

**Troshin v Stella Orton Home Care Agency, Inc.**

2018 NY Slip Op 30922(U)

May 11, 2018

Supreme Court, New York County

Docket Number: 159312/2016

Judge: Gerald Lebovits

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**NEW YORK STATE SUPREME COURT  
NEW YORK COUNTY: IAS PART 7**

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IHOR TROSHIN, individually and on behalf of all  
other persons similarly situated who were employed  
by THE STELLA ORTON HOME CARE AGENCY,  
INC.,

Plaintiffs,

Index No.:159312/2016

-against-

THE STELLA ORTON HOME CARE AGENCY, INC.,

Defendant.  
-----X

Gerald Lebovits, J.:

This action arises out of plaintiff Ihor Troshin’s claims that he and other similarly situated employees of defendant The Stella Orton Home Care Agency, Inc., did not receive the wages and benefits they were entitled to pursuant to the New York Labor Law. Plaintiffs move for an order, pursuant to CPLR 3124, granting their motion to compel the production of responses to Plaintiffs’ First Pre-Class Certification Set of Interrogatory Demands and Plaintiffs’ First Pre-Class Certification Demand for the Production of Documents and Things. Plaintiffs are also seeking an extension of the pre-certification discovery deadline and an adjournment for time to file their note of issue and certificate of readiness. Defendant opposes the motion, claiming that it is justified in withholding any pre-class certification discovery for individuals other than Troshin.

**BACKGROUND AND FACTUAL ALLEGATIONS**

Plaintiff Ihor Troshin brought this putative class action on behalf of himself and on behalf of all other persons similarly situated who are presently, or were formerly, employed by defendant to provide home health aide services at the residences of defendant’s clients. Troshin worked for defendant from March 2004 until January 2015 as a home care attendant. He worked 24-hour shifts during his employment and did not “live in” the homes of the clients. While Troshin was on his shift, he was required to stay overnight and be ready to aid the clients during all hours of his shift. Troshin alleges that he was only paid for approximately 12 out of the 24 hours in his shifts, and that he was not paid the applicable overtime hourly rate, for hours worked over 40 in one week. Among other allegations, Troshin claims that, in violation of the New York Labor Law, he was obligated to purchase supplies used during employment.

Troshin alleges that the action is properly brought as a class action because the putative class members performed the same work and were not properly compensated. The complaint provides the elements required for class action certification and why plaintiffs believe a class

action is the superior avenue to adjudicate the controversy. In sum, plaintiffs seek to recover wages and benefits that they believe they are entitled to pursuant to Labor Law §§ 190, 650, 651 and 663, 12 New York Code of Rules and Regulations (NYCRR) §§ 142-2.1, 142-2.2, 142-2.4, 142-2.10 and 142-2.14, and to recover damages for breach of contract.

In June 2017, plaintiffs served their first pre-class certification set of interrogatory demands on defendant. Plaintiffs' exhibit A. According to plaintiffs, although defendant has responded to some of the discovery requests, the discovery provided is insufficient for plaintiffs to demonstrate the requirements of class action certification. Defendant has provided some information regarding Troshin, but has not produced information concerning other potential class members. Plaintiffs advise, "[a]lthough Defendant has disclosed information pertaining to the Named Plaintiff, this information is insufficient to demonstrate the requirements of §§ 901 and 902 with regard to the putative class and Defendant's refusal to disclose the information requested precludes Plaintiffs of their opportunity to adduce evidence to demonstrate they meet those requirements." Lusher affirmation, ¶ 27.

Over the course of several months, plaintiffs sent defendant two deficiency letters, listing the outstanding discovery and why they believe that they are entitled to it. For example, the letter dated November 10, 2017 (November 2017 letter) advised defendant that it was asked to "identify all putative class members narrowly defined as Named Plaintiff and all other current and former employees of the Defendant employed as home health care workers . . . during the Relevant Period." Plaintiffs' exhibit C at 2. Plaintiffs assert that defendant has not produced this information and that this information is required to satisfy the numerosity requirement for class action certification.

The November 2017 letter further advised that plaintiffs are missing discovery necessary to establish the commonality and typicality of the class claims. For example, although plaintiffs requested documents related to the wages and hours worked for the putative class members, defendant has not produced documents responsive to this request.

After a compliance conference held on November 15, 2017, defendant was ordered to "produce a reasonable sampling of pre-certification class discovery within 30 days." NYSCEF exhibit 23. Nonetheless, plaintiffs allege that they have not received any additional discovery since July 31, 2017.

Plaintiffs assert that defendant has not offered any reasonable justification for its failure to respond to the discovery request. For example, in interrogatory number 5, plaintiffs ask the defendant to provide, among other things, the following information about each putative member: the starting and ending dates of employment, the work schedule, the hourly wage for hours worked up until 40 and hourly wage paid for all hours worked over 40, and the nature of, and time allotted, for breaks. In response, defendant objected, claiming "it is overbroad, unduly burdensome and premature during pre-certification discovery." Plaintiffs' exhibit B at 4.

### *The Instant Action*

After defendant failed to respond to the two deficiency letters and refused to provide any additional discovery at the latest compliance conference held on January 17, 2018, plaintiffs commenced the instant action. Plaintiffs now move for an order, pursuant to CPLR 3124, compelling the production of responses to plaintiffs' pre-class certification discovery demands. Plaintiffs argue that they have requested relevant information that is necessary for them to satisfy the requirements for class action certification. Although defendant has responded to some of the discovery requests, plaintiffs allege that the discovery provided is insufficient. They continue that they are entitled to this limited discovery, as they have the burden to establish that they have met the requirements for class action certification.<sup>1</sup>

In addition to compelling the production of discovery, plaintiffs are further requesting an extension for both the pre-certification discovery and note of issue deadlines. Plaintiffs allege that, due to defendant's deficiency in providing the discovery requested, plaintiffs have been unable to review the class discovery documents. They also argue that they are unable to complete a certificate of readiness in combination with the note of issue representing that all discovery is complete.

In opposition to plaintiffs' motion, defendant states that it responded to plaintiffs' discovery requests on July 31, 2017, by "producing 560 pages documents" related to the named plaintiff, and that it also provided records related to defendant's payroll procedures, among other things. Douglas affirmation, ¶ 6. Defendant concedes that, after receiving the November 2017 deficiency letter, it agreed to "produce a sampling of pre-class certification discovery" in a compliance conference. *Id.*, ¶ 8. But defendant alleges that, as a result of a "recently published emergency rule making issued by the Commission of Labor clarifying the consistent policy of the Commissioner of Labor relating to 24-hour claims," it is justified in withholding any pre-class certification discovery for any individual other than the named plaintiff. *Id.*, ¶ 9.

### *Background History of the New York Minimum Wage Order*

Plaintiffs commenced their action in November 2016 and alleged that, as of November 2010, in violation of the New York State Labor Law, defendant failed to pay the minimum wage for all hours worked. In 2015, as relevant to plaintiffs' claims, the minimum wage order, as codified in 12 NYCRR § 142-2.1 (b) ("Basic minimum hourly rate and allowances") was as follows:

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<sup>1</sup> In defendant's responses to plaintiffs' first pre-class certification set of interrogatory demands, defendant generally objected to some of the interrogatories "to the extent they seek information or the identification of documents or other communications that constitute confidential and/or proprietary business information, trade secrets and/or personal information." Lusher affirmation in support, exhibit B, ¶ 6. Plaintiffs have advised that, in the event that defendant is concerned about the disclosure of sensitive information, plaintiffs' counsel is willing to enter into a confidentiality stipulation. At no point did defendant allege that its refusal to release discovery stemmed from concerns regarding confidentiality, and the court will not address this issue.

“The minimum wage shall be paid for the time an employee is permitted to work, or is required to be available for work at a place prescribed by the employer . . . . However, a residential employee — one who lives on the premises of the employer — shall not be deemed to be permitted to work or required to be available for work: (1) during his or her normal sleeping hours solely because he or she is required to be on call during such hours; or (2) at any other time when he or she is free to leave the place of employment.”

*Id.* See Lusher affirmation in further support, exhibit A at 1.

In addition to these statutory requirements, on March 10, 2010, the Department of Labor (DOL) issued an opinion letter providing guidance on the minimum wage orders (DOL opinion letter). The DOL opinion letter sets forth that “live-in employees, whether or not they are residential employees, must be paid not less than for thirteen hours per twenty-four-hour period provided that they are afforded at least eight hours for sleep and actually receive five hours of uninterrupted sleep, and that they are afforded three hours for meals.” *Tokhtaman v Human Care, LLC*, 149 AD3d 476, 477 (1st Dept 2017), quoting NY St Dept of Labor, Op No. RO-09-0169 at 4 [Mar. 11, 2010] [internal quotation marks omitted].

The Appellate Division, First and Second Departments, have specifically considered and rejected the application of the DOL opinion letter to nonresidential employees, on the basis that it conflicted with the minimum wage order. In *Tokhtaman, supra*, like the instant action, plaintiff, a former health care attendant, alleged that she and the other putative plaintiffs had not been paid for all the hours worked in their 24-hour shifts. *Id.* Defendants initially moved to dismiss, citing the DOL Opinion Letter, and claimed that plaintiffs were only entitled to 13 hours of pay for each 24-hour period. The lower court denied defendants’ motion to dismiss and defendants appealed.

On appeal, as explained by the First Department, “[t]he merit of [plaintiff’s wage claims] depends on whether plaintiff, who was employed by defendants as a home health care attendant, falls within the category of employees who need only be paid for 13 hours of every 24-hour shift. We find that plaintiff has sufficiently alleged that she does not fall within that category.” *Id.* at 476. The court affirmed the trial court’s determination, holding “that the DOL opinion conflicts with 12 NYCRR § 142-2.1 (b) insofar as the opinion fails to distinguish between ‘residential’ and ‘nonresidential’ employees, and should thus not be followed in this respect.” *Id.* at 477. The court concluded that, “if plaintiff can demonstrate that she is a nonresidential employee, she may recover unpaid wages for the hours worked in excess of 13 hours a day.” *Id.*

Similarly, in *Andryeyeva v New York Health Care, Inc.*, 153 AD3d 1216, 1219 [2d Dept 2017], the Second Department affirmed the renewal motion granting class certification to plaintiffs, who were home health care attendants providing services to the elderly and disabled, and worked 24-hour shifts. The Second Department found that “plaintiffs established the existence of the five prerequisites to class certification.” *Id.* at 1219. The court noted that it

agreed with the First Department that the DOL opinion letter conflicted with the plain language of the minimum wage order. The court held the following:

“[P]laintiffs were required to be at the clients’ residences and were also required to perform services there if called upon to do so. To interpret that regulation to mean that the plaintiffs were not, during those nighttime hours, ‘required to be available for work’ simply because it turned out that they were not called upon to perform services is contrary to the plain meaning of ‘available.’” *Id.* at 1218-1219.

It concluded that nonresidential employees “were entitled to be paid the minimum wage for all 24 hours of their shifts, regardless of whether they were afforded opportunities for sleep and meals.” *Id.* at 1219.

Recently, in *Moreno v Future Health Care Servs., Inc.* (153 AD3d 1254, 1256 [2d Dept 2017]), in reversing the lower court’s determination, the Appellate Division, Second Department, found that plaintiffs, nonresidential home health care attendants working 24-hour shifts, could establish the prerequisites for class certification. The court also held that the DOL opinion letter should not be followed. The court noted that the opinion letter “fails to distinguish between ‘residential’ and nonresidential employees, it conflicts with the plaintiff meaning of 12 NYCRR § 142-2.1 (b).” *Id.* at 1255.

After these appellate decisions, on October 6, 2017, the DOL issued an Emergency Rule (emergency rule) addressing the “Home Care Aide Hours Worked.” Defendant’s exhibit C at 1. In pertinent part, the emergency rule amended 12 NYCRR § 142.2.1 (b) to include the following:

*Notwithstanding the above, this subdivision shall not be construed to require that the minimum wage be paid for meal periods and sleep times that are excluded from hours worked under the Fair Labor Standards Act of 1938, as amended, in accordance with sections 785.19 and 785.22 of 29 C.F.R. for a home care aide who works a shift of 24 hours or more.*

*Id.* at 2 (Emphasis in original).

The purpose of the emergency rule was to “clarify that hours worked may exclude meal periods and sleep times for home care aides who work shifts of 24 hours or more.” *Id.* at 1. The emergency rule explained, in relevant part:

“This emergency regulation is needed to preserve the status quo . . . in the face of recent divisions by the State Appellate Divisions that treat meal periods and sleep time by home care aides who work shifts of 24 hours or more as hours worked for purposes of state (but not federal) minimum wages. As a result of those decisions, home care agencies may cease to provide home care aides thereby threatening the continued operation of this industry . . .

... Because those decisions relied upon the Commissioner’s regulation, and rejected the Department’s opinion letters as inconsistent with that regulation, this emergency adoption stands the relevant regulations to codify the Commissioner’s longstanding and consistent interpretations that such meal periods and sleep times do not constitute hours worked for purposes of minimum wage and overtime requirements.”

*Id.*

The emergency rule was effective as of October 6, 2017, and was set to expire on January 3, 2018. After this emergency rule expired, another identical one was issued on January 5, 2018, effective on that date, set to expire on April 4, 2018. The DOL noted that the notice of the emergency rule was intended “to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making ... at some future date.” Defendant’s exhibit B at 1.

As a result of this emergency rule making, defendant argues that Appellate Division decisions that fail to recognize the DOL opinion letter are no longer binding, and that compensable hours under the State Minimum Wage Law do not include meal periods and sleep time for home care aides who work shifts of 24 hours or more. Relying on federal law, defendant argues that, as wage and hour disputes related to the 13-hour rule are fact specific and individualized, they are “not properly resolved via class action litigation.” Defendant’s memo of law at 8.

Defendant concedes that, at the November 15, 2017, compliance conference it initially agreed to provide a sampling of pre-class certification discovery. But now, because of the emergency rule, it is justified in withholding discovery, because plaintiffs will not be able to satisfy the commonality and typicality element of a class action.<sup>2</sup>

**DISCUSSION**

To avoid discovery, defendant argues that plaintiffs are not entitled to the pre-class certification discovery they requested for any putative plaintiffs besides the named plaintiff. Although not well articulated, evidently, defendant believes that plaintiffs will not be able to satisfy the commonality and typicality element of class certification, due to an “intervening change to the legal landscape.” Douglas affirmation, ¶ 10. This intervening change is the emergency rule making issued on October 6, 2017.

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<sup>2</sup> Defendant does not oppose that part of plaintiffs’ motion seeking to extend the pre-certification discovery deadline and adjourning the time for plaintiffs to file their note of issue and certificate of readiness. Further, defendant states that it agrees to stipulate that plaintiffs can satisfy the numerosity requirement under CPLR 901.

Plaintiff was required to stay overnight at the residences of his clients, but did not live there and had his own residence. As of 2015, the minimum wage order indicates that home care attendants like plaintiff, who are nonresidential, are paid for every hour of their shift. The DOL opinion letter advised that home care agencies are required to pay residential and nonresidential employees only for 13 hours per 24-hour period, if they are afforded time for meals and sleep (the 13-hour rule). Both the First and Second Departments expressly declined to follow the DOL opinion letter. But now, because of the emergency rule amending the minimum wage order, defendant believes that plaintiffs do not have to be paid for more than 13 hours, if they are afforded three hours for meals and five hours for sleep. Defendant continues that, as wage and hour disputes related to the 13-hour rule are too fact specific for class action litigation, plaintiffs will not be able to satisfy the class action requirements of commonality and typicality and are, therefore, not entitled to access employment records of other putative members.

As set forth below, plaintiffs are entitled to limited pre-certification discovery to ascertain whether they can support an application for class action status. Therefore, before any pre-certification discovery, it is premature for defendant to argue that plaintiffs' lack of commonality precludes a class action.<sup>3</sup> See e.g. *Tokhtaman v Human Care, LLC*, 2016 NY Slip Op 31606 (U), \*2, 2016 WL 4439990, at \*2 (Sup Ct, NY County 2016), *affd* 149 AD3d 476 (1st Dept 2017) ("defendants' contention that plaintiff is precluded from seeking class certification and that class certification is an improper vehicle for her claim, is premature in the absence of any discovery on this issue"); *accord Downing v First Lenox Terrace Assoc.*, 107 AD3d at 91, *affd by* 24 NY3d 382 (finding it "premature to dismiss class action allegations before an answer is served or pre-certification discovery has been taken").

At the pre-class certification stage, a plaintiff is entitled to "limited discovery to determine whether the prerequisites to class certification listed in CPLR 901 are present, and to assess the feasibility considerations listed in CPLR 902 in relation to the particular facts." *Chimenti v Am. Express Co.*, 97 AD2d 351, 352 (1st Dept 1983); see also *Katz v NVF Co.*, 100 AD2d 470, 474 (1st Dept 1984) ("class action consideration is premature. The parties should conduct relevant discovery as to the nature and size of the class").

CPLR 901 (a) sets forth the pre-requisites for a class action as follows:

- "1. The class is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable;
- "2. there are questions of law or fact common to the class which predominate over the questions affecting only individual members;
- "3. the claims or defenses of the representative parties are typical of the claims or defenses of the class;
- "4. the representative parties will fairly and adequately protect the interests of the class; and

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<sup>3</sup> The court notes that, while, in certain situations, "a motion to dismiss may be made before a motion to determine the propriety of the class and a hearing under CPLR 902," here, defendant did not move for dismissal. See *Downing v First Lenox Terrace Assoc.*, 107 AD3d 86, 91 (1st Dept 2013) *affd by Borden v 400 E. 55<sup>th</sup> St. Assoc., L.P.*, 24 NY3d 382 (2014).

“5. a class action is superior to other available methods for the fair and efficient adjudication of the controversy.”

*Id.*<sup>4</sup>

“The purpose of pre-class certification discovery is to ascertain the dimensions of the group of individuals who share plaintiff’s grievance.” *Rodriguez v Metro. Cable Communications*, 79 AD3d 841, 842 (2d Dept 2010) (internal quotation marks and citations omitted). Here, plaintiffs have alleged that the putative plaintiffs, like the named plaintiff, were home care attendants working 24-hour shifts who were not paid for every hour that they worked. According to plaintiffs, defendant has provided some of the requested discovery regarding only the named plaintiff, and has not provided any information about the putative class members. As noted, upon motion for class certification, plaintiffs will have the burden to establish that the criteria in CPLR 901 (a) are met. *CLC/CFI Liquidating Trust v Bloomingdale’s, Inc.*, 50 AD3d 446, 447 (1st Dept 2008). Without being provided any records of any putative class members, plaintiffs will be unable to meet their burden.

“Disclosure in civil actions is generally governed by CPLR 3101 (a), which directs: [t]here shall be full disclosure of all matter material and necessary to the prosecution or defense of an action, regardless of the burden of proof. . . . The test is one of usefulness and reason.” *Forman v Henkin*, 30 NY3d 656, 661 (2018) (internal quotation marks and citations omitted). “The supervision of disclosure and the setting of reasonable terms and conditions therefor rests within the sound discretion of the trial court . . .” *Montalvo v CVS Pharm, Inc.*, 102 AD3d 842, 843 (2d Dept 2013) (internal quotation marks and citations omitted).

Pursuant to CPLR 3124, “[i]f a person fails to respond to or comply with any request, notice, interrogatory, demand, question or order under this article . . . the party seeking disclosure may move to compel compliance or a response.” On a motion brought pursuant to CPLR 3124, the burden is on the party seeking the disclosure to establish a basis for the production sought. *Rodriguez v Goodman, M.D.*, 2015 NY Slip Op 31412 (U), \*5, 2015 WL 4554460, at \*5 (Sup Ct, NY County 2015). Courts have found that a party is not required to respond to a discovery demand that is “palpably improper . . . [in that it is seeking] irrelevant information, or [is] overbroad and burdensome.” *Montalvo*, 102 AD3d at 843.

Plaintiffs have alleged that their discovery demands are appropriately tailored to satisfy the criteria for class certification, and that they have spent months attempting to gather this pre-certification discovery. They have attended court conferences and sent detailed deficiency letters to defendant. Despite entering into orders agreeing to provide a sampling of pre-class

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<sup>4</sup> After a plaintiff satisfies the criteria in CPLR 901 (a), the court shall consider the factors as set forth 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 v Price Waterhouse*, 252 AD2d 179, 191 (1st Dept 1998); *see* CPLR 902.

certification discovery, defendant has not done so, and has vaguely objected to the requests as overbroad or unduly burdensome.

Here, plaintiffs have demonstrated that the information sought is “material and necessary” to establish the commonality of the class claims and that the named plaintiff’s claims are typical of all the putative members. CPLR 3101 (a). In addition, class certification has routinely been granted in similar actions. In *Andryeyeva* (153 AD3d at 1217), plaintiffs could establish the prerequisites to class certification for “a class of approximately 1,063 home attendants who had worked 24-hour shifts . . . between December 28, 2007 and March 8, 2013.” In response, defendant has failed to establish how the requests are overbroad or unduly burdensome. *See e.g. Munoz v 147 Corp.*, 309 AD2d 647, 648 (1st Dept 2003) (“The items sought in the supplemental demand for discovery and inspection are ‘material and necessary in the prosecution or defense’ of the instant action (CPLR 3101[a]) and the City has not shown that the requests are overly broad or unduly burdensome”).

Defendant has argued that the requests are irrelevant, as plaintiffs’ class certification is legally deficient. In addition to being premature, defendant’s arguments for refusing to comply with discovery are without merit. Citing *De Carrasco v Life Care Servs., Inc.*, 2017 WL 6403521, at \*5, 2017 US Dist LEXIS 206682, at \*14 (SD NY, Dec. 15, 2017, No. 17-CV-5617 [KBF]), defendant surmises that plaintiffs are only entitled to be paid for 13 hours of work and that the resulting disputes regarding these claims are not subject to class action litigation.<sup>5</sup>

But the First and Second Departments have expressly declined to follow the DOL opinion letter, and the Court of Appeals has not yet addressed the issue. *See e.g. Tokhtaman*, 2016 NY Slip Op 31606 (U), \*3-4, *affd* 149 AD3d 476 (“Individual assessment [of being underpaid] based on how many 24-hour shifts . . . worked during the class period is a matter of individual damages and is not an impediment to class certification. The amount of time of interrupted sleep and time for meals each person had pertain to damages and does not preclude class action relief, as the paramount issues in this regard is defendants’ claimed conduct”) (internal quotation marks and citations omitted).

Moreover, plaintiffs have multiple claims and may seek various class action certifications, not just the one defendant has addressed. Even in *De Carrasco, supra*, although the court denied class certification for the New York class of employees who were not paid a full 24 hours for 24-hour shifts, it granted the class certification of a New York class on the overtime issue.

<sup>5</sup> In *De Carrasco, supra*, plaintiff, who was a home healthcare aide, brought an action alleging that, among other things, she and other similar employees were not compensated properly for 24-hour shifts, and that they were not paid the proper overtime rate. Plaintiff sought to conditionally certify two FLSA collection actions and five New York State classes. The court denied class certification for the New York class of employees who were not paid a full 24 hours for 24-hour shifts. Noting that the 2010 DOL opinion letter is given deference in federal court, but not in state courts, the court held, “[a]s such, an employee should only be paid twenty-four hours if she, in fact, is not receiving the appropriate meal and sleep breaks. As a result, individualized and not common questions predominate – and thus, class action is not the superior method of adjudication for the 24 Hour Claims.” 2017 WL 640351, at \*9, 2017 US Dist LEXIS 206682, at \*23.

Finally, the emergency rule making, as relied on by defendant, states in the body of the rule that it was filed on October 6, 2017, effective on that same date, and set to expire on January 3, 2018. Another similar emergency rule making was promulgated on January 5, 2018, effective on that date, and set to expire on April 4, 2018. As the emergency rule makings are silent as to their retroactivity, plaintiffs’ claims will not be affected by either emergency rule making as the action was commenced on November 4, 2016.

Accordingly, plaintiffs have satisfied the “threshold requirement of demonstrating that the disclosure sought is ‘material and necessary’” for pre-class certification, and plaintiffs’ motion to compel is granted. *U.S. Bank N.A. v Ventura*, 130 AD3d 919, 920 (2d Dept 2015). But plaintiffs’ discovery demands are “unduly broad for the limited purposed of allowing plaintiff access to proof of . . . the existence of a class.” *Chimenti*, 97 AD2d at 352. In the exercise of the court’s discretion, plaintiffs’ motion is granted to the extent of directing defendant to produce the information and documents requested in Interrogatory Demands numbered 4, 5, 6, 7, 9, 10, 11, 15, 17, 18, 19, 20, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 37, 40, 41, and 44, and the associated documents, as set forth in Document Demands numbered 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28, and 32, for the relevant time period. *See Lusher* affirmation in support, exhibit A.

Accordingly, it is

ORDERED that plaintiffs’ motion to compel is granted in part, to the extent that defendant is directed to produce the information and documents requested in Interrogatory Demands numbered 4, 5, 6, 7, 9, 10, 11, 15, 17, 18, 19, 20, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 37, 40, 41, and 44, and the associated documents, as set forth in Document Demands numbered 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28, and 32, for the relevant time period; and it is further

ORDERED that defendant shall produce the discovery demands to plaintiffs on or Before June 8, 2018; and it is further

ORDERED that plaintiffs’ requests for an extension of time to complete pre-class certification discovery, to file the note of issue and to file the certificate of readiness, are granted: Pre-class certification discovery must be completed by July 9, 2018, and the note of issue and certificate of readiness must be filed by September 28, 2018; and it is further

ORDERED that the parties must appear for a compliance conference on July 18, 2018, at

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<sup>6</sup> For example, several of the interrogatory demands relate to plaintiffs’ breach of contract claim and others are duplicative or seeks general information that is not relevant to determine if an employee falls within the proposed class.

NYSCEF DOC. NO. 47

RECEIVED NYSCEF: 05/14/2018

10:00 a.m. in Part 7, room 345, at 60 Centre Street.

Dated: May 11, 2018

  
J.S.C.  
**HON. GERALD LEOVITS**  
J.S.C.