

**Arias-Amacosta v Consolidated Edison Co. of N.Y.**

2020 NY Slip Op 33582(U)

October 28, 2020

Supreme Court, New York County

Docket Number: 153700/2014

Judge: Lynn R. Kotler

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

Decision/Order as to 008
Interim Order as to 006
PART 8

PRESENT: HON.LYNN R. KOTLER, J.S.C.

MONSERRAT ARIAS-AMACOSTA individually and o/b/o C.G., et al.

INDEX NO. 153700/2014

MOT. DATE

- v -

MOT. SEQ. NO. 006 & 008

CONSOLIDATED EDISON COMPANY OF NEW YORK et al.

The following papers were read on this motion to/for
Notice of Motion/Petition/O.S.C. — Affidavits — Exhibits
Notice of Cross-Motion/Answering Affidavits — Exhibits
Replying Affidavits
ECFS DOC No(s)
ECFS DOC No(s)
ECFS DOC No(s)

There are two motions presently marked submitted. The first is sequence 6, by defendant Consolidated Edison Company of New York ("Con Ed") and it is to dismiss all but eight of the plaintiffs' claims due to their failure to provide discovery. Defendant Kaoru Demler Muramatsu also cross-moves to dismiss plaintiffs' complaint. Plaintiffs' counsel has filed an affirmation in opposition to motion sequence 6, opposing the motion and "request[s] the Court to reject both Con Ed's and Plumbing Works' Motion to Dismiss." There is no motion to dismiss by Plumbing Works, however, plaintiff's counsel represents that "[a]fter Con Ed filed its Motion to Dismiss, Plaintiffs' counsel communicated with John Rand and Carol Wickham and produced the requested medical authorizations for certain Plaintiffs on July 14, 2020." Attorneys John Rand and Carol Wickham are both counsel for Con Ed.

The second motion is by plaintiffs' counsel, THE WEBSTER LAW FIRM, WELLER, GREEN, TOUPS & TERRELL, LLP, and WHATLEY, KALLAS, LLC, seeking to be relieved as counsel for many of the plaintiffs in this action, to wit, 29 sets of plaintiffs. Those particular plaintiffs are:

- 1. Fausto de Dios Bautista;
2. Adon Flores Encornacion;
3. Noe Sebastian Flores Encornacion;
4. Uriel Rodriguez Flores;
5. Abelardo Cayetano Hernandez;
6. Faviola Ibarra;
7. Evelina Ibarra;
8. Nayeli Islas;
9. Ismael Juarez and Teofila Garcia, individually and on behalf of Iker Juarez;
10. Marisela Martinez;

Dated: 10/28/20

HON. LYNN R. KOTLER, J.S.C.

1. Check one: [ ] CASE DISPOSED [X] NON-FINAL DISPOSITION
2. Check as appropriate: Motion is [X] GRANTED [ ] DENIED [ ] GRANTED IN PART [ ] OTHER
3. Check if appropriate: [ ] SETTLE ORDER [ ] SUBMIT ORDER [ ] DO NOT POST
[ ] FIDUCIARY APPOINTMENT [ ] REFERENCE

11. Enrique Garcia Martinez;
12. Jose Ricardo Garcia Martinez;
13. Encarnacion and Minerva Mendoza, individually and on behalf of Freddy Mendoza, Daniel Mendoza, Ponciana Mendoza and Gissell Mendoza, Vincente Mendoza, Cesar Mendoza;
14. Estaban Mendoza and Gloria Vazquez, individually and on behalf of Kevin Mendoza, Yenny Mendoza, Ashly Mendoza and Johan Mendoza, Benjamin Mendoza;
15. Francisca Diaz, individually and on behalf of Veronica Mendoza;
16. Lucas Neri;
17. Raul Gayetan Parra;
18. Jose Armando Perez;
19. Martin Ramirez; Maria Luisa Ramirez; Javier Ramirez-Aguilar; Rosa Isela Buchan Ramirez; Oscar Gil Ramirez and Joselin Herrera, individually and on behalf of Oscar Lloyd Gil Herrera;
20. Pedro Carlos Isias Robles;
21. Mario Sierr Rubio;
22. Nicolaca Salazar;
23. Rita Minero Sanchez;
24. Santiago Flores Sanchez;
25. Jose Adan Valeriano-Villareal;
26. Gloria Vazquez;
27. Elio Villareal and Esther Sanchez, individually and on behalf of Victor Villareal and Alex Villareal;
28. Noe Zamudio, individually and on behalf of Leslie Zamudio, Edwin Zamudio and Daniel Zamudio;  
and
29. Cesar Justo Razo.

The motion to withdraw as counsel was brought by order to show cause and plaintiffs' counsel has provided proof of service on its clients. Despite such service, none of the plaintiffs have submitted opposition to the motion.

Attorney Wickham has submitted an affirmation in opposition to the motion to be relieved which requests that if the motion be granted, the court hold its decision on motion sequence 6 in abeyance until after the motion to be relieved has been decided. Attorney Wickham further requests: "that if the application is granted that a conditional order be issued, setting a deadline for those plaintiffs to advise of new counsel or provide the outstanding discovery" and if the motion is denied, "with the exception of [] eight cases" the remainder "be dismissed for failure to provide either injury details or discovery consisting of medical records/authorizations for same."

Since there is no opposition to plaintiff's motion to withdraw despite proof of service, motion sequence 8 is granted upon plaintiffs' counsel's filing of proof of compliance with the conditions set forth below. In light of this result, the court adjourns motion sequence 6 to December 15, 2020 for the plaintiffs who have been relieved of counsel to either obtain new counsel or file a notification in writing on NYSCEF of the intention to proceed *pro se* (without counsel). No in-person appearances are required on the adjourn date. The parties may submit supplemental affirmations on or before the adjourn date addressing their efforts to provide and/or obtain outstanding discovery.

## CONCLUSION

Accordingly, it is hereby

**ORDERED** that the motion of THE WEBSTER LAW FIRM, WELLER, GREEN, TOUPS & TERRELL, LLP, and WHATLEY, KALLAS, LLC to be relieved as attorney for plaintiffs:

1. Fausto de Dios Bautista;
2. Adon Flores Encornacion;
3. Noe Sebastian Flores Encornacion;

4. Uriel Rodriguez Flores;
5. Abelardo Cayetano Herandez;
6. Faviola Ibarra;
7. Evelina Ibarra;
8. Nayeli Islas;
9. Ismael Juarez and Teofila Garcia, individually and on behalf of Iker Juarez;
10. Marisela Martinez;
11. Enrique Garcia Martinez;
12. Jose Ricardo Garcia Martinez;
13. Encarnacion and Minerva Mendoza, individually and on behalf of Freddy Mendoza, Daniel Mendoza, Ponciana Mendoza and Gissell Mendoza, Vincente Mendoza, Cesar Mendoza;
14. Estaban Mendoza and Gloria Vazquez, individually and on behalf of Kevin Mendoza, Yenny Mendoza, Ashly Mendoza and Johan Mendoza, Benjamin Mendoza;
15. Francisca Diaz, individually and on behalf of Veronica Mendoza;
16. Lucas Neri;
17. Raul Gayetan Parra;
18. Jose Armando Perez;
19. Martin Ramirez; Maria Luisa Ramirez; Javier Ramirez-Aguilar; Rosa Isela Buchan Ramirez; Oscar Gil Ramirez and Joselin Herrera, individually and on behalf of Oscar Lloyd Gil Herrera;
20. Pedro Carlos Isias Robles;
21. Mario Sierr Rubio;
22. Nicolaca Salazar;
23. Rita Minero Sanchez;
24. Santiago Flores Sanchez;
25. Jose Adan Valeriano-Villareal;
26. Gloria Vazquez;
27. Elio Villareal and Esther Sanchez, individually and on behalf of Victor Villareal and Alex Villareal;
28. Noe Zamudio, individually and on behalf of Leslie Zamudio, Edwin Zamudio and Daniel Zamudio;  
and
29. Cesar Justo Razo.

is granted without opposition upon filing of proof of compliance with the following conditions; and it is further

**ORDERED** that said attorney serve a copy of this order with notice of entry upon the former clients at her last known address by certified mail, return receipt requested, and upon the attorneys for all other parties appearing herein by regular mail; and it is further

**ORDERED** that together with the copy of the order with notice of entry served upon the former client, moving counsel shall forward a notice directing the former client to appoint a substitute attorney within 30 days from the date of mailing the notice and the client shall comply therewith, except that, in the event plaintiff intends instead to proceed *pro se*, he/she shall notify the Clerk of the Part in writing within said 30-day period; and it is further

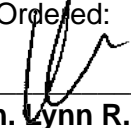
**ORDERED** that any new attorney retained by plaintiff file a notice of appearance with the Clerk of the Trial Support Office (Room 158) and the Clerk of the Part within 30 days from the date the notice to retain new counsel is mailed; and it is further

**ORDERED** that no further proceedings shall be taken against the former clients without leave of court for a period of 30 days after service on the former client of the aforesaid notice to appoint a substitute attorney; and it is further

**ORDERED** that motion sequence number 6 is hereby calendared for a control date on December 15, 2020 for the plaintiffs who have been relieved of counsel to either obtain new counsel or file a notification in writing on NYSCEF of the intention to proceed *pro se* (without counsel). No in-person appearances are required on the adjourn date. The parties may submit supplemental affirmations on or before the adjourn date addressing their efforts to provide and/or obtain outstanding discovery.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby expressly denied and this constitutes the Decision and Order of the court.

Dated: 10/28/20  
New York, New York

So Ordered:  
  
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Hon. Lynn R. Kotler, J.S.C.