SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

----------x

TASLEEMA MOHAMED, individually and on behalf Of all other similarly situated who were employed by GLOBAL SECURITY ASSOCIATES, LLC, GLOBAL ELITE GROUP INC., and any related entities,

Plaintiffs,

Index No. 159835/14

-against-

**DECISION/ORDER**

GLOBAL SECURITY ASSOCIATES, LLC, GLOBAL ELITE GROUP INC., GLOBAL SECURITY CONSULTING GROUP INC. and any related companies,

Defendants.

----------x

**HON. CYNTHIA S. KERN, J.S.C.**

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for :_____

| Papers | Numbered |
|---|---|
| Notice of Motion and Affidavits Annexed..... | 1 |
| Affirmations in Opposition ..... | 2 |
| Replying Affidavits..... | 3 |
| Exhibits..... | 4 |

Plaintiffs Tasleema Mohamed, individually and on behalf of all others similarly situated who were employed by Global Security Associates, LLC ("Global Security"), Global Elite Group Inc. ("Global Elite") and any related companies, bring the instant motion for an Order pursuant to CPLR § 901 certifying this action as a class action. For the reasons set forth below, plaintiffs' motion is granted.

The relevant facts and procedural history of this case are as follows. This action is brought on behalf of plaintiffs, a putative class of individuals who furnished labor to defendants

Global Security, Global Elite and Global Security Consulting Group Inc. ("Global Security Consulting") (hereinafter collectively referred to as "defendants" or "Global") at John. F. Kennedy International Airport ("JFK Airport") in New York seeking to recover underpayment of wages which plaintiff and members of the putative class were allegedly entitled to receive for work they performed for defendants since 2008. Global provides airport security services, including securing the exteriors of aircraft; searching the interior of aircraft; securing the ramps that lead to airport doors; securing the baggage claim areas; providing security escorts for various individuals; verifying passenger identification; and securing baggage rooms for airports across the United States.

Plaintiffs' complaint alleges that plaintiff and the putative class members are a group of workers who provided security services to various airlines on behalf of Global and makes the following claims against defendants: (1) Global failed to pay plaintiffs for time they spent traveling between various locations at JFK Airport, resulting in shortfalls of payments for both regular-time and overtime wages in violation of New York Labor Law ("Labor Law") §§ 650 and 663 and 12 NYCRR 142-2.1; (2) Global failed to pay plaintiffs for time they spent waiting at JFK Airport between job postings, resulting in shortfalls of payments for both regular-time and overtime wages in violation of Labor Law § 663 and 12 NYCRR 146-2.2; (3) Global failed to pay the "spread of hours" or "split shift" payments in violation of 12 NYCRR 142-2.4; (4) Global made unlawful deductions from plaintiffs' wages for payment for required uniforms in violation of 12 NYCRR 142-2.5; and (5) Global failed to pay plaintiffs the "uniform allowance" for employees who launder and maintain their uniforms in violation of Labor Law § 193 and 12 NYCRR 142-2.5.

Plaintiff now moves for an Order pursuant to CPLR § 901 certifying the following class

as a class action:

> All individuals, other than managers, corporate officers or directors, or clerical or office workers, who performed work for Global Security Associates, LLC, Global Elite Group Inc. or Global Security Consulting Group Inc. at John F. Kennedy International Airport between October 2008 and the present.

"A class action may be maintained in New York only after the following five prerequisites of CPLR 901(a) have been met: (1) the class is so numerous that joinder of all members is impracticable: (2) common questions of law or fact predominate over any questions affecting only individual members; (3) the claims of the representative parties are typical of the class as a whole: (4) the representative parties will fairly and adequately protect the interests of the class; and (5) the class action is superior to other available methods for the fair and efficient adjudication of the controversy." *Ackerman v. Price Waterhouse*, 252 A.D.2d 179, 188 (1st Dept 1998). *See also* CPLR § 901(a). "Once these prerequisites are satisfied, the court must consider the factors set out in CPLR 902, to wit, the possible interest of class members in maintaining separate actions and the feasibility thereof, the existence of pending litigation regarding the same controversy, the desirability of the proposed class forum and the difficulties likely to be encountered in the management of a class action." *Ackerman*, 252 A.D.2d at 188. "Plaintiff bears the burden of establishing compliance with the requirements of both CPLR 901 and 902, and the determination is ultimately vested in the sound discretion of the trial court." *Id.* "Appellate courts in this State have repeatedly held that the class action statute should be liberally construed. Thus, any error, if there is to be one, should be in favor of allowing the class action." *Pruitt v. Rockefeller Center Properties, Inc.*, 167 A.D.2d 14, 21 (1st Dept 1991)(internal citations omitted).

In the instant action, this court finds that plaintiffs' motion for an Order certifying this

action as a class action is granted as they have established the elements of CPLR § 901(a). Initially, plaintiffs have demonstrated that the putative class is so numerous that joinder of all members is impracticable under CPLR § 901(a)(1). There is no "mechanical test" or "set quantity" of prospective class members which must exist to determine whether class membership is so numerous as to make actual joinder under CPLR § 901(a)(1) impracticable. *See Pesantez*, 251 A.D.2d at 11-12. "Each case depends upon the particular circumstances surrounding the proposed class and the court should consider the reasonable inferences and common sense assumptions from the facts before it." *Friar v. Vanguard Holding Corp.*, 78 A.D.2d 83, 96 (2d Dept 1980). As the Court of Appeals has explained, "the legislature contemplated classes involving as few as 18 members (Mem of St Consumer Protection Bd at 8 n 11, Bill Jacket, L 1975, ch 207) where the members would have difficulty communicating with each other, such as where 'barriers of distance, cost, language, income, education or lack of information prevent those who are aware of their rights from communicating with others similarly situated.' (Mem of St Consumer Protection Bd at 3, Bill Jacket, L 1975, ch 207)." *Borden*, 24 N.Y.3d at 389. There is also no requirement that the exact number of class members be immediately known. *See Smith v. Atlas International Tours, et al.*, 80 A.D.2d 762 (1st Dept 1981). While courts have held the general threshold for impracticability of joinder to be around forty members, numerosity has been found to be satisfied with less than forty members. *See Pesantez*, 251 A.D.2d 11 (holding that forty class members was "many more" than required to satisfy numerosity); *see also Galdamez v. Biordi Construction Corp.*, 2006 WL 2969651 (Sup. Ct. N.Y. County 2006), *aff'd* 50 A.D.3d 357 (1st Dept 2008)(finding that evidence indicating that class consists of about 30-70 workers were sufficient to satisfy numerosity).

Here, the court finds that plaintiffs have satisfied the numerosity element under CPLR §

901(a)(1) based on the allegations in the complaint that "[t]he size of the putative class is believed to be in excess of 100 individuals...[and] the names of all potential members of the putative class are not known"; the employee list provided by Global, which demonstrates that at least one hundred individuals were employed by Global at one time to perform security services at JFK Airport; the testimony of Audrey Villani, Global's Vice President of Human Resources and Administration, that Global has employed at least several hundred workers as security employees at JFK Airport since 2008; and plaintiff Mohamed's affidavit that "[f]rom [her] conversations and interactions with other workers at Global, [she] believe[s] that all other security workers with Global were underpaid in a similar manner to [her] for their work at JFK airport."

Further, plaintiffs have demonstrated that common questions of law or fact predominate over any questions affecting only individual members as required by CPLR § 901(a)(2). Whether common questions of law or fact predominate "should not be determined by any mechanical test, but rather, whether the use of a class action would achieve economies of time, effort, and expense, and promote uniformity of decision as to persons similarly situated." *Friar*, 78 A.D.2d at 97. In determining whether the claims of the named plaintiffs and putative class members share common questions of law or fact, "factual identity between the Plaintiff's claim and those of the class he seeks to represent is not necessary if these claims arise, at least in part, from a common wrong or set of wrongs regardless of individual factors." *Pajaczek v. Cema Construction Corp.*, 18 Misc.3d 1140 *4 (Sup. Ct. N.Y. County 2008), quoting (*Senter v. General Motors Corp.*, 532 F.2d 511, 524 (6th Cir.), cert denied, 429 U.S. 870 (1976)). "[T]he rule requires predominance, not identity or unanimity, among class members. Similarly, the fact that questions peculiar to each individual may remain after resolution of the common questions is

not fatal to the class action." *Friar*, 78 A.D.2d at 98 (internal citations omitted).

Here, the court finds that plaintiffs have satisfied the predominance element under CPLR § 901(a)(2). Plaintiffs have demonstrated that the claims of the named plaintiff and those of the putative class members, who are all security officers in similar positions as plaintiff Mohamed, arise from identical wrongs, namely, Global's alleged failure to comply with the requirements for providing its employees with uniforms free of charge, its alleged failure to comply with the "uniform allowance" provision of 12 NYCRR § 142-2.5 and its alleged practice of paying its employees only for the time they were "on post" and not any other time, which plaintiffs allege resulted in a violation of New York's minimum wage, overtime and spread of hours/split shift laws. These issues involve the existence of a common nucleus of operative facts and any evidence required to prove these issues will be the same. Indeed, plaintiffs assert that to demonstrate defendants' liability, they will present evidence that they had the cost of their uniforms deducted from their pay at all times between the beginning of the statute of limitations period, in October 2008, up until the time Global changed its uniform pay policy in or around 2013 or 2014; that they were required to launder and maintain their own uniforms and were not provided the required "uniform allowance" each week; and that they performed work outside of their scheduled post times, including time spent "engaged to wait" and traveling in the airport to their next assignment for which they were not compensated. Based on the foregoing, the court finds that the questions of law and fact concerning defendants' alleged failure to pay its workers and the resulting liability of defendants to all class members are not merely common but are identical questions. The harm which plaintiff Mohamed alleges she has suffered is identical to the harm allegedly suffered by every member of the putative class, namely, that they did not receive proper wages for all hours worked and did not receive proper compensation regarding

their uniforms. Plaintiff Mohamed's allegations are not unique to her situation as she alleges that it was Global's practice not to pay its employees for all hours worked and not to pay its employees appropriately for the required uniforms they had to wear until the policy was changed.

Plaintiffs have also demonstrated that the claims of the representative party are typical of the class as a whole as required by CPLR § 901(a)(3). To demonstrate typicality, "it is not necessary that the claims of the named plaintiff be identical to those of the class." *Super Glue v. Avis Rent-A-Care System, Inc.*, 132 A.D.2d 604 (2d Dept 1987), *aff'd as mod., on other grounds*, 159 A.D.2d 68 (2d Dept 1990). However, the named "plaintiffs' claims must not be antagonistic to or in conflict with the interest of the other class members." *Gilman v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 93 Misc.2d 941, 945 (Sup. Ct. N.Y. County 1978). Indeed, the First Department has held that with regard to wage claims, "[c]ommon issues of law and fact predominate, and the minor differences in each individual class member's claim do not defeat typicality." *Williams v. Air Serv Corp.*, 121 A.D.3d 441, 442 (1st Dept 2014).

Here, the court finds that plaintiffs have satisfied the typicality element under CPLR § 901(a)(3). As this court has already explained, Mohamed's claims are not just typical of the claims of the putative class members but they are identical to them. Indeed, the named plaintiff and the putative class members were all employed by Global in furtherance of Global's security operations at JFK Airport and the named plaintiff was treated in a manner directly identical to the way the members of the putative class were treated. Plaintiffs have provided evidence, including the testimony of Villani and Angelo Santiago, Global's Operations Manager, that all employees were paid in the same manner, that all employees' time was recorded by two managers, Santiago and Manuel Quezada, using identical methods, that all employees' schedules

were set by the same two managers and that all employees' hours were recorded in the same manner. Further, Evgeniy Klyuchinskiy, also a former security agent employed by Global, has affirmed that like his coworkers, although he was required to wear and pay for his uniform, he was not reimbursed for it and that he was not paid for his time between shifts or waiting for a plane to arrive.

Additionally, plaintiffs have demonstrated that the representative party will fairly and adequately protect the interests of the class as required by CPLR § 901(a)(4). Adequacy of representation requires that "counsel for the named Plaintiffs be competent and that the interests of the named Plaintiffs and the members of the class not be adverse." *Pajaczek*, 2008 WL 541298 *5 (Sup. Ct. N.Y. County 2008). "It is the function of the class action representative to act as a check on the attorneys in order to provide an additional assurance that in any settlement or other disposition the interests of the members of the class will take precedence over those of the attorneys. However, rigid application of this requirement is inappropriate where…the class is comprised of laborers." *Nawrocki v. Proto Construction and Development Corp.*, 82 A.D.3d 534 (1st Dept 2011)(internal citations omitted). When assessing the adequacy of a proposed class representative, it is "more than sufficient" to "find no substantiated conflicts between the [class representative and class members] and a representative with adequate understanding of the case." *Borden*, 24 N.Y.3d at 399-400. A class representative will be found to be appropriate where "[t]he record reveals no conflict of interest between the class members and the class representatives. Indeed, plaintiffs seek the same relief as the class members – to receive the wages and benefits allegedly owed to them." *Nawrocki*, 82 A.D.3d at 534. In determining whether counsel for the named plaintiff is competent and thus, whether the action will be vigorously prosecuted, courts also look to the skill and experience of counsel. *See Super Glue*

*Corp.*, 132 A.D.2d 604.

Here, the court finds that plaintiffs have established that Mohamed will fairly and adequately protect the interests of the putative class and that plaintiffs' counsel is competent and thus, will vigorously prosecute the case under CPLR § 901(a)(4). Initially, plaintiffs have demonstrated that there are no substantiated conflicts between Mohamed and the putative class members as plaintiff seeks the same relief as the class members, namely, to receive the wages and benefits allegedly owed to them. Further, plaintiffs have demonstrated that Mohamed has more than a mere "adequate understanding of the case" based on her testimony at her deposition that she brought the lawsuit "[b]ecause I felt that a lot, a lot of us still had the same complaints about the uniforms and the fact that the people were not getting paid for gaps and – I don't feel it's fair for us to work as hard as we did and not get paid for what we should, and we shouldn't be paying for uniforms. That's company issued." Further, Mohamed has testified that she is aware that she is pursuing, for herself and on behalf of all others similarly situated, underpayments related to the "off-the-clock" work, split shift compensation and uniform compensation. Additionally, plaintiffs have demonstrated that counsel for Mohamed is competent based on their skill and experience in dealing with wage and hour class action lawsuits. Indeed, plaintiffs have affirmed that counsel for Mohamed has successfully represented tens of thousands of workers in dozens of class action lawsuits to recover unpaid prevailing wages in federal and state courts and also counsels numerous labor unions, union benefit funds, contractor trade associations and fair contracting associations on matters pertaining to wages.

To the extent defendants assert that Mohammed is not an appropriate representative party to fairly and adequately protect the interests of the class because she has not demonstrated that

she has standing as a class representative to assert claims for illegal deductions and failure to pay wages, such assertion is without merit. Specifically, defendants assert that because defendants paid Mohamed above minimum wage for the hours she worked and were entitled to structure her compensation formula such that her wage rate was sufficient to cover any additional hour she may have worked, she has no standing to assert a claim for unpaid wages. However, such an argument does not go to whether Mohamed has standing to bring the instant action but rather goes to whether there is merit to Mohamed's underlying claims for unpaid wages, which, as this court has already explained, is inappropriate on a motion to certify a class action. Indeed, Mohamed has alleged that no workers, including herself, were paid for any time other than "post time" when they were actively engaged in securing airplanes or baggage rooms but not when they were traveling throughout the airport to get to an assignment or waiting in defendants' offices for their shifts to begin.

Plaintiffs have also demonstrated that the class action is superior to other available methods for the fair and efficient adjudication of the controversy as required by CPLR § 901(a)(5). The First Department has acknowledged that class actions are the "best method of adjudicating" wage and hour disputes, *Pesantez*, 251 A.D.2d at 12, and that "a class action is the 'superior vehicle' for resolving wage disputes." *Stecko v. RLI Insurance Co.*, 121 A.D.3d 542, 543 (1st Dept 2014). *See also Nawrocki*, 82 A.D.3d at 534 ("since the damages allegedly suffered by an individual class member are likely to be insignificant, and the costs of prosecuting individual actions would result in class members having no realistic day in court, we find that a class action is the superior vehicle for resolving this wage dispute.") Additionally, courts have found that in wage disputes such as this one, "requiring dozens of individual actions is an ineffective and inefficient method, which could lead to conflicting determinations and the

imposition of different and, perhaps, incompatible standards upon defendants." *Galdamez*, 2006 WL 2969651 (Sup. Ct. N.Y. County 2006), *aff'd* 50 A.D.3d 357 (1st Dept 2008). In *Galdamez*, the plaintiffs were a group of workers seeking unpaid wages. The court certified the class and noted that a class action was the superior method for adjudicating the workers' claims explaining as follows:

> According to plaintiffs, the class of workers numbering between 30 and 70 members has incurred an aggregate of approximately $1 million in damages...Yet, given the relatively small size of each claim, many members of the class would not be able to afford to pursue redress of defendants' Labor Law violations absent class certification. This furthers the "collateral public benefits" of the class action, which is "a means of inducing socially and ethically responsible behavior on the part of large and wealthy institutions which will be deterred from carrying out policies or engaging in activities harmful to large numbers of individuals."

*Id.*, quoting *Friar*, 78 A.D.2d at 94. Here, as this case involves a wage and hour dispute under the Labor Law, the court finds that it would be most efficient for the case to proceed as a class action.

Additionally, this court finds that plaintiffs' motion for an Order certifying this action as a class action is granted as they have also established the elements of CPLR § 902. Specifically, plaintiffs have affirmed that there is no interest of the individual class members in maintaining separate actions and that there is no other pending litigation against defendants for underpayment of wages at JFK Airport. Additionally, plaintiffs have established that a class action is a particularly effective litigation tool where workers, like the ones in this case, may be too afraid to pursue recovery of unpaid wages on their own, based on Mohamed's testimony that her coworkers are "scared. A lot of folks are scared to come out here and talk...They're scared that Global might do something with their jobs." Further, plaintiffs have demonstrated that the existence of over one hundred class members makes it both impracticable and inefficient to

prosecute or defend so many separate actions and that there will be few difficulties encountered in the management of this class action when compared with the difficulties that may be encountered in managing multiple actions regarding the same controversy.

To the extent defendants assert that the action should not be certified as a class action because there is no merit to plaintiff's claims, such assertion is without merit. "While it is appropriate in determining whether an action should proceed as a class action to consider whether a claim has merit, this inquiry is limited, and such threshold determination is not intended to be a substitute for summary judgment or trial." *Kudinov v. Kel-Tech Constr. Inc.*, 65 A.D.3d 481, 482 (1st Dept 2009)(internal citations omitted). "To the extent that the merits of the action may be considered in determining whether class action is appropriate, inquiry is limited to a determination as to whether on the surface there appears to be a cause of action for relief which is neither spurious nor sham." *Bloom v. Cunard Line Ltd.*, 76 A.D.2d 237, 240 (1st Dept 1980).

Here, the court finds that plaintiffs' claims for underpayment of time spent at the airport waiting to start a second shift or traveling to their next assignment and claims for reimbursement of money spent on their uniforms are not sham claims as plaintiffs sufficiently allege that such claims fall within the prohibitions of the Labor Law and New York City's Rules and Regulations. Thus, as the court finds that plaintiffs' claims are not sham claims, the court declines to delve any further into the underlying merits of the claims on the instant motion.

Additionally, to the extent defendants assert that Mohamed is prohibited from maintaining a class action pursuant to CPLR § 901(b) because Article 6 of the Labor Law provides for a penalty against an employer, such assertion is without merit. Pursuant to CPLR § 901(b), "[u]nless a statute creating or imposing a penalty, or a minimum measure of recovery

specifically authorizes the recovery thereof in a class action, an action to recover a penalty, or minimum measure of recovery created or imposed by statute may not be maintained as a class action." However, the law in New York is clear that as long as the penalty imposed is not mandatory and that the penalty is not being sought by the plaintiffs in the class action, the fact that the statute allows for the imposition of a penalty is not a bar to bringing a class action. *See Borden v. 400 E. 55th St. Assoc, L.P.*, 24 N.Y.3d 382, 393 (2014).

> This view is bolstered by the legislative history of CPLR 901(b), which provides that the statute requires a liberal reading and allows class-action recovery of actual damages despite a statute's additional provision of treble damages (Sponsor's Mem, Bill Jacket, L 1975, ch 207). Assemblyman Fink, the bill's sponsor, explained the purpose of CPLR 901(b), stating that "[t]he bill...precludes a class action based on a statute creating or imposing a penalty...unless the specific statute allows for a class action," but "[a] statutory class action for *actual damages* would still be permissible." (Sponsor's Mem at 2, Bill Jacket, L 1975, ch 207 [emphasis added]). In other words, "if the members of a class who would be entitled to a penalty sue only for their actual damages, they may do so in a class action."

*Id.* Indeed, "[w]here a statute imposes a nonmandatory penalty, plaintiffs may waive the penalty in order to bring the claim as a class action...." *Id.* at 394.

Here, the court finds that Mohamed is not barred from maintaining a class action pursuant to CPLR § 901(b) as she, along with the other putative members of the class, are not seeking any penalty provided for in Article 6 of the Labor Law but only actual damages and the statute does not provide for mandatory penalties. Pursuant to Labor Law § 198(1-a), "[i]n any action instituted in the courts upon a wage claim by an employee...in which the employee prevails, the court shall allow such employee to recover the full amount of any underpayment, all reasonable attorney's fees, prejudgment interest as required under the civil practice law and rules, and, unless the employer proves a good faith basis to believe that its underpayment of

wages was in compliance with the law, an additional amount as liquidated damages equal to one hundred percent of the total amount of the wages found to be due." As the statute does not impose a mandatory penalty, but rather imposes a penalty only if the employer establishes a good faith basis for believing that its underpayment of wages was in compliance with the law, and as Mohamed and the putative class members are not seeking any penalty under the statute, plaintiffs may waive the penalty in order to bring the claim as a class action. *See Borden*, 24 N.Y.3d at 394. Moreover, the First Department has held, with regard to claims brought under Article 6 of the Labor Law, that "[t]o the extent certain individuals may wish to pursue punitive claims pursuant to Labor Law § 198 (1-a), which cannot be maintained in a class action (CPLR 901[b]), they may opt out of the class action." *Pesantez v. Boyle Envtl. Servs.*, 251 A.D.2d 11, 12 (1st Dept 1998).

Accordingly, it is hereby

ORDERED that plaintiffs' motion for an Order certifying this action as a class action is granted. This constitutes the decision and order of the court.

Dated: 4/25/16

Enter: _____
J.S.C.
CYNTHIA S. KERN
J.S.C.