

<b>Joseph v Office Solution Group, LLC</b>
2022 NY Slip Op 30271(U)
January 27, 2022
Supreme Court, New York County
Docket Number: Index No. 157478/2020
Judge: Frank P. Nervo
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. FRANK NERVO PART 04

*Justice*

-----X

YVES JOSEPH

Plaintiff,

- v -

OFFICE SOLUTION GROUP, LLC,

Defendant.

-----X

INDEX NO. 157478/2020

MOTION DATE 07/06/2021

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38 were read on this motion to/for DISCOVERY.

This matter was transferred to Part IV.

Plaintiff moves to compel defendant to provide time-clock records (clock-in/clock-out records of employees), paycheck records for employees, electronically stored information related to travel/spread of hours/shift pay, and a list of the putative class members. Plaintiff further seeks an extension of time to move for class certification. Defendants oppose contending that plaintiff waived proceeding as a class by failing to move to certify the class within 60 days of defendant's answer, pursuant to CPLR § 901.

Despite the filing of this matter nearly one and one-half years ago, no party has sought to hold a court conference, and none has occurred in this matter. The Court's search of the record reveals that the complaint was filed in September 2020 (NYSCEF Doc. No. 1) and defendant filed an answer in November 2020 (NYSCEF Doc. No. 2); the next filing is the notice of the instant discovery motion (NYSCEF Doc. No. 3). Notably, defendant did not seek relief related to the class-action claims until plaintiff filed the instant discovery motion. Consequently, the Court finds that there is no prejudice in extending the time for plaintiff to move for class certification given the discovery related delays outlined in plaintiff's motion papers and the attempts to stipulate to extending same, and that portion of the motion is granted pursuant to CPLR § 2004.

Turning to that portion of the motion seeking to compel discovery responses, 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.*). "[U]pon learning that a party has repeatedly failed to comply with discovery orders, [trial courts] have an affirmative obligation to take such additional steps as are necessary to ensure

future compliance” (*Figdor v. City of New York*, 33 AD3d 560, 561 [1st Dept 2006]).

Here, plaintiff alleges, essentially, that defendant failed to pay its workers overtime, spread of hours, and shift wages in violation of the Labor Law, and failed to provide workers with related wage statements (*see* NYSCEF Doc. No. 1, causes of action one through four). Defendant’s opposition is primarily devoted to that portion of the motion seeking to extend plaintiff’s time to move for class certification, a single paragraph addresses the substance of the discovery sought whereby defendant contends plaintiff has not established a basis for the material sought (*see* NYSCEF Doc. No. 25 at p. 15). The discovery sought, timecard and similar records, is clearly related to plaintiff’s wage claims and necessary thereto, as well as necessary to identify members of the putative class, and within the possession of defendant.

Accordingly, it is

ORDERED that the motion is granted to the extent of extending plaintiff’s deadline to move for class certification to December 29, 2023 and compelling defendants to provide the discovery sought herein by March 18, 2022; and it is further

ORDERED that counsel shall confer and file a single-joint proposed preliminary conference order addressing all other known discovery by March 18, 2022 (preliminary conference order forms are available online at: <https://www.nycourts.gov/LegacyPDFS/courts/1jd/suptmanh/PC-Genl.pdf>); and it is further

ORDERED that to the extent that counsel cannot reach agreement on the material contained in the preliminary conference order they shall file, contemporaneously with the proposed order above, a single-joint letter outlining the dispute; and it is further

ORDERED that the above proposed order/letter shall be filed via NYSCEF with courtesy copy via first-class mail to chambers at 80 Centre Street, Part IV New York, NY 10013; and it is further

ORDERED that the failure to timely file a proposed preliminary conference order, as above, shall result in the Court issuing a sua sponte order, may result in sanctions without further application, and shall constitute a waiver of objections to same; and it is further

ORDERED that the motion is otherwise denied.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

1/27/2022

DATE

FRANK NERVO, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE