

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

EMMANUEL PIMENTEL,
RANCEL MORENO, JOHNNY
CUEVAS, RAMON CUEVAS,
ADAM OROZCO, IRVIN
MALDONADO, TRENT BARKER,
CHRISTOPHER CAMPBELL,
KHADEJHA DUBOSE, JOHN
FABIEN, TOMAS SANCHEZ,
TERRANCE STOUTE, RAYMOND
WALLS, ALFRED CLARK,
ALEXANDER DIAZ-BENITEZ,
CARLOS GUERRA, RAFAEL
ARMANDO LEVYA MARTINEZ,
LENIER MACHIN, JORGE
QUINONES, JACOB POWELL,
FIDEL RODRIGUEZ, TAYLOR
SAMS, RONALD THOMAS and
ANYEL DELGADO, individually
and on behalf of others similarly
situated,

Plaintiffs,

v.

Case No.: 2:23-cv-544-JLB-KCD

STRENGTH20, LLC, GLOBAL
STRATEGIES CONSULTANT
GROUP, CORP., ROMMEL A.
ARIZA and FLORIDA
STRUCTURAL GROUP, INC.,

Defendants.

ORDER

Plaintiffs sue under the Fair Labor Standards Act. They allege Defendants (their former employers) did not pay minimum wage or overtime as required. (*See* Doc. 1.)¹

Plaintiffs now ask the Court to hold Defendants Strength20, LLC and Rommel Ariza (collectively “Defendants”) in default under Fed. R. Civ. P. 55(a). (Doc. 127.) But Rule 55(a) only triggers when a party “has failed to plead or otherwise defend.” (*Id.*) Defendants have appeared, answered the complaint, and engaged in discovery. Indeed, Defendants filed a brief contesting a discovery issue just a few weeks ago. (Doc. 121.) Default “would not be appropriate” on these facts. *Deforest v. Johnny Chisholm Glob. Events, LLC*, No. 3:08CV498MCREMT, 2010 WL 1792094, at *9 (N.D. Fla. May 4, 2010); *see also Montecalvo v. Brandon Auto Clinic, Inc.*, No. 8:07-CV-851-T-30MSS, 2007 WL 2155581, at *1 (M.D. Fla. July 26, 2007).

Plaintiffs’ real problem, as best the Court can tell, is that Defendants have stalled the orderly progression of this case. For instance, Defendants have twice been ordered to produce discovery. And most recently, they failed to appear for a duly noticed deposition. (*See* Doc. 127 at 2-3.) The Court in no way condones such conduct. But the proper mechanism to hold Defendants

¹ Unless otherwise indicated, all internal quotation marks, citations, and alterations have been omitted in this and later citations.

accountable is Rule 37, not Rule 55. *See Malautea v. Suzuki Motor Co.*, 987 F.2d 1536, 1542 (11th Cir. 1993) (explaining that Rule 37 provides district courts “broad discretion to fashion appropriate sanctions” for discovery violations and non-compliance).

Accordingly, Plaintiffs’ Motion for Clerk’s Default (Doc. 127) is **DENIED**.
ORDERED in Fort Myers, Florida on June 18, 2024.



Kyle C. Dudek
United States Magistrate Judge

Copies: All Parties of Record