

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

Gulston v. Le Verde Group LLC et al.

24-CV-4155 (EK)(PCG) (E.D.N.Y. Jan. 20, 2026) · No. 24-CV-4155 (EK)(PCG) · Decided January 20, 2026

SUMMARY

The United States District Court for the Eastern District of New York adopted a magistrate judge’s Report and Recommendation recommending denial of the plaintiff’s motion for default judgment. The court granted the plaintiff leave to amend allegations concerning interstate commerce under the Fair Labor Standards Act and injury-in-fact relating to wage notice and wage statement claims, warning that insufficient amendments could result in dismissal.

CASE DETAILS

COURT	United States District Court for the Eastern District of New York
WRITING FOR THE COURT	Eric Komitee
JURISDICTION	United States District Court for the Eastern District of New York
DECIDED	January 20, 2026
DOCKET	24-CV-4155 (EK)(PCG)
DISPOSITION	other
PROCEDURAL POSTURE	The district court reviewed a magistrate judge's Report and Recommendation recommending denial of default judgment and dismissal for lack of subject matter jurisdiction absent an amended pleading. Neither party objected.
STANDARD OF REVIEW	Clear-error review of the Report and Recommendation because no party filed objections.
PRECEDENTIAL VALUE	Unpublished district court memorandum and order; precedential status is unknown.
PARTIES	Brendan Gulston v. Le Verde Group LLC et al.

TOPICS

- default judgment
- subject matter jurisdiction
- motion to amend
- flsa
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the magistrate judge's recommendation should be adopted under clear-error review when no party filed objections.
2. Whether plaintiff's motion for a default judgment should be denied.
3. Whether plaintiff should be permitted to amend the complaint to allege interstate commerce under the FLSA and injury in fact for the wage notice and wage statement claims.

HOLDINGS

1. When no party objects to a magistrate judge's Report and Recommendation, the district court reviews the recommendation for clear error on the face of the record; finding no error, the court adopted the recommendation in its entirety.
2. Plaintiff's motion for a default judgment was denied.
3. Plaintiff was permitted to file an amended complaint by February 3, 2026, including allegations sufficiently establishing an element of interstate commerce under the FLSA and facts establishing injury in fact for the wage notice and wage statement claims.

KEY QUOTATIONS

“Having reviewed the record, I find no error and therefore adopt the R&R in its entirety.”

FACTUAL BACKGROUND

The action includes claims under the Fair Labor Standards Act and claims concerning wage notices and wage statements. The pleadings, as described in the Report and Recommendation, did not sufficiently allege an element of interstate commerce under the FLSA or facts establishing injury in fact for the wage notice and wage statement claims.

PROCEDURAL HISTORY

Magistrate Judge Pollak recommended denying plaintiff's motion for default judgment and permitting amendment to allege an interstate-commerce element under the FLSA and injury-in-fact allegations for wage notice and wage statement claims. After the objection period expired without objections, the district court reviewed the recommendation for clear error, adopted it in its entirety, denied default judgment, and granted plaintiff leave to amend by February 3, 2026.

DISPOSITION

other

CASES CITED

- State Farm Mut. Auto. Ins. Co. v. Grafman, 968 F. Supp. 2d 480, 481 (E.D.N.Y. 2013)

OPINION

Gulston

PER CURIAM.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

BRENDAN GULSTON,
Plaintiff, MEMORANDUM & ORDER
24-CV-4155 (EK)(PCG)

-against- LE VERDE GROUP LLC et al., Defendants. -----X ERIC
KOMITEE, United States District Judge: The Court has received Magistrate Judge Pollak's Report
and Recommendation (R&R) dated January 3, 2026. ECF No.

27. Judge Pollak recommends that the motion for a default
judgment, ECF No. 22, be denied, and that in the absence of an amended pleading alleging an
element of interstate commerce under the Fair Labor Standards Act ("FLSA"), the case be
dismissed for lack of subject matter jurisdiction. Judge Pollak also recommends that if the Court
permit an amended pleading, the Court should permit plaintiff to amend the factual allegations
pertaining to his wage notice and wage statement claims to allege an injury-in-fact flowing
therefrom. Neither party has filed objections and the time to do so has expired. Accordingly, the
Court reviews Judge Pollak's recommendation for clear error on the face of the record. See Fed. R.
Civ. P. 72(b) advisory committee's note to 1983 addition; accord State Farm Mut. Auto. Ins. Co. v.
Grafman, 968 F. Supp. 2d 480, 481 (E.D.N.Y. 2013). Having reviewed the record, I find no error
and therefore adopt the R&R in its entirety. Thus, the motion for a default judgment is denied. By
February 3, plaintiff may file an amended complaint. Failure to sufficiently allege an element of
interstate commerce under the FLSA may result in dismissal of this case. Plaintiff may also amend
his wage notice and wage statement claims to allege facts establishing an injury-in-fact. Failure to
do so may result in dismissal of that claim. SO ORDERED. /s/ Eric Komitee

ERIC KOMITEE

United States District Judge Dated: January 20, 2026 Brooklyn, New York