Turgunbaev v Home Family Care, Inc.
2021 NY Slip Op 32213(U)
November 3, 2021
Supreme Court, Kings County
Docket Number: Index No. 515325/15
Judge: Lawrence Knipel
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At an IAS Term, Part Comm 4 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 3rd day of November, 2021.

PRESENT:

HON. LAWRENCE KNIPEL,

Justice.

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IKRAM TURGUNBAEV and MASHRAB ASROROV,
Individually and on behalf of all other similarly situated,

Plaintiffs,

-against-

Index No.: 515325/15

HOME FAMILY CARE, INC.,

Defendant.

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The following e-filed papers read herein: NYSEF Nos.:

Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed	78-93
Opposing Affidavits (Affirmations)	94-103
Affidavits/ Affirmations in Reply	105

Upon the foregoing papers, plaintiffs Ikram Turgunbaev and Mashrab Asrorov, individually and on behalf of all other similarly situated (plaintiffs) move, in motion (mot.) sequence (seq.) 6, for an order certifying this action as a class action, designating Virginia & Ambinder, LLP and Naydenskiy Law Firm, LLC as class counsel, and approving for publication the proposed Notice of Class Action Lawsuit and Publication Order annexed to their papers.

Background Facts and Procedural History[1]

On December 17, 2015, plaintiff Ikram Turgunbaev commenced the instant action individually and on behalf of a putative class consisting of home health care attendants employed by defendant Home Family Care, Inc. (defendant or HFC) who did not live in the homes of defendant's clients but worked 24-hour shifts providing them with personal care, assistance, health related tasks, and other services in the State of New York. Among other things, the complaint sought damages under the Labor Law and New York Codes, Rules, and Regulations based upon defendant's alleged failure to provide legally required wage statements and notices, unpaid minimum wages, unpaid overtime compensation, and unpaid spread of hours pay.

On July 25, 2016, defendant moved for summary judgment dismissing plaintiff's complaint. In so moving, defendant argued that, under the New York State Department of Labor's (DOL) interpretation of its Miscellaneous Industries and Occupations Minimum Wage Order (the Wage Order), it was only required to pay plaintiff and members of the putative class for 13 hours per 24-hour shift provided that they were afforded at least eight hours of sleep and actually received five hours of uninterrupted sleep, and that they were afforded three hours for meals. Defendant further noted that plaintiff did not allege in her complaint that she and members of the putative class failed to receive the requisite hours for sleep and meals. Under the circumstances, defendant argued that there was no basis for plaintiff's action inasmuch as it was perfectly legal for

[1] **In the interest of judicial economy, portions of the background facts and procedural history have been taken from the court's Decision and Order dated March 22, 2021.**

it to pay home health care attendants for 13 hours of work during their 24-hours shifts. Defendant also argued that plaintiff's action must be dismissed inasmuch as a class action was not a proper remedy for resolving the underlying wage claims. In particular, defendant claimed that individual fact inquiries would be required for each claim. Finally, defendant argued in the alternative, the court should stay the action pending the outcome of the appeal of the case of *Andryeyeva v New York Health Care, Inc.* (45 Misc. 3d 820 [2014]) in the Appellate Division, Second Department.

In an order dated August 19, 2016, this court stayed the case pending the Appellate Division's determination in *Andryeyeva.* On September 13, 2017, the Appellate Division issued its decision in *Andryeyeva*, which upheld the lower court's ruling granting class certification (*Andryeyeva v New York Health Care, Inc*., 153 AD3d 1216 [2017]). In so ruling, the Appellate Division found that the DOL's interpretation of the Wage Order was neither rational nor reasonable because it conflicted with the plain language of the Order (*id.* at 1218).

On March 26, 2019, the Court of Appeals reversed the Appellate Division's ruling in *Andryeyeva* (*Andryeyeva v New York Health Care, Inc.* 33 NY3d 152 [2019]). In this regard, the Court determined that the Appellate Division erred in ruling that the DOL's interpretation of the Wage Order was irrational and unreasonable (*id.* at 164). The Court further remitted the matter "for consideration of alternative grounds for class-certification for alleged violations of New York's Labor Law, inclusive of defendants' alleged systematic denial of wages earned and due, unaddressed by the courts below because of their erroneous rejections of DOL's interpretation [of the Wage Order]" (*id.*). Further,

although the Court did not rule on the merits of the plaintiffs' class certification motions, in dicta, it addressed the defendants' argument that, because each putative class member's claim is fact specific and turns on whether the attendant received the required number uninterrupted sleep and meal hours, the plaintiffs could not offer generalized proof on a class-wide basis. In particular, the Court noted that "the fact that damages may vary by class member does not per se foreclose class certification" and that "[a] difference in damage awards is an insufficient basis to deny certification as a matter of law where the class may rely on representative evidence of the class wide violations" (*Andryeyeva*, 33 NY3d at 185). The court further stated:

> "Plaintiffs allege, and claim there is evidence of, defendants' systemic violations of the Wage Order and Labor Law, such as defendants' failure to adequately compensate home health care aides when they did not receive the minimum time for sleep and meal breaks during their 24-hour shifts, maintain adequate records of, or compensate for, the hours actually worked, and provide appropriate sleep facilities. Claims of uniform systemwide violations are particularly appropriate for class certifications." (*id.* at 184).

In an order dated October 18, 2019, the court granted, without opposition, plaintiff's motion to vacate the stay and to amend the complaint and directed that plaintiff file an amended complaint. On October 22, 2019, plaintiff filed an amended complaint which contained new causes of action, new factual allegations and added plaintiff Mashrab Asrorov to the caption. The amended complaint also removed causes of action for failure to provide wage notices and wage statements and added claims for failure to pay wages and breach of contract. These new factual allegations included claims that

plaintiff and the members of the putative class did not receive the requisite amount of time for sleep and meals when working 24-hour shifts as required by the Wage Order.

On January 22, 2021, the court issued an order directing that all pre-class certification discovery including depositions be completed by March 22, 2021, that plaintiffs move for class certification 30 days after the completion of discovery, and that plaintiffs file a note of issue by June 18, 2021. In an order dated March 22, 2021, the court denied defendant's motion for summary judgment. The instant motion is now before the court.

Plaintiffs' Motion for Class Certification

Plaintiffs move, pursuant to CPLR 901, for an order certifying this action as a class action with the class defined as:

> "All individuals who performed work on behalf of Defendant as non-residential home health aides and/or personal care assistants in the State of New York at any time between December 2009 and today."

Plaintiffs also move for an order designating Virginia & Ambinder, LLP and Naydenskiy Law Firm, LLC as class counsel and approving for publication the proposed Notice of Class Action Lawsuit and Publication Order attached to their motion papers.

In support of their motion, plaintiffs submit their own affidavits, as well as an affidavit by non-party Rosa Clemente. In this regard, plaintiff Turgunbaev alleges in his affidavit that:

> -He worked for HHC as a home health aide between December 2014 and August 2015 during which time he performed services for elderly and/or physically/mentally ailing clients including dressing, bathing, personal grooming,

cooking, feeding, cleaning, and taking clients to doctor's appointments.

-During his employment, at least 100 individuals who performed similar tasks worked for HHC and at least 20 different co-workers showed up for each in-service training session.

-During his employment with HHC, he maintained his own home but typically worked five 24-hour shifts per week which were spent in the homes of clients. During these shifts, he and his co-workers were generally not permitted to leave the clients' residences and were instructed to provide assistance to clients throughout the night.

-While working 24-hour shifts, he and his co-workers typically did not get an opportunity to sleep without interruptions for five hours and did not get a one-hour break for each of the three meals per day.

-During his employment, HFC did not have any procedure or schedule that tracked whether he received regularly scheduled sleep and meal breaks during 24-hour shifts and he was never told to maintain or submit a log showing such breaks. Further, HFC never informed him or his co-workers that they were entitled to additional pay if they did not receive sleep and meal breaks during 24-hour shifts.

-During his employment, HFC paid him and his co-workers a flat rate of $140 per 24-hour shift and he was only paid for 13 hours of the 24-hour shifts regardless of whether or not he received the requisite breaks for sleep and meals.

-When he and his co-workers worked ten or more hours per day, there were not paid "spread of hours" premiums of one additional hour at the minimum wage rate for those days in which they worked ten or more hours.

In his affidavit, plaintiff Asrorov makes similar allegations. In particular, Asrorov avers that:

-He worked for HFC as a home health aide between April 2013 and July 2013 where he performed services for elderly and/or physically/mentally ailing clients including dressing, bathing, personal grooming, cooking, feeding, cleaning, and taking clients to doctor's appointments.

-During his employment, no fewer than 40 individuals worked with him at HFC and 30 to 40 different people showed up at each in-service training session.

-During his employment, he maintained his own home but typically worked four 24-hour shifts per week which were spent in the clients' homes.

-During shifts, he and his co-workers were generally not permitted to leave the clients' residences, were instructed not to leave the clients by themselves, and were instructed to provided assistance to clients throughout the night.

-When working 24-hour shifts, he and his co-workers typically did not get an opportunity to sleep without interruptions for five hours and did not get one-hour breaks for meals.

-During his employment, HFC did not have any procedure or schedule that tracked sleep and meal breaks and did not tell its employees to maintain or submit a log of meal and sleeping times for 24-hour shifts.

-During his employment, HFC paid him and his co-workers a flat rate of approximately $130 per 24-hour shift and he was only paid for 13 hours of the shift period.

-HFC did not keep any records of the hours he and his co-workers worked during their 24-hour shifts and HFC required its home health aides to call an automated telephone system and punch-in a code only at the beginning of each 24-hour shift, but there was no code to punch-in and report whether they received sleep or meal breaks.

-When he and his co-workers worked ten or more hours per day, they were not paid the required "spread of hours" premium.

-He complained to his coordinator about not receiving uninterrupted sleep breaks.

In her affidavit, Ms. Clemente states that she worked as a home health aide for HFC between December 2015 and January 2017 during which time she typically worked seven 8-hour shifts per week. Ms. Clemente further avers that her co-workers worked similar hours and none of them were paid at the correct overtime rate for all the hours that they worked over forty hours. Finally, Ms. Clemente states that when she and her co-workers worked ten or more hours per day, they were not paid the "spread of hours" premium of one additional hour at the minimum wage rate.

In further support of their motion for class certification, plaintiffs submit samples of Turgunbaev and Asrorov's paystubs, which indicate that they were paid at a payrate of $140 and $130 respectively per shift and that they were never paid above these payrates. Plaintiffs also submit a sampling of pay records for Ms. Torres and other members of the putative class which indicate that they were not paid the proper overtime rate during certain pay periods in which they worked more than 40 hours a week.

Given this evidence, plaintiffs argue that they have satisfied all five requirements for class certification set forth in CPLR 901. Specifically, plaintiffs contend that Turgunbaev's allegation that he worked with at least 100 home health aides who were subject to the same HFC policy of only paying them for 13 hours during their 24-hour shifts regardless of whether or not they received the proper sleep and meal breaks satisfies the requirement of numerosity since joinder of all these parties would be impractical.

Similarly, plaintiffs main that Asrorov's claim that she worked with at least 40 similarly situated home health aides while employed by HFC satisfies the numerosity requirement.

Plaintiffs also maintain that they have satisfied the requirement that common questions of law and fact predominate over any questions affecting individual members of the class. In particular, plaintiffs argue that their evidence demonstrates that their claims arise out of a HFC's systemwide violation of the Wage Order and Labor Law inasmuch as a matter of policy, HFC only paid home health aides who worked 24-hour shifts for 13 hours regardless of whether or not they received the required breaks for sleep and meals, failed to pay overtime compensation for hours worked over 40 hours per week, and failed to pay spread of hours compensation. Plaintiffs further argue that, under settled Court of Appeals and Appellate Division caselaw, the fact that damages will vary amongst individual members of the putative class is not a sufficient basis for denying class certification.

In further support of their motion for class certification, plaintiffs argue that their claims are typical of the putative class claims. In this regard, plaintiffs note that they and members of the putative class provided similar services and were underpaid pursuant to identical policies. In addition, plaintiffs contend that they will adequately protect the interests of the class inasmuch as they seek the same relief as members of the putative class, they are familiar with the lawsuit, and are fully aware of the claims and those of the putative class which they seek to represent. Further, plaintiffs aver that their attorneys are experienced in class actions and labor and employment law and have represented plaintiffs in other class action lawsuits involving the underpayment of home health aides.

Thus, plaintiffs maintain that their attorneys clearly have a level of competence that ensures that they can fairly and adequately represent the class.

Plaintiffs also argue that a class action is superior to other available forms of relief. In particular, plaintiffs point to the aforementioned language in *Andryeyeva*, where the Court of Appeals specifically recognized that claims involving the systemwide underpayment of home health aides are "particularly appropriate for class certifications" (*Andryeyeva*, 33 NY3d at 184). In addition, plaintiffs maintain that subjecting the court and parties to the expenses and time of multiple trials would be wasteful and resolving the common issues on a class-wide basis would create uniform resolution of the issues.

In further support of their motion for class certification, plaintiffs argue that they have satisfied the requirements for class certification set forth in CPLR 902 inasmuch as these factors mimic the requirements of CPLR 901.

As a final matter, plaintiffs note that numerous lower court cases have granted class certification in cases involving facts and allegations virtually identical to those involved in this case. (i.e., the underpayment of home health aides).

Defendant's Opposition

In opposition to plaintiffs' motion for class certification, HFC argues that the proposed class action is not superior to other remedies available to plaintiffs. In this regard, HFC notes that the New York Department of Labor (DOL) has already calculated the precise underpayments to approximately 1,346 employees and former employees of HFC in an audit and that, pursuant to a settlement agreement between HFC and the DOL, the 1,246 underpaid employees have been repaid 55.4% of what they were owed. Defendant HFC also notes that amongst the former employees who benefitted from this settlement are named plaintiff Turgunbaev and the purported putative class member Ms. Clemente. Thus, HFC argues that the audit and administrative actions taken by the DOL are superior to the class action proposed by plaintiffs.

HFC also argues that class certification should be denied because plaintiffs' wage claim based upon lack of sleep and lack of meal break allegations cannot and should not be resolved on a class basis since individualized, fact-specific determinations would need to be made concerning hundreds of different aides during thousands of different shifts. HFC also notes that specific inquiries would need to be made inasmuch as 1,346 of HFC's former and current employees have already been renumerated as a result DOL audit while others have not. Moreover, HFC points out that sampling employees' payroll records alone will not indicate whether plaintiffs or members of the putative class received the required amount of uninterrupted sleep and meal breaks.

Defendant HFC further contends that the named plaintiffs' claims are not typical of the proposed class. In particular, HFC notes that the named plaintiffs contend that they

regularly worked 24-hour shifts but were only paid for 13 hours of each shift. However, the proposed class encompasses all non-residential home health aides who performed work for HFC, regardless of the type and number of shifts worked by these individuals.

In further opposition to plaintiffs' motion for class certification, HFC argues that plaintiffs cannot adequately represent the interests of the class. In this regard, HFC contends that Turgunbaev cannot effectively represent the proposed class because he does not have any interest in the litigation since his grievances have already been addressed by the DOL's audit. In addition, HFC maintains that Asrorov cannot adequately represent the interests of the class inasmuch as he lied when he claimed in his affidavit that he attended an in-service training session attended by 30 to 40 individuals. In support of this contention, HFC submits an affidavit by its president Alexander Kiselev. According to Mr. Kiselev, HFC only conducts two training sessions per year, a Spring session for individuals hired as of March 1st, and a Fall session for individuals hired as of September 1st. Here, since Asrorov was only employed between April 2013 and July 2013, Mr. Kieselev contends that he could not have attended a training session.

As a final matter, HFC argues that plaintiffs' motion for class certification must be denied because they have not satisfied the manageability requirement under CPLR 902. Specifically, HFC avers that the court would have to conduct individualized mini-trials for the putative class members to determine whether they received the requisite breaks for sleeping and meals and whether or not they were reimbursed through the DOL audit.

Plaintiff's Reply

In reply to HFC's opposition papers, plaintiffs maintain that there is no merit to defendant's argument that the DOL's audit precludes certification of the class. To the contrary, plaintiffs argue that the fact that the DOL determined that HFC underpaid 1,346 individuals between June 29, 2013 and December 23, 2016 constitutes evidence of the systematic underpayment of home health aides. Plaintiffs further note that that the period covered by the audit is far shorter than the period covered by the class, which runs from December 2009 to the present. In addition, plaintiffs point out that the audit only provided partial compensation for unpaid overtime wages. In contrast, the plaintiffs here seek compensation for unpaid minimum wages, spread of hours compensation, and unpaid wages and benefits owed pursuant to the Wage Parity Act and Living Wage Law. Plaintiffs also note that they allege that they did not receive the requisite meal and sleep breaks during 24-hour shifts and should therefore be paid for the entire 24-hour period. According to plaintiffs, the audit calculated overtime damages for those working 24-hour shifts assuming only 13 hours of work. Furthermore, plaintiffs maintain that any unpaid overtime wages that are paid to a subset of class members pursuant to the audit can be factored in to reduce their overall damages. Under the circumstances, plaintiffs argue that the DOL audit is not a basis for denying class certification.

Discussion

In moving for class certification, "[t]he proposed class representative bears the burden of establishing compliance with the requirements of both CPLR 901 and 902" (*Krobath v South Nassau Comm. Hosp.*, 178 AD3d 805, 806 [2019]). In particular, "[a] class action may be maintained in New York only after the five prerequisites of CPLR 901 [a] have been satisfied [and] [o]nce those prerequisites are satisfied, the court 'shall consider' the factors set forth in CPLR 902" (*Cooper v Sleepy's LLC*, 120 AD3d 742, 743 [2014], quoting CPLR 902). "[T]he criteria to be considered in granting class action certification, is to be liberally construed" (*Krobath* at 806, citing *Dowd v Alliance Mtge. Co.*, 74 AD3d 867, 869 [2010]). Further, as previously noted, claims of uniform and systematic underpayment of wages "are particularly appropriate for class certifications" (*Andryeyeva*, 33 NY3d at 184). In addition, "the potential for different individual damages claims is not a valid reason for denying class action status" (*Globe Surgical Supply v Geico Ins. Co.*, 59 AD3d 129, 142 [2008]). Finally, the determination of whether to grant class certification is vested in the sound discretion of the trial court (*Cooper* at 743).

CPLR 901 (a)(1) requires a showing that the class is so numerous that joinder of all members is impracticable. "[T]he minimum number permissible may depend on a variety of factors [and] '[there is no mechanical test to determine whether ... numerosity has been met'" (*Globe Surgical Supply v GEICO Ins.* Co., 59 AD3d 129, 137 [2008], quoting *Friar v Vanguard Holding Corp.*, 78 AD2d 83, 96 [1980]). Although there is no set number which establishes numerosity, "'[i]t has been held that the threshold for

impracticability of joinder seems to be around forty'" (*Globe Surgical Supply* at 138, quoting *Dornberger v Metropolitan Life Ins. Co.*, 182 FRD 72, 77 [SD NY 1999]). Here, Turgunbaev states in his affidavit that he worked with at least 100 other home health aides who were subject to the same underpayment of wages and benefits that they experienced. Further, Asrorov states in his affidavit that he worked with at least 40 other home health aides during his employment with HFC. Under the circumstances, the numerosity requirement has been satisfied.

The statute also requires that there be "questions of law or fact common to the class which predominate over any questions affecting only individual members" (CPLR 901 [a][2]). Courts have consistently certified class actions notwithstanding differing individual damages where "there is uniformity in contractual agreements and/or statutorily imposed obligations (*Globe Surgical Supply*, 59 AD3d at 139). Indeed, where there is evidence of underpayment of statutorily and contractually required wages based upon an employers' uniform and systematic policy, "[a] difference in damage awards is an insufficient basis to deny certification as a matter of law where the class may rely on representative evidence of the class wide violations" (*Andryeyeva*, 33 NY3d at 185).

Here plaintiffs allege that they and members of the putative class were paid a flat rate for 13 hours per 24-hour shift when they did not receive the required uninterrupted sleep and meal breaks, that there was no system in place to track whether or not the received these breaks, that they did not receive overtime pay for hours worked beyond 40 hours per week, that they did not receive the spread of hours premium, and they did not receive the prevailing wages and benefits required under the Public Health Law and New

York City Administrative Code. Plaintiffs also allege that this underpayment of wages and benefits to home health aides was part of a uniform system-wide policy adopted by HFC. Furthermore, plaintiffs have supported these allegations by submitting sworn affidavits by the named plaintiffs as well as payroll records which indicate that the named plaintiffs were only paid for 13 hours of work when they worked 24-hour shifts. "This evidence satisfies the minimum threshold of establishing that their claim is not a sham" and that questions of fact common to the class predominate over questions affecting only individual members (*Kurovskaya v Project O.H.R. [Office for Homecare Referral], Inc.*, 194 AD3d 612, 613 [2021]). In this regard, that fact that Turgunbaev and other members of the putative class received compensation for unpaid overtime wages pursuant to the DOT audit is insufficient to show that individual issues will predominate. In particular, the DOT audit only dealt with unpaid overtime wages and did not address the bulk of plaintiffs' claims, which include failure to compensate for full 24-hour shifts when the requisite meal and sleep breaks were not taken and failure to pay spread of hours compensation. While it is true the compensation paid to Turgunbaev and members of the putative class will have to be taken into account when calculating damages, differing damage awards is an insufficient basis to defeat a motion for class certification. (*Andryeyeva*, 33 NY3d at 185).

CPLR 901 (a)(3) requires that the "claims and defenses of the representative parties [be] typical of the claims or defenses of the class." "Typical claims are those that arise from the same facts and circumstances of the claims of the class members" (*Globe*, 59 AD3d at 143). "Typicality does not require identity of issues and the typicality

requirement is met even if the claim asserted by class members differ from those asserted by other class members" (*Pludeman v Northern Leasing Sys., Inc.*, 74 AD3d 420, 423 [2010]).

Here, the claims asserted by plaintiffs on behalf of themselves and the putative class all arise out of HFC's alleged policy of systematically and uniformly underpaying home health aides. Furthermore, as noted above, the fact that claims may differ among class members is insufficient to demonstrate a lack of typicality. Accordingly, plaintiffs have satisfied the requirements of CPLR 901 (a)(3).

CPLR 901 (a)(4) requires that a party seeking class certification demonstrate that the representative plaintiffs "will fairly and adequately protect the interests of the class." "The three essential factors to consider in determining adequacy of representation are potential conflicts of interest between the representative and the class members, personal characteristics of the proposed class representative (*e.g.*, familiarity with the lawsuit and his or her financial resources), and the quality of the class counsel" (*Globe*, 59 AD3d at 144).

Plaintiffs have demonstrated that they will fairly and adequately protect the interests of the class. In particular, contrary to HFC's claim, the fact that Turgunbaev's was compensated pursuant to the DOL audit does not demonstrate that he lacks an interest in this suit. As previously noted, the audit did not address the bulk of Turgunbaev's claims in this action. Further, Mr. Kiselev's claim that Asrorov did not attend any training sessions is insufficient to demonstrate that his personal characteristics preclude him from being a class representative. Finally, it is not disputed that plaintiffs'

attorneys have the skills and experience necessary to represent the class. Accordingly, plaintiffs have satisfied the requirements of CPLR 901 (a)(4).

CPLR 901 (a)(5) states that a class action may be certified only if "a class action is superior to other available methods for the fair and efficient adjudication of the controversy." As noted above, the Court of Appeals has stated that claims involving the systematic and uniform underpayment of wages, "are particularly appropriate for class certifications" (*Andryeyeva*, 33 NY3d at 184). Moreover, the fact that members of the putative class have an administrative remedy under the Labor Law is not a basis for denying class certification (*Nawrocki v Photo Constr. & Dev. Corp.*, 82 AD3d 534, 536 [2011]). Finally, since the alleged damages suffered by an individual class member are likely to be relatively modest, "a class action is the superior vehicle for resolving this wage dispute" (*id.* at 536). Accordingly, plaintiffs have satisfied the requirements of CPLR 901 (a)(5).

As a final matter, the court finds that the factors set forth in CPLR 902 weigh in favor of granting class certification. In this regard, these factors include:

> "(1) The interest of members of the class in individually controlling the prosecution or defense of separate actions; (2) The impeachability or inefficiency of prosecuting or defending separate actions; (3) The extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (4) The desirability or undesirability of concentrating the litigation of the claim in the particular forum; [and] (5) the difficulties likely to be encountered in the management of the class action."

Most of the factors set forth in CPLR 902 have already been considered by the court in its discussion of CPLR 901 (a)(1) (2), (3), and (5). In addition, HFC has not identified any

pending litigation between it and current or former home health aides involving wage disputes. Further, this court is an appropriate forum since all of the class members were employed as home health aides in the state of New York. Plaintiffs, therefore, have satisfied the requirements of CPLR 902.

Accordingly, plaintiffs' motion for class certification is granted and leave is granted for plaintiffs to prosecute their action on behalf of a class consisting of:

> "All individuals who performed work on behalf of Defendant as non-residential home health aides and/or personal care assistants in the State of New York at any time between December 2009 and today."

Furthermore, the proposed Notice of Class Action Lawsuit attached plaintiffs' motion papers as exhibit L (NYSCEF Document no. 91) is approved for publication.

Within 30 days after entry of this order, HFC shall furnish plaintiffs' counsel with a class list containing the names of all individuals employed by HFC as non-residential home health aides in New York between December 2009 and today. This list shall include the individuals' last known mailing and email addresses and, to the extent possible, the list is to be furnished in electronic form. Within 30 days after plaintiffs' counsel receives this list, plaintiff shall cause of a copy of the Notice of Class Action to be mailed to every class member in English, Russian, Spanish, Polish, and Chinese once by first class mail and once by electronic mail (when possible). In addition, within 30 days after plaintiffs' counsel receives the class list, counsel shall cause a copy of the Notice of Class Action to be made available at a designated location on Virginia & Ambinder, LLP's website located at www.vandallp.com.

Conclusion

In summary, plaintiffs' motion, in mot. seq. 6, for an order for an order certifying this action as a class action, designating Virginia & Ambinder, LLP and Naydenskiy Law Firm, LLC as class counsel, and approving for publication the proposed Notice of Class Action Lawsuit and Publication Order annexed to their papers is granted.

This constitutes the decision and order of the court.

E N T E R,