SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LOUIS L. NOCK** **PART** **IAS MOTION 38EFM**

Justice

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JASON PORTUGUEZ,

Plaintiff,

- v -

AQUA DESIGN GROUP, INC., and ALEXANDER KOSOVSKY,

Defendants.

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INDEX NO. 156989/2020

MOTION DATE 02/26/2021

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

LOUIS L. NOCK, J.

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13

were read on this motion for JUDGMENT - DEFAULT.

Upon the foregoing documents, the motion of plaintiff Jason Portuguez ("Plaintiff") for entry of a default judgment is granted on default and without opposition, in accord with the following memorandum decision.

Plaintiff is a former employee of defendants Aqua Design Group, Inc. and Alexander Kosovsky (together, "Defendants"). Plaintiff commenced this action to recover amounts owed pursuant to the New York Labor Law, alleging Defendants' failure to timely pay wages for hours worked, failure to provide accurate wage statements, failure to timely provide a hiring notice, and failure to pay accrued but unused vacation time following Plaintiff's separation from employment (Complaint ¶ 8, NYSCEF Doc 2). Defendants were served with process and have not answered the complaint or otherwise appeared in the action. Plaintiff now moves for entry of a default judgment against both Defendants.

A plaintiff that seeks entry of a default judgment upon defendant's failure to answer or appear in an action demonstrates entitlement to entry of a default judgment by submitting proof of service of the summons and complaint upon defendant, proof of the facts constituting Plaintiff's claims, and proof of default (CPLR 3215). "The standard of proof is not stringent, amounting only to some firsthand confirmation of the facts" (*Feffer v Malpeso*, 210 AD2d 60, 61 [1st Dept 1994]). "[D]efaulters are deemed to have admitted all factual allegations contained in the complaint and all reasonable inferences that flow from them" (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]). Nevertheless, "CPLR 3215 does not contemplate that default judgments are to be rubber-stamped once jurisdiction and a failure to appear have been shown. Some proof of liability is also required to satisfy the court as to the prima facie validity of the uncontested cause of action" (*Guzetti v City of New York*, 32 AD3d 234, 235 [1st Dept 2006] [internal quotations and citations omitted]).

Plaintiff has met this burden on the motion by submitting an affirmation of his counsel, Mark Gaylord, Esq., who attests to service of the summons and complaint upon Defendants and to their default by failing to appear, and an affidavit of Plaintiff, which constitutes proof of Plaintiff's claims. Plaintiff attests that he was "employed as a fabricator/welder by Defendants from April 1, 2018 through March 20, 2020," performing manual labor at an agreed upon rate of pay of "$20-29 per hour" (NYSCEF Doc. No. 8 ¶¶ 6-7). Plaintiff further attests that Defendants failed to pay him for his first week of work and, instead, "held" his first week's pay as "security," which was not paid to him upon his separation from employment (*id.* ¶ 10). Plaintiff seeks an award of $800 for these unpaid wages, representing 40 hours at his starting rate of $20 an hour (*id.*). Plaintiff also attests that he was not provided a paystub or wage statement for that week and was not provided any hiring notices regarding wages at his time of hire or any time

thereafter (*id.* ¶ 8). Beginning on January 1, 2020 through the end of his employment, Defendants switched from paying him on a weekly basis to paying on a bi-weekly basis, and he was paid a total of $12,056.53 during this time (*id.* ¶ 10). Finally, Plaintiff attests that Defendants did not have a known written policy regarding the forfeiture of accrued but unused vacation time and the separation from employment, and that he was not paid for 16 hours of accrued but unused vacation time following his separation from employment, at which time he earned a rate of $29 an hour, for a total of $464 (*id.* ¶ 12).

New York Labor Law Article 6 "sets forth a comprehensive set of statutory provisions enacted to strengthen and clarify the rights of employees to the payment of wages" (*Truelove v Northeast Capital & Advisory, Inc.*, 95 NY2d 220, 223 [2000]; *see Kolchins v Evolution Mkts., Inc.*, 31 NY3d 100, 109 [2018]). "Wages" are defined as "the earnings of an employee for labor or services rendered, regardless of whether the amount of earnings is determined on a time, piece, commission, or other basis" (NYLL § 190 [1]). Plaintiff qualifies as a "manual worker" as defined under the statute at NYLL § 190 as "a mechanic, workingman or laborer" (4). In support of the motion for default, Plaintiff has provided proof of violations for unpaid wages in the amount of $1,264, violation of NYLL § 191 (a) for failure to timely pay wages, violation of NYLL § 195 (3) for failure to provide accurate wages statements, and for violation of NYLL § 195 (1)(a) for failure to provide a wage notice at the time of hiring.

Labor Law § 198 sets forth the remedies available to a prevailing employee for substantive violations of Article 6 (*see Slotnick v RBL Agency*, 271 AD2d 365, 365 [1st Dept 2000]). Section 198 provides for the award of various liquidated and statutory damages for violations of the statute, including liquidated damages up to one-hundred percent of the total amount of unpaid or late paid wages (§ 198 [1-a]), fifty dollars a day up to $5000 for violations

of NYLL § 195 (1) (§ 198 [1-b]), $250 a day up to $5000 for violations of NYLL § 195 (3) (§ 198 [1-d]) (§ 198 [4]), and prejudgment interest (§ 198 [1-a]). Plaintiff is, therefore, entitled to an award of compensatory and liquidated damages in the amount of $2,528.00 for unpaid wages, liquidated damages in the amounts of $6,028.27 for late paid wages, $5000 for violation of NYLL § 195 (1), and $5000 for violation of NYLL § 195 (3), and prejudgment interest.

Plaintiff is also entitled to an award of reasonable attorneys' fees in the amount of $5400 pursuant to NYLL § 198 and demonstrated by the submissions of Plaintiff's counsel provided in support of the motion (NYSCEF Docs 7, 12).

Accordingly, it is

ORDERED that plaintiff's motion for entry of a default judgment is granted, and the Clerk of the Court is directed to enter judgment in favor of plaintiff Jason Portuguez and against defendants Aqua Design Group, Inc., and Alexander Kosovsky, jointly and severally, in the principal sum of $18,556.27, with interest at the statutory rate from March 26, 2019, as calculated by the Clerk, together with reasonable attorneys' fees in the amount of $5,400, and costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs.

This will constitute the decision and order of the court.

ENTER:

4/27/2021
DATE

LOUIS L. NOCK, J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION		
	X	GRANTED		DENIED	GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE