

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.

OPINION

Gulston

PER CURIAM.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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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