUND

The facts set forth below are drawn from the uncontested allegations contained in the plaintiffs' complaint and memoranda of law. Defendant Harrington is the president, chief executive officer, and majority shareholder of the two corporate defendants. Compl. ¶ 13. Defendants are in the business of cleaning and maintaining the facilities of other companies. Id. ¶ 14. Plaintiffs were employed by defendants as manual laborers. Id. ¶¶ 15, 18. Plaintiff Callier worked for defendants from approximately September 2006 to December 2009, and variously made $8 and $9 per hour. Pls.' Mem. of Law in Supp. of Request for Damages ("Pls.' Mem.") 2, ECF No. 14. From September 2006 to April 2007, and December 2007 to September 2009, Callier estimates that he worked 50 to 60 hours per week. Id. From May 2007 to December 2007, Callier estimates he worked 90 to 100 hours per week. Id. Plaintiff Rogers worked intermittently for defendants from March 2006 to September 2009, and variously made $7, $9, and $10 per hour. Id. at 3. Rogers estimates that he typically worked fifty to sixty hours per week, and occasionally worked 90 to 100 hours. Id. They were both paid by check on a bi-weekly basis. See Decl. of Jennifer Smith in Supp. of Pls.' Mem. ("Smith Decl.") ¶ 7. Despite working over forty hours per week on multiple occasions, neither plaintiff was paid overtime wages for hours worked in excess of that threshold. Compl. ¶¶ 19–20. Plaintiffs seek

$19,363.35 in damages and interest for Callier, $3,255.81 in damages and interest for Rogers, $15,808 in attorneys' fees, and $618 in costs. Smith Decl. Ex. G.

II. DISCUSSION

A. Applicable Law

1. Federal and State Labor Laws

a. Unpaid Overtime Wages

The FLSA and NYLL require employers to "compensate employees who work over forty hours per week with overtime pay at the rate of one and one-half times the regular rate." Wong v. Hunda Glass Corp., No. 09-CV-4402, 2010 WL 2541698, at *2 (S.D.N.Y. June 23, 2010) (citing 29 U.S.C. §§ 207(a)(1)).[1] "Even when wages exceed the minimum prescribed by Congress, [employers] must respect the statutory policy of requiring the employer to pay one and one-half times the regularly hourly rate for all hours actually worked in excess of [forty]." Walling v. Helmerich & Payne, Inc., 323 U.S. 37, 42 (1944). Under the FLSA, employees must raise claims for unpaid overtime within two years of a non-willful violation, or within three years of a willful violation. See 29 U.S.C. § 255(a). Under NYLL, employees have six years to raise claims for unpaid overtime wages. N.Y. Lab. Law § 663(1), (3).

An employee bringing an action for unpaid overtime wages under the FLSA has the burden of proving that he performed work for which he was not properly compensated. Rivera v. Ndola Pharmacy Corp., 497 F. Supp. 2d 381, 388 (E.D.N.Y. 2007) (quoting Anderson v. Mt. Clemens Potter Co., 328 U.S. 680, 687 (1946)). Employers are required to "make, keep, and preserve" records of employee wages, hours, and employment conditions. 29 U.S.C. § 211(c). If an employer fails to keep records, the plaintiff may meet his burden by producing "sufficient

[1] An employer may be exempt from paying overtime if there is a salary agreement that "assures that the employee will receive at least the minimum wage per week." Wong, 2010 WL 2541698, at *2 (citing 29 C.F.R. § 778.114).

evidence to show the amount and extent of that work as a matter of just and reasonable inference." Rivera, 497 F. Supp. 2d at 388 (citation omitted). A plaintiff may do so solely through his own recollection. Id.

b. Liquidated Damages

In addition to unpaid overtime wages, employees may seek liquidated damages. Under the FLSA, an employee can be awarded liquidated damages in an additional amount equal to the unpaid overtime wages. 29 U.S.C. § 216(b). Like claims for unpaid overtime, 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). 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," Herman v. RSR Sec. Services Ltd., 172 F.3d 132, 141 (2d Cir. 1999) (citation omitted), and the standard under NYLL "does not appreciably differ," Moon v. Kwon, 248 F. Supp. 2d 201, 235 (S.D.N.Y. 2002).

Under NYLL, "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 violation. See N.Y. Lab. Law § 663(1), (3). NYLL entitles employees to liquidated damages at a rate of twenty-five percent of the unpaid overtime. N.Y. Lab. Law § 663(1).

2. Default

When a defendant defaults, the court must accept all well-pleaded allegations in the complaint as true, except those pertaining to the amount of damages. Fed. R. Civ. P. 8(b)(6); see Finkel v. Romanowicz, 577 F.3d 79, 83 n.6 (2d Cir. 2009) (citation omitted). In order to ascertain the amount of damages, the court must conduct an inquiry sufficient to establish them

to a "reasonable certainty," Credit Lyonnais Sec. (USA), Inc. v. Alcantara, 183 F.3d 151, 155 (2d Cir. 1999) (quotation omitted), and documentary evidence can suffice in lieu of an evidentiary hearing, Action S.A. v. Marc Rich & Co., 951 F.2d 504, 508 (2d Cir. 1991).

B. Damages

Here, defendants' default constitutes an admission of liability, and the documentary evidence submitted by plaintiffs provides a sufficient basis from which I can ascertain damages.

1. Callier Damages

a. Callier's Unpaid Overtime Damages

Because Callier asserts claims under both the FLSA and NYLL, relief is available under either statute. See Wong, 2010 WL 2541698, at *2. Thus, I will employ NYLL for the purposes of unpaid overtime claims. The NYLL six-year statute of limitations encompasses all of Callier's unpaid overtime claims. N.Y. Lab. Law § 663(1), (3).

Under Mt. Clemens, when an employer fails to keep or produce employment records, an employee's recollection of his hours is sufficient for the purposes of calculating damages. See 328 U.S. at 687–88; see also Vasquez v. Ranieri Cheese Corp., No. 07-CV-464, 2010 WL 1223606, at *8 (E.D.N.Y. Mar. 26, 2010). Here, defendants defaulted and thus failed to provide any records. Additionally, Callier submitted bi-weekly paycheck stubs and a chart summarizing them. See Smith Decl. Ex. C. For periods where he is missing a paycheck stub, the gap is filled with Callier's recollection that he typically worked 110 hours during a bi-weekly period. See Smith Decl. Ex. C; Decl. of Jeffrey Callier in Supp. of Pls.' Request for Damages Ex. A. These estimations are supported by his paycheck stubs, which list numerous bi-weekly periods in which he worked in excess of 110 hours. See Smith Decl. Ex. C. Further, Callier asserts that he made

between $9 and $10 per hour. Id. I will presume these allegations to be correct, and rely on them in the analysis that follows.

Both the FLSA and NYLL require defendants to pay a fifty percent premium for any hours worked in excess of forty per week. 29 U.S.C. § 207(a)(1); N.Y. Comp. Codes R. & Regs. tit. 12, § 142-2.2. I have reviewed the chart summarizing Callier's hours worked and unpaid overtime wages, and find the calculations to be correct.[2] Therefore, I respectfully recommend that Callier be awarded $7,752.87 in unpaid overtime wages.

b. Callier's Liquidated Damages

Under the FLSA, Callier is entitled to liquidated damages in an amount equal to his unpaid overtime wages, and, under NYLL, he is entitled to an additional twenty-five percent of the unpaid overtime. 29 U.S.C. § 216(b); N.Y. Lab. Law § 663(1), (3). Because Callier claims overtime wages going back to September 2006, and this falls more than two years before the complaint was filed, the Court must determine whether defendants' violations were willful. 29 U.S.C. § 255(a). Because the standards for judging whether a violation is willful under the FLSA and NYLL are similar, a finding of willfulness under the FLSA suffices for both statutes. Moon, 248 F. Supp. 2d at 235. Here, because defendants failed to appear in this action and failed to respond to the entry of default against them, I find that their violations are willful. See Jin M. Cao v. Wu Liang Ye Lexington Restaurant, Inc., No. 08-CV-3725, 2010 WL 4159391, at *1–2 (S.D.N.Y. Sept. 30, 2010) ("[D]efendants defaulted and thus plaintiffs' allegations that the FLSA violations were willful are deemed admitted."); Blue v. Finest Guard Servs., Inc., No. 09-CV-133, 2010 WL 2927398, at *11 (E.D.N.Y. June 24, 2010), adopted in its entirety by 2010 WL 2927403 (E.D.N.Y. July 19, 2010) (same); Kopec v. GMG Const., No. 09-CV-2187, 2010

[2] Callier calculated the fifty percent premium by dividing his hourly wage by two, and then multiplying that by the number of hours worked in excess of eighty for each two week period. See Smith Decl. Ex. C.

WL 3925210, at *4 (E.D.N.Y. Sept. 10, 2010), adopted in its entirety by 2010 WL 3909273 (E.D.N.Y. Sept. 30, 2010) (finding willfulness where plaintiffs offered uncontested proof that violations were willfull). Thus, Callier is entitled to liquidated damages for the entire period for which he claims unpaid overtime wages.

However, he is not entitled to liquidated damages under the FLSA for the entire period of employment. A small portion of Callier's claims for unpaid overtime wages is barred by the FLSA three-year statute of limitations, but falls within the NYLL six-year statute of limitations. Thus, for claims arising more than three years before the complaint was filed, I recommend that Callier solely receive twenty-five percent of unpaid overtime, which comes to $120.[3] Kopec, 2010 WL 3925210, at *4 ("For the period that is untimely under the federal three-year statute of limitations but timely under the state law six-year statute of limitations, the state law claim is operative."). For claims arising within three years of the date the complaint was filed, I find that Callier is entitled to liquidated damages under both the FLSA and NYLL. See Jin M. Cao, 2010 WL 4159391, at *5 (citing Yu G. Ke v. Saigon Grill, Inc., 595 F. Supp. 2d 240, 261–62 (S.D.N.Y. 2008)) (holding that, because the purpose of liquidated damages under the FLSA is compensatory and the purpose under NYLL is punitive, it is permissible to award both); Chun Jie Yin v. Kim, No. 07-CV-1236, 2008 WL 906736, at *7 (E.D.N.Y. Apr. 1, 2008) (recognizing that "each statute provides a separate form of liquidated damages," but electing to only award liquidated damages under one statute); but see Jin v. Pacific Buffet House, Inc., No. 06-CV-579, 2009 WL 2601995, at *9, (E.D.N.Y. Aug. 24, 2009) (declining to award liquidated damages

[3] For the period more than three years before the complaint was filed—from September 15, 2006 to October 27, 2006—Callier is owed $480 in unpaid overtime. Smith Decl. Ex. C. I included the paycheck stub dated October 27, 2006 in this calculation despite the fact that it falls just within the three year period before the complaint was filed because it would presumably be for work performed before October 27, 2009. Liquidated damages under NYLL are equal to twenty five percent of unpaid overtime wages. N.Y. Comp. Codes R. & Regs. tit. 12, § 142–2.2. Thus, Callier is owed $120.

under both statutes). Thus, for the claims arising within three years of the complaint, Callier is entitled to $9,091.09.[4] In light of the above, I respectfully recommend that Callier be awarded $9,211.09 in total liquidated damages.[5]

c. Callier's Pre-Judgment Interest

Plaintiffs are "entitled to an award of prejudgment interest under [New York S]tate law for that portion of unpaid wages for which [they are] being compensated under state law." Jin, 2009 WL 2601995, at *9 (citing N.Y. C.P.L.R. § 5001). New York law provides for prejudgment interest at a statutory rate of nine percent per year. See NY C.P.L.R. §§ 5001, 5004; see also Reilly v. Natwest Mkts. Grp. Inc., 181 F.3d 253, 265 (2d Cir. 1999). When damages are incurred at various times, interest may be calculated separately on each particular claim from the date that claim arose, or on all the damages from a "single reasonable intermediate date." N.Y. C.P.L.R. § 5001(b).

Here, Callier is entitled to prejudgment interest for all of his unpaid overtime claims because I found that he could recover unpaid overtime wages under NYLL. See supra Part II.B.1.a. Instead of proposing a single midpoint, Callier apparently divides the period of employment into three sections and gives a midpoint for each of these. Smith Decl. Ex F. A review of case law in this circuit reveals that, typically, a single midpoint is used. See Kopec, 2010 WL 3925210, at *4 (using single midpoint); Said v. SBS Electronics, Inc., No. 08-CV-3067, 2010 WL 1270129, at *3 (E.D.N.Y. April 1, 2010), adopted in its entirety by No. 08-CV-3067, 2010 WL 2541368 (E.D.N.Y. June 16, 2010) (same). The use of a single midpoint is

[4] For the three-year period preceding the complaint—from November 10, 2006 to September 25, 2009—Callier is owed $7,272.87. Smith Decl. Ex. C. Liquidated damages under the FLSA are equal to the amount of unpaid overtime wages (100% of $7,272.87 is $7,272.87), and liquidated damages under NYLL are equal to twenty-five percent of the unpaid overtime wages (25% of $7,272.87 is $1,818.22). Thus, Callier is owed $9,091.09.

[5] $9,091.09 (liquidated damages owed for claims within the three year period) + $120 (liquidated damages owed for claims without the three year period) = $9,211.09.

further supported by the fact that the statute references a "single reasonable intermediate date." N.Y. C.P.L.R. § 5001(b). Therefore, I find that the midpoint date should be March 22, 2008, which is approximately midway between Callier's start date of September 15, 2006, and end date of September 25, 2009. Applying a nine percent annual interest rate to the unpaid overtime wages award of $7,752.87 for the period of March 22, 2008 until July 20, 2010 (the date plaintiffs' request for damages was filed) produces an interest award of $1,625.78.[6] Therefore, I respectfully recommend that Callier be awarded $1,625.78 in prejudgment interest.

2. Rogers' Damages

As the law under the FLSA and NYLL pertaining to unpaid overtime wages, liquidated damages, and prejudgment interest has already been discussed, it will not be rehashed below.

a. Rogers' Unpaid Overtime Wages

As previously discussed, because Rogers asserts claims under both the FLSA and NYLL, relief is available under either statute. See Wong, 2010 WL 2541698, at *2. Thus, I will employ NYLL for the purposes of unpaid overtime claims. See N.Y. Lab. Law § 663(1). Further, because the period for which Rogers claims unpaid overtime wages begins in March 2008, all of his claims occurred within even the shortest statute of limitations. 29 U.S.C. § 206(a) (statute of limitations for a non-willful violation of FLSA is two years). Thus, none of his claims are time-barred. Further, Rogers alleges that he was paid between $9 and $10 hours per hour, and I will presume these allegations to be correct. However, for the reasons discussed below, I find that Rogers' recollection of the hours worked during periods for which he does not have a paycheck stub is insufficient.

An employee carries his burden of proving the amount of unpaid overtime wages owed if he produces "sufficient evidence to show the amount and extent of [work for which he is owed

[6] $7,752.87 * 9% * 2.33 years = $1,625.78.

overtime wages] as a matter of just and reasonable inference." Mt. Clemens, 328 U.S. at 687. Although courts generally extend plaintiffs the benefit of the doubt when it comes to their recollections of hours worked in the absence of documentation, courts need not blindly accept allegations patently out of line with other evidence. See Ranieri Cheese, 2010 WL 1223606, at *16 ("Ultimately, whether the plaintiff's account is credible is a determination left to the fact-finder.") (citing Falleson v. Paul T. Freund Corp., No. 03-CV-6277, 2007 WL 4232783, at *14 (W.D.N.Y. Nov. 28, 2007)); see also Seever v. Carrols Corp., 528 F. Supp. 2d 159, 169 (W.D.N.Y. 2007) (holding that plaintiffs' recollections were insufficient to support allegations of unpaid overtime when there was evidence in the record contrary to those assertions).

Here, Rogers estimates that he worked 100 hours during bi-weekly periods between March of 2008 and September 2009, and uses that figure for periods where he does not have a paycheck stub. See Smith Decl. Ex. E. A review of the paycheck stubs submitted by Rogers reveals that his hours worked over a two week period were typically in the seventies, and that during the twenty-seven pay periods for which he provided documentation, only seven indicate hours in excess of eighty. Id. In light of the significant difference between his claims and the paycheck stubs provided, I recommend the Court use a figure of eighty-six hours per bi-weekly period for those periods where Rogers has not produced documentation. This finding extends Rogers the benefit of the doubt because eighty-six hours represents the most documented hours he ever worked in a two week period. Id. Thus, in the chart below, I substituted eighty-six hours wherever Rogers recollected working 100 hours, and highlighted the altered figures in bold.

Based on these calculations, I respectfully recommend that Rogers be awarded $561.36 in unpaid overtime wages. [7]

Calculation of Rogers' Unpaid Overtime Wages

Check Date	Rate ($/hour)	Hours	Paid ($)	Should Have Received ($)	Owed ($)
3/14/2008	9	**86**	**774**	**801**	**27**
3/28/2008	9	**86**	**774**	**801**	**27**
4/10/2008	9	58.25	524.25	524.25	0
4/24/2008	9	**86**	**774**	**801**	**27**
5/9/2008	9	**86**	**774**	**801**	**27**
5/23/2008	9	**86**	**774**	**801**	**27**
6/6/2008	9	**86**	**774**	**801**	**27**
6/20/2008	9	**86**	**774**	**801**	**27**
7/3/2008	9	70	630	630	0
7/17/2008	9	**86**	**774**	**801**	**27**
7/31/2008	10	79.125	791.25	791.25	0
8/14/2008	10	85.5	855	882.5	27.5
8/28/2008	10	78.25	782.5	782.5	0
9/12/2008	10	75.75	757.5	757.5	0
9/26/2008	10	75	750	750	0
10/10/2008	10	82.25	822.5	833.75	11.25
10/24/2008	10	**86**	**860**	**890**	**30**
11/6/2008	10	83.5	835	852.5	17.5
11/20/2008	10	85.5	855	882.5	27.5
12/4/2008	10	76.5	765	765	0
12/19/2008	10	77	770	770	0
1/2/2009	10	83	830	845	15
1/16/2009	10	**86**	**860**	**890**	**30**
1/30/2009	9	68	612	612	0
2/12/2009	9	75.5	679.5	679.5	0
2/27/2009	9	74.5	670.5	670.5	0

[7] Rogers' paycheck dated March 27, 2009 indicates that he was paid $749 with a $20 bonus, leaving a principal of $729. Decl. of Maac Rogers in Supp. of Pls.' Request for Damages Ex. A. When $729 is divided by his hourly rate of $9, the result is 81 hours, and not the 83.22 asserted by Rogers. Thus, Rogers is owed $4.50 in overtime wages for that bi-weekly period, and not the $14.49 he requests. See infra Calculation of Rogers' Unpaid Overtime Wages Chart (italicized text). I also note that the overtime wages sought for the period preceding June 6, 2009 appear to be negligibly lower than they should be. As plaintiffs' calculation is less than mine, I recommend that the Court award plaintiffs their requested amount.

3/12/2009	9	75.5	679.5	679.5	0
3/27/2009	*9*	*81*	*729*	*733.50*	*4.50*
4/10/2009	9	59	531	531	0
4/24/2009	9	86	774	801	27
5/7/2009	9	76	684	684	0
5/22/2009	9	76	884	884	0
6/5/2009	9	67.25	605.25	605.25	0
6/6/2009	*9*	17.78	160	160	20.11
6/19/2009	9	**86**	**774**	**801**	**27**
7/3/2009	9	73	657	657	0
7/16/2009	9	74	666	666	0
7/31/2009	9	**86**	**774**	**801**	**27**
8/14/2009	9	**86**	**774**	**801**	**27**
8/28/2009	9	**86**	**774**	**801**	**27**
9/11/2009	9	**86**	**774**	**801**	**27**
9/25/2009	9	74	666	666	0
					561.36

b. Rogers' Liquidated Damages

All of Rogers' claims for unpaid overtime occurred within two years of the date the complaint was filed; as such, no claims for liquidated damages are time barred. Therefore, I respectfully recommend that Rogers be awarded $561.36 under the FLSA, and $140.34 under NYLL, for a total liquidated damages award of $701.70.[8]

c. Rogers' Pre-Judgment Interest

Because Rogers' claims for unpaid overtime are compensable under NYLL, he is entitled to pre-judgment interest on those claims. As was the case with Callier, Rogers also proposes multiple midpoints. Smith Decl. Ex. F. For the reasons discussed above, a single midpoint is appropriate. I find that the midpoint should be December 20, 2008, which is approximately halfway between Rogers' start date of March 14, 2008 and end date of September 25, 2009.

[8] Rogers is owed $561.36 in unpaid overtime damages. Liquidated damages under the FLSA are equal to the amount of unpaid overtime wages (100% of $561.36 is $561.36), and liquidated damages under NYLL are equal to twenty-five percent of the unpaid overtime wages (25% of $561.36 is $140.34). Thus, Callier is owed $701.70.

Applying a nine percent annual interest rate to the unpaid overtime wages award of $561.36 for the period from December 20, 2008 until July 20, 2010 (the date plaintiffs' request for damages was filed) produces an interest award of $79.83.[9] Therefore, I respectfully recommend that Callier be awarded $79.83 in prejudgment interest.

3. Attorneys' Fees and Costs

Attorneys are entitled to attorneys' fees and costs incurred in prosecuting actions under the FLSA and NYLL. 29 U.S.C. § 216(b); N.Y. Lab. Law §§ 198(1-a), 663(1). In considering an application for attorneys' fees, courts should ascertain the "presumptively reasonable fee," which is the "the rate a paying client would be willing to pay." Arbor Hill Concerned Citizens Neighborhood Ass'n v. Cnty. of Albany, 522 F.3d 182, 190 (2d Cir. 2008). In order to arrive at this amount, courts will look to the "prevailing [market rates] in the community for similar services by lawyers of reasonably comparable skill, experience[,] and reputation." Cho v. Koam Medical Services P.C, 524 F. Supp. 2d 202, 206 (E.D.N.Y. 2007) (citation omitted) (first alteration supplied); see also Simmons v. New York City Transit Auth., 575 F.3d 170, 174 (2d Cir. 2009) ("[C]ourts should generally use the hourly rates employed in the district in which the reviewing court sits." (citation and internal quotation marks omitted)). Additionally, courts should "exclude hours that [are] excessive, redundant, or otherwise unnecessary to the litigation." Cho, 524 F. Supp. 2d at 209 (citation and internal quotation marks omitted). "In lieu of making minute adjustments to individual timekeeping entries, a court may make across-the-board percentage cuts in the number of hours claimed, 'as a practical means of trimming fat from a fee application.'" Chan v. Sung Yue Tung Corp., No. 03-CV-6048, 2007 WL 1373118, at *5 (S.D.N.Y. May 8, 2007) (citation omitted).

[9] $561.36 * 9% * 1.58 years = $79.83

As an initial matter, the Court notes that this is a relatively straightforward FLSA and NYLL case, and all three defendants defaulted. See, e.g., Cho, 524 F. Supp. 2d at 208 (holding that requested rates and hours were excessive because the case was a simple FLSA default). Bruce Menken, an attorney with over twenty-three years of experience, requests $400 per hour. Pls.' Mem. 8. Because this is a simple case with only two plaintiffs and no appearances by defendants, I recommend that Menken be compensated at $350 per hour. See Said, 2010 WL 1265186, at *10 (noting "hourly rates for attorneys approved in recent Eastern District of New York cases have ranged from $200 to $350 for partners"); see also Shim, 2010 WL 2772493, at *3 (awarding $350 per hour); Whitney v. JetBlue Airways Corp., No. 07-CV-1397, 2009 WL 4929274, at *7 (E.D.N.Y. Dec. 21, 2009) (consolidating cases) (noting that $300-$400 per hour is reasonable for partners, and awarding $350 per hour). Jennifer Smith requests $250 per hour, and I find that this is reasonable given her eight years experience.

Plaintiffs' counsel aver that 53.71 hours were spent litigating this case. Pls.' Mem. 8–9. A review of their submissions reveals that some of the tasks are not of the type or duration for which a reasonable client would be willing to pay. For example, Smith spent 1.2 hours and Menken spent .6 hours meeting with a potential plaintiff that did not opt in. Smith Decl. Ex. A; Decl. of Bruce Menken in Supp. of Pls.' Mem. Ex. A. A reasonable plaintiff would not likely be willing to pay for time spent by his attorney meeting with a potential plaintiff not ultimately involved in the case. See Arbor Hill, 522 F.3d at 190. Additionally, some of the time billed seems excessive. Smith spent 3.5 hours reviewing paycheck stubs and creating the spreadsheet calculating owed overtime on July 15, 2010, and then spent another four hours on July 19, 2010 "review[ing] and revis[ing]" those same spreadsheets and creating two other largely similar spreadsheets. Smith Decl. Ex A. Further, on July 20, 2010, Smith spent a full nine hours

drafting her declaration and revising the memorandum in support of the request for damages. Id. Based on this, I recommend an across-the-board cut of fifteen percent. Thus, I respectfully recommend that attorneys' fees be granted in the amount of $12,412.12.[10] I have reviewed plaintiffs' counsel's requests for costs and find it to be reasonable. Therefore, I respectfully recommend awarding $618 in costs.

4. All Defendants are Jointly and Severally Liable

If an individual defendant qualifies as an "employer" under the FLSA, he is jointly and severally liable along with corporate defendants. See Moon, 248 F. Supp. 2d at 237–38 (holding that a corporate officer who is considered an "employer" under the FLSA is jointly and severally liable along with the corporation). Here, plaintiffs assert that Harrington exercised managerial responsibilities, assigned defendants to particular worksites, set pay rates, and exerted substantial control over defendants. See Compl. ¶¶ 13, 16, 17. Further, plaintiffs generically refer to the violations as having been committed monolithically by "defendants." See, e.g., id. ¶¶ 19, 21, 23. Such allegations suffice to establish that all defendants qualify as plaintiffs' employers for purposes of the FLSA, and therefore I find that all defendants are jointly and severally liable. See Shim, 2010 WL 409949, at *2 (finding both individual defendants and a corporation liable under the FLSA where the complaint alleged actions taken collectively by the "Defendants") (citing Herman, 172 F.3d at 140).

III. CONCLUSION

For the foregoing reasons, I respectfully recommend that the Court enter judgment against defendants in the total amount of $32,962.75. For Callier, this consists of $7,752.87 in unpaid overtime wages, $9,211.09 in liquidated damages, and $1,625.78 in prejudgment interest.

[10] Plaintiffs' requested $5,318 for the services of Menken. After reducing his hourly rate to $350 per hour, this award should be $4,112.50. Plaintiffs' requested $10,490 for the services of Smith. After reducing the total award by fifteen percent, plaintiffs' counsel should be awarded $12,412.12.

For Rogers, this consists of $561.36 in unpaid overtime wages, $701.70 in liquidated damages, and $79.83 in prejudgment interest. The total amount also includes my recommendation of $12,412.12 in attorneys' fees and $618 in costs.

Plaintiffs are hereby ordered to promptly serve a copy of this Report and Recommendation on defendants and to file proof of service by ECF. Any objections must be filed with the Clerk of the Court, with a copy to the undersigned, within fourteen (14) days of the date of receipt of this Report and Recommendation. Failure to file objections within the specified time waives the right to appeal the District Court's order. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a), 72.

SO ORDERED.

Dated: December 22, 2010
Brooklyn, New York

/s/
JOAN M. AZRACK
UNITED STATES MAGISTRATE JUDGE