

**Ikramov v A-Life Saver Home Care Servs., Inc.**

2020 NY Slip Op 33866(U)

November 20, 2020

Supreme Court, New York County

Docket Number: 161328/2017

Judge: Frank P. Nervo

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK, PART IV

-----X  
MIRZAGADAYBOY IKRAMOV, individually and on  
behalf of all other persons similarly situated who were  
employed by A-LIFE SAVER HOME CARE SERVICES,  
INC.

**DECISION AND  
ORDER**

Plaintiffs,

Index. No.  
161328/2017

-against-

A-LIFE SAVER HOME CARE SERVICES, INC.,  
and/or any other related entities

Defendants

-----X  
A-LIFE SAVER HOME CARE SERVICES, INC.,

Third-party Plaintiff,

-against-

ALL HEART HOMECARE AGENCY, INC., STEPHEN  
GERSHKOWITZ and ALBERT FINKELSTEIN,

Third-party Defendants

-----X  
FRANK P. NERVO, J.S.C.:

Plaintiffs seek an order compelling the third-party defendants to respond to their first pre-class certification set of interrogatory demands as well as their first demand for the production of documents and things (hereinafter collectively “plaintiffs’ demands”), pursuant to CPLR § 3124. Plaintiffs further seek to extend the note of issue and pre-class discovery deadlines. No party has appeared in opposition on this motion.

CPLR § 3101(a) directs that there “shall be full disclosure of all matter material and necessary to the prosecution or defense of an action, regardless of the burden of proof” (*Forman v. Henkin*, 30 NY3d 656, 661 [2018]). The test utilized is “one of usefulness and reason” (*id.*). CPLR § 3124 provides that a party seeking disclosure may move to compel compliance or a response where their demand has gone unheeded.

As relevant to this motion, plaintiffs allege, inter alia, defendants failed to pay the required overtime wage for those hours they worked as homecare providers in excess of 40 hours per week. Plaintiffs further contend that defendants maintained a practice and policy of assigning them more than 40 hours of work per week, without paying the applicable overtime hourly rate, in violation of the Labor Law, Public Health law, and Admin. Code and that the action is properly brought as a class action on behalf of defendants’ employees.

Plaintiffs have established that their demands are relevant and material to this action, specifically the identification of putative class members and information necessary to their anticipated application for class-certification. The discovery of such information is proper and necessary (*Smith v. Atlas Intern. Tours*, 80AD2d 762 [1st Dept 1981]). As the Court of Appeals has reiterated, “our court system is dependent on all parties engaged in litigation abiding by the rules of proper practice” (*Gibbs v. St. Barnabas Hosp.*, 16 NY3d 74 [2010]). Proper practice requires a timely response and good faith effort to provide a meaningful response to demands (*Kihl v. Pfeffer*, 94 NY2d 118, 123 [1999]). Third-party defendants’ failure to respond to plaintiffs’ demand, as well as their failure to appear on this motion, has “impaired the efficient function of the

court,” and has unnecessarily placed the court in the position of “having to order enforcement remedies to respond to the delinquent conducts of members of the bar, often to the detriment of the litigants they represent” (*Gibbs v. St. Barnabas Hosp.*, 16 NY3d 74 [2010]).

Turning to movants’ request to extend the class certification and note of issue deadlines, such extensions are discretionary upon a showing of good cause (*see Rodriguez v. Metropolitan Cable* (79 AD3d 841 [2d Dept 2010]; CPLR § 2004). Here, plaintiffs have established the third-party defendants’ failure to respond to their demands has delayed their ability to move for class certification. Thus, extension of the class certification deadline is prudent (*see Galdamez v. Biordi Constr. Corp.*, 50 AD3d 357 [1st Dept 2008]). Likewise, the Court extends the note of issue deadline, as below.

Accordingly, it is

ORDERED that plaintiffs’ motion is granted; and it is further

ORDERED that third-party defendants All Heart Homecare Agency, Stephen Gershkowitz, and Albert Finkelstein shall provide the material sought in plaintiff’s first pre-class certification set of interrogatory demands and first demand for the production of documents and things (NSYCEF Doc. No. 48) within 20 days of notice of entry of this decision and order; and it is further

ORDERED that failure to comply with this decision and order may result in the imposition of sanctions, including but not limited to striking pleadings or precluding

evidence, pursuant to CPLR § 3126 and in the Court's discretion, upon further application; and it is further

ORDERED that plaintiffs shall move for class certification on or before February 26, 2021; and it is further

ORDERED that the note of issue deadline is vacated and a new note of issue date shall be set at the conference below; and it is further

ORDERED that the parties shall appear for a Court Conference on January 5, 2021 at 3:00pm via Microsoft Teams.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Dated: November 20, 2020

ENTER:

A handwritten signature in black ink, appearing to read 'Frank P. Nervo', written over a horizontal line.

Hon. Frank P. Nervo, J.S.C.