SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 02TR

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LEAH GOLLMAN,

Plaintiff,

- v -

WENDY'S INTERNATIONAL LLC,THE WENDY'S COMPANY, WENDY'S OLD FASHIONED HAMBURGERS OF NEW YORK, LLC,WENDY'S RESTAURANTS OF NEW YORK, LLC,

Defendant.

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INDEX NO. 653783/2022

MOTION DATE 06/06/2023

MOTION SEQ. NO. 005

DECISION + ORDER ON MOTION

HON. LORI S. SATTLER:

The following e-filed documents, listed by NYSCEF document number (Motion 005) 40, 41, 42, 43 were read on this motion to/for DISMISS.

In this putative class action, defendants Wendy's International LLC; The Wendy's Company; Wendy's Old Fashioned Hamburgers of New York, LLC; and Wendy's Restaurants of New York, LLC (collectively "Defendants") move for an order to dismiss the first cause of action in the Amended Complaint. Plaintiff Leah Gollman opposes the motion.

According to the Amended Complaint, Gollman was employed at the Wendy's restaurant located at 714 Third Avenue in Manhattan ("the restaurant") from April 2014 through July 2022. Defendants are alleged to have jointly operated the restaurant from at least 2014 through May 2022, at which time a franchisee assumed ownership and control over the restaurant. An hourly employee, Gollman performed tasks such as food preparation, transaction processing, and maintenance of the restaurant's cleanliness that allegedly required her uniform to be cleaned after each shift.

She maintains that Defendants required her and other members of the proposed class to wear a uniform consisting of a shirt, an apron, and a hat bearing the Wendy's logo during every

shift. Defendants allegedly provided Gollman with only one hat, two aprons, and three shirts during the entirety of her employment despite the purported need to wash the uniform before each shift. Gollman claims that Defendants did not launder or offer to launder her uniforms or those of the other putative class members. She further alleges that Defendants did not pay her or her coworkers uniform maintenance pay or otherwise reimburse the cost of maintaining the uniform despite the requirement that employee uniforms be clean at the beginning of shifts.

Gollman commenced this action on October 12, 2022 and filed an Amended Complaint on May 12, 2023. She asserts three causes of action: a class claim for uniform maintenance pay, an individual claim under Section 195(1) of the New York Labor Law alleging failure to provide wage notice, and an individual claim under Section 193(3) of the New York Labor Law alleging failure to provide wage statements. Defendants now move to dismiss the first cause of action, arguing that CPLR 901(b) prevents Gollman from maintaining it as a class claim.

It is generally "premature to dismiss class action allegations before an answer is served or precertification discovery has been taken" (*Griffin v Gregory's Coffee Mgt. LLC*, 191 AD3d 600 [1st Dept 2021], quoting *Downing v First Lennox Terrace Assoc.*, 107 AD3d 86, 91 [1st Dept 2013], *affd* 24 NY3d 382 [2014]). To succeed on a pre-certification motion to dismiss, a defendant must conclusively show that there is no basis for class action relief as a matter of law (*Griffin*, 191 AD3d at 601).

CPLR § 901(b) provides that, unless specifically authorized by statute, "an action to recover a . . . minimum measure of recovery . . . may not be maintained as a class action." "A statute that creates or imposes a 'minimum measure of recovery' is one that, upon proof of its violation, provides for the recovery of some fixed minimum amount, without regard to the amount of damages suffered" (*Pruitt v Rockefeller Center Properties, Inc.*, 167 AD2d 14, 26 [1st Dept

1991]). Here, the first cause of action is brought pursuant to 12 NYCRR § 146-1.7 ("Uniform Maintenance Pay Order"), which requires employers to provide employees with additional compensation for maintaining their uniforms where the employees are responsible for doing so. The section sets forth a rate for employees' weekly uniform maintenance pay based on their location, hours worked, and employer size.

Defendants argue that the Uniform Maintenance Pay Order creates a "minimum measure of recovery" within the meaning of CPLR § 901(b), rather than allowing for the recovery of compensatory damages, because the regulation sets forth a minimum weekly amount that employers must pay for uniform maintenance. Defendants argue that were plaintiffs permitted to recover "actual compensatory damages," the damages would consist of "reimbursement of laundering receipts or dry-cleaning charges" (NYSCEF Doc. No. 41 at 5). They therefore contend Gollman is not permitted to maintain this cause of action as a class claim. In opposition, Gollman argues that the section merely sets forth a weekly supplement to class members' wages for having to maintain their uniforms. She claims that the damages for the first cause of action would be these unpaid supplemental wages, which she argues are class members' actual damages and not a minimum measure of recovery.

Recovery for nonpayment of the wages is effectuated pursuant to Labor Law § 663(1), which provides that employees paid "less than the wage to which [they are] entitled . . . shall recover in a civil action the amount of any such underpayments." The first cause of action alleges Defendants failed to pay putative class members wages required under the Uniform Maintenance Pay Order. Should the class members prevail, they would be entitled to recover the supplemental wages they were not paid by Defendants. These would amount to actual compensatory damages, rather than a fixed minimum amount (*see Pruitt*, 167 AD2d at 26).

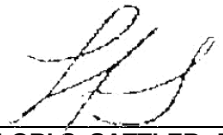
Furthermore, it is well-established that class treatment is appropriate for claims of systemic wage violations, and the Court has routinely allowed class claims to proceed for alleged violations of minimum wage orders similar to the Uniform Maintenance Pay Order at issue in this action (*see, e.g., Andryeyeva v New York Health Care, Inc.*, 33 NY3d 152 [2019]; *Konstantynovska v Caring Professionals, Inc.*, 215 AD3d 405, 406 [1st Dept 2023]; *Kurovskaya v Project O.H.R. [Office for Homecare Referral], Inc.*, 194 AD3d 612 [1st Dept 2021]). Defendants fail to cite any applicable authority to the contrary. They therefore fail to conclusively show that Gollman's class claim lacks any basis as a matter of law.

Accordingly, it is hereby:

ORDERED that the motion is denied; and it is further

ORDERED that Defendants shall file and serve via NYSCEF an Answer to the Amended Complaint within 20 days of service of a copy of this Decision and Order with Notice of Entry.

This constitutes the Decision and Order of the Court.



8/11/2023
DATE

LORI S. SATTLER, J.S.C.

CHECK ONE:		**CASE DISPOSED**		[X]	**NON-FINAL DISPOSITION**		
	[ ]	**GRANTED**	[X] **DENIED**	[ ]	**GRANTED IN PART**	[ ]	**OTHER**
APPLICATION:	[ ]	**SETTLE ORDER**		[ ]	**SUBMIT ORDER**		
CHECK IF APPROPRIATE:	[ ]	**INCLUDES TRANSFER/REASSIGN**		[ ]	**FIDUCIARY APPOINTMENT**	[ ]	**REFERENCE**