

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW
YORK

**Mayra Cruz and Raul Herrera, individually and on behalf of all
other similarly situated persons v. Ultimate Care, Inc.**

Cruz v. Ultimate Care · No. 22-CV-7520 (AMD) (LKE) · Decided January 28, 2026

SUMMARY

The Eastern District of New York adopted a magistrate judge's Report and Recommendation recommending denial of the plaintiffs' motion for leave to file a third amended complaint in an FLSA and NYLL overtime action. Because no party objected, the court reviewed the recommendation for clear error and denied the motion.

OPINION

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK -----
----- X MAYRA CRUZ and RAUL HERRERA, individually and
on behalf of all other similarly situated persons,; ORDER ADOPTING REPORT Plaintiffs,; A ND
RECOMMENDATION 22-CV-7520 (AMD) (LKE) – against – ULTIMATE CARE, INC.,;
Defendant.: ----- X A NN M. DONNELLY,
United States District Judge: On December 12, 2022, the plaintiffs brought this action on behalf of
themselves and others similarly situated for the defendant's failure to pay overtime wages in
violation of the Fair Labor Standards Act ("FLSA").

(ECF No. 1.) Pursuant to a stipulation with the defendant, the plaintiffs filed a first amended
complaint on August 22, 2023, adding claims under New York Labor Law ("NYLL"). (ECF No.
48.) The defendant moved to dismiss the first amended complaint, which the Court denied without
prejudice to renew after completion of discovery. (ECF No. 66; ECF Minute Entry dated Mar.

20, 2024.) After some discovery, the parties stipulated to allow the plaintiffs to file a second
amended complaint (ECF No. 126), which the plaintiffs filed on July 18, 2024 (ECF No. 130).
After conducting additional discovery, on July 14, 2025, the plaintiffs filed a motion for leave to
file a third amended complaint (ECF No. 160), which the defendants opposed on August 18, 2025
(ECF No. 162).

On December 31, 2025, Magistrate Judge Lara Eskenazi issued a Report and Recommendation
recommending that the Court deny the motion. (ECF No. 178.) No party has filed an objection to
the report and recommendation, and the time for doing so has passed.¹ A district court reviewing a

report and recommendation “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C).

To accept a report and recommendation to which no timely objection has been made, “a district court need only satisfy itself that there is no clear error on the face of the record.” *VOX Amplification Ltd. v. Meussdorffer*, 50 F. Supp. 3d 355, 369 (E.D.N.Y. 2014) (citation omitted).

The Court has carefully reviewed Judge Eshkenazi's well-reasoned report and recommendation for clear error and finds none. Accordingly, the Court adopts the report and recommendation in its entirety. The plaintiffs' motion for leave to file a third amended complaint is denied. SO ORDERED. __ s/_A_n_n_M_ D_o_n_n_e_lly_____ ANN M. DONNELLY United States District Judge Dated: Brooklyn, New York January 28, 2026

1 Instead, on January 9, 2026, the defendant notified the Court that the parties reached a settlement in principle.

(ECF No. 179.) On January 23, 2026, the plaintiffs filed a motion for settlement approval. (ECF No. 181.)