

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ARMANDO AGUILAR and BENITO CRUZ TORRES,
individually and on behalf of all
others similarly situated,

Plaintiffs,

MEMORANDUM AND ORDER

15-CV-2781 (KAM) (SMG)

-against-

HAM N EGGERY DELI INC. (d/b/a NEW YORK
DELI) and KOSTAS KALOUDIS,

Defendants.

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MATSUMOTO, United States District Judge:

Plaintiffs Armando Aguilar ("Aguilar") and Benito Cruz Torres ("Torres") brought suit against defendants Ham N Eggery Deli, Inc. and Kostas Kaloudis, alleging violations of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et seq.*, and the New York Labor Law ("NYLL"), § 190 *et seq.* The case proceeded to trial and was submitted to a jury, which returned a verdict partially in plaintiff's favor and partially in defendant's favor and awarded plaintiffs damages under the NYLL. Pending before the court are defendants' renewed motion for judgment as a matter of law and motion for a new trial, and plaintiff's motion for liquidated damages, pre-judgment interest, and attorneys' fees. For the reasons set forth below, the court denies defendants' motions and grants plaintiffs' motion.

BACKGROUND

On May 13, 2015, plaintiffs commenced this labor law action for unpaid minimum and overtime wages under the FLSA and NYLL, unpaid spread of hours pay and violation of wage notice and statement provisions under the NYLL, and recovery of equipment costs under the FLSA and NYLL against defendants. (ECF No. 1, Complaint ("Compl.").) On March 30, 2017, the court issued a Memorandum and Order granting in part and denying in part plaintiffs' motion for partial summary judgment. (ECF No. 47, Memorandum & Order dated March 30, 2017.) Specifically, the court: granted Aguilar summary judgment as to defendants' liability on his tip credit claim; granted Torres summary judgment as to defendants' liability on his tip credit claim insofar as it is based on the prerequisites in N.Y. Comp. Codes R. & Regs. tit. 12, §§ 1.3 and 2.2 and their predecessors; granted Aguilar summary judgment on his wage statement claims under N.Y. Lab. Law §§ 195(3) and 198(1-d) and awarded him \$5,000 in damages; and denied Torres summary judgment on his wage statement claims. (*Id.*)

On October 12, 2018, the court issued a Memorandum and Order denying in its entirety defendants' motion for summary judgment. (ECF No. 64, Memorandum & Order dated October 12, 2018.) The court denied summary judgment on defendants' arguments that the deli was not covered by the FLSA and that

Torres's claims were barred by the statute of limitations, because there were disputed issues of material facts related to those determinations. (*Id.*) Based on the denial of summary judgment on the FLSA coverage issue, the court held that defendant's argument that the court should decline to exercise supplemental jurisdiction over plaintiffs' NYLL claims was moot. (*Id.*)

A trial commenced on November 13, 2018, and a jury heard evidence on November 13 and 14, 2018. After hearing summations and being charged, the jury deliberated and returned a verdict on November 15, 2018. (ECF No. 97, Returned Verdict Form.) The jury only returned verdicts in plaintiffs' favor on the minimum wage and overtime claims under the NYLL, finding for the defendants on the sole FLSA claim and the other remaining NYLL claims. (*Id.*) Defendants subsequently filed a renewed motion for judgment as a matter of law or for a new trial, and plaintiffs moved for liquidated damages, pre-judgment interest, and attorneys' fees.

LEGAL STANDARD

I. Motion for Judgment as a Matter of Law under Rule 50 or for a New Trial under Rule 59

"If a party believes that 'a reasonable jury would not have a legally sufficient evidentiary basis' to find for its adversary on a particular issue, it may move for judgment as a matter of law during trial under Federal Rule of Civil Procedure

50(a) and renew the motion after trial under Rule 50(b).”

Cangemi v. Town of E. Hampton, 374 F. Supp. 3d 227, 232

(E.D.N.Y. 2019) (citing Fed. R. Civ. P. 50 (a)-(b)). “In ruling on the renewed motion, the court may: (1) allow judgment on the verdict, if the jury returned a verdict; (2) order a new trial; or (3) direct the entry of judgment as a matter of law.” Fed. R. Civ. P. 50(b).

“When evaluating a motion under Rule 50, courts are required to consider the evidence in the light most favorable to the party against whom the motion was made and to give that party the benefit of all reasonable inferences that the jury might have drawn in [its] favor from the evidence.” *ING Glob. v. United Parcel Serv. Oasis Supply Corp.*, 757 F.3d 92, 97 (2d Cir. 2014) (citation and internal quotation marks omitted).

“The court cannot assess the weight of conflicting evidence, pass on the credibility of the witnesses, or substitute its judgment for that of the jury, and must disregard all evidence favorable to the moving party that the jury is not required to believe.” *Id.* (citation and internal quotation marks omitted).

“Put another way, a court may grant a Rule 50 motion only if, after ‘viewing the evidence in the light most favorable to the non-movant, [it] concludes that a reasonable juror would have been compelled to accept the view of the moving party.’”

Jackson v. Tellado, 295 F. Supp. 3d 164, 170 (E.D.N.Y. 2018) (citing *Cash v. Cty. Of Erie*, 654 F.3d 324, 333 (2d Cir. 2011)).

A party “fil[ing] a renewed motion for judgment as a matter of law . . . may include an alternative or joint request for a new trial under Rule 59.” Fed. R. Civ. P. 50(b). “The court may, on motion, grant a new trial on all or some of the issues . . . after a jury trial, for any reason for which a new trial has heretofore been granted in an action at law in federal court[.]” Fed. R. Civ. P. 59(a). “In contrast to a Rule 50 motion for a new trial, a Rule 59(a) motion for a new trial “may be granted even if there is substantial evidence supporting the jury's verdict.”” *Greenaway v. Cty. of Nassau*, 327 F. Supp. 3d 552, 560 (E.D.N.Y. 2018) (citing *DLC Mgmt. Corp. v. Town of Hyde Park*, 163 F.3d 124, 134 (2d Cir. 1998)). “Moreover, a trial [court] is free to weigh the evidence [itself], and need not view it in the light most favorable to the verdict winner.” *DLC Mgmt. Corp.*, 163 F.3d at 134.

But “[a] trial court should not grant a motion for a new trial unless it is ‘convinced that the jury . . . reached a seriously erroneous result or that the verdict is a miscarriage of justice.’” *Ali v. Kipp*, 891 F.3d 59, 64 (2d Cir. 2018) (citing *Amato v. City of Saratoga Springs, N.Y.*, 170 F.3d 311, 314 (2d Cir. 1999)). “A court considering a Rule 59 motion . . . should only grant such a motion when the jury’s verdict is

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