

**Sanchez v Unique Steel Works LLC**

2025 NY Slip Op 32028(U)

May 28, 2025

Supreme Court, Kings County

Docket Number: Index No. 512670/24

Judge: Carolyn E. Wade

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At an IAS Term, Part 84 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at Civic Center, Brooklyn, New York on the 28<sup>th</sup> day of May, 2025.

**PRESENT:**

**HON. CAROLYN E. WADE,**

Justice

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JUAN RAMON SANTIAGO SANCHEZ,

Plaintiff,

Index No. 512670/24

-against-

**DECISION AND ORDER**

UNIQUE STEEL WORKS LLC,  
EMPIRE STEEL SUPPLIERS LLC, and SHABSE FUCHS,

Mot. Seq. No. 1

Defendants.

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**Recitation, as required by CPLR 2219 (a), of the electronic papers considered in the review of the joint pre-Answer Motion of Defendants Unique Steel Works LLC, Empire Steel Suppliers LLC, and Shabse Fuchs to Dismiss the Complaint:**

Notice of Motion, Affirmation, and Exhibits Annexed.....	<u>5-7</u>
Opposing Affirmation.....	<u>11</u>
Reply Memorandum of Law and Affirmation.....	<u>12-13</u>
Proposed Order.....	<u>14</u>

Upon the foregoing papers and after oral argument, the joint pre-Answer Motion of Defendants Unique Steel Works, LLC, Empire Steel Suppliers, LLC, and Shabse Fuchs (collectively, "Defendants") for an Order, in effect, pursuant to CPLR 3211 (a) (7), dismissing the Complaint of plaintiff Juan Ramon Santiago Sanchez ("Plaintiff"), dated May 6, 2024 (the "Complaint"), is decided as follows:

### Facts and Allegations

From June 2019 to January 10, 2024, Plaintiff was employed by Defendants as a W-2 non-exempt wage earner in the titles of a supervisor, welder, and installer.<sup>1</sup> Although Plaintiff regularly worked for Defendants approximately 40 to 55 hours per week, he was working between 49 and 60 hours per week between June 2019 and June 2022.<sup>2</sup> Starting in June 2022 and until the end of his employment with Defendants on January 10, 2024, Plaintiff worked approximately 46 hours per week, five days per week, with Saturdays and Sundays off.<sup>3</sup> Plaintiff received from Defendants a straight pay of \$20 per hour, regardless of the number of hours he worked in a particular day or in a particular week.<sup>4</sup> Plaintiff alleges that Defendants failed to pay him an overtime premium (or 1.5 times of his regular hourly rate of \$20) for approximately three years.<sup>5</sup> Although Plaintiff was paid by Defendants weekly,<sup>6</sup> he did not receive with his pay either accurate paystubs, or any paystubs at all.<sup>7</sup> Further, within ten days of his first day of work, Defendants did not provide plaintiff with the statutory wage notice.<sup>8</sup>

In May 2024, Plaintiff commenced this action against Defendants to recover (among other things) unpaid overtime from June 2019 to January 10, 2024. His Complaint asserted four causes of action: (1) failure to pay wages within the statutory period under Labor Law § 191 (“Frequency of Payments”); (2) unlawful wage deductions under Labor Law § 193 (“Deductions from Wages”); (3) failure to pay

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<sup>1</sup> Complaint, ¶¶ 10-20.

<sup>2</sup> Complaint, ¶¶ 21-22.

<sup>3</sup> Complaint, ¶¶ 23-24.

<sup>4</sup> Complaint, ¶¶ 25 and 27-28.

<sup>5</sup> Complaint, ¶¶ 27 and 29.

<sup>6</sup> Complaint, ¶ 26.

<sup>7</sup> Compare Complaint, ¶ 30 (alleging that “Defendants failed to provide Plaintiff with an accurate statement of wages with each payment of wages that set forth Plaintiff’s hours worked, rates of pay, gross wages, credits claimed . . . , deductions, and net wages”) with the immediately preceding subheading (“Failure to Provide Pay[s]tubs”).

<sup>8</sup> Complaint, ¶ 31.

overtime wages under Labor Law § 652 (“Minimum Wage”); and (4) failure to provide wage notices under Labor Law § 195 (“Notice and Record-Keeping Requirements”).<sup>9</sup>

Defendants, in lieu of interposing an Answer, jointly served the instant Motion to Dismiss the entire Complaint for failure to state a cause of action under CPLR 3211 (a) (7). By way of counsel, plaintiff submitted an Affirmation in Opposition. After oral argument held on March 19, 2025, the Court reserved decision on the instant Motion.

### Discussion

Contrary to Defendants’ contention, “the pleading requirements for a cause of action alleging unpaid overtime under the relevant provisions of the New York Labor Law are not identical to those under the federal Fair Labor Standards Act (29 USC § 201 et seq.), as the federal pleading requirement of plausibility in a cause of action such as this is not an element of the analysis under CPLR 3211 (a) (7)” (*Gutierrez v. Bactolac Pharm., Inc.*, 210 AD3d 746, 747 [2d Dept 2022]). “Rather, when considering a motion to dismiss pursuant to CPLR 3211 (a) (7), the court must accept the facts as alleged in the complaint as true, accord the plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory” (*Gutierrez*, 210 AD3d at 747; *see also Reyes v. Seaqua Delicatessen, Inc.*, 234 AD3d 88, 92 [2d Dept 2024]; *Cabrera v. Deadwood Constr., Inc.*, 226 AD3d 743, 743-744 [2d Dept 2024]). “Whether a plaintiff can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss” (*Silvers v. Jamaica Hosp.*, 218 AD3d 817, 818 [2d Dept 2023] [internal quotation marks omitted]). “Unlike on a motion for summary judgment where the court searches the record and assesses the sufficiency of the parties’ evidence, on a motion to dismiss the court merely examines the adequacy of the pleadings” (*Cabrera*, 226 AD3d at 744 [internal quotation marks omitted]).

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<sup>9</sup> Although the fourth cause of action is captioned as having been brought under several subsections of Labor Law § 198 (“Costs and Remedies”), the body of the fourth count (in ¶¶ 47-48 of the Complaint) expressly relies on Labor Law § 195 (“Notice and Record-Keeping Requirements”) as the predicate for this cause of action.

In that regard, CPLR 3013 provides that “[s]tatements in a pleading shall be sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved and the material elements of each cause of action or defense.”

Failure to Pay Wages Within Statutory Period Under Labor Law § 191 (“Frequency of Payments”)

Plaintiff’s first count for failure to pay wages within the statutory (or weekly) period under Labor Law § 191 is insufficient to state a cause of action because this statute pertains to the frequency of pay and not to the unpaid wages (*see Cabrera*, 226 AD3d at 744-745; *Gutierrez*, 210 AD3d at 747). Plaintiff does not allege that Defendants required him to accept wages at periods other than those provided in Labor Law § 191 (meaning, other than weekly<sup>10</sup>). Rather, plaintiff challenges the alleged failure to pay him in full for hours worked, which is the basis of his remaining counts.

Unlawful Wage Deductions under Labor Law § 193 (“Deductions from Wages”)

Plaintiff’s second count for unlawful wage deductions states a cause of action under Labor Law § 193 “for the unauthorized failure to pay wages, benefits or wage supplements” *to the extent* that his claims under the statute accrued on and after the effective date of the No Wage Theft Loophole Act of August 19, 2021 (Labor Law § 193 [5], as amended by L 2021, ch 397, § 3) (*see Neu v. Amelia US LLC*, 226 AD3d 515, 516 [1st Dept 2024]; *cf. Raparhi v. Clark*, 214 AD3d 613, 614 [1st Dept 2023]). Labor Law § 193 (5), as amended by the No Wage Theft Loophole Act, provides that “[t]here is no exception to liability under this section [Labor Law § 193] for the unauthorized failure to pay wages, benefits or wage supplements.”

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<sup>10</sup> Complaint, ¶ 26 (“Defendant[s] paid Plaintiff weekly.”).

For the period prior to August 19, 2021, however, plaintiff fails to state a cause of action for unlawful wage deductions under Labor Law § 193 because the No Wage Theft Loophole Act is not retroactive (*see* L 2021, ch 397, § 5; *see also Frances v. Klein*, 231 AD3d 535, 536 [1st Dept 2024]).

Failure to Pay Overtime Wages under Labor Law § 652 (“Minimum Wage”)

Plaintiff’s third count for failure to pay overtime wages under Labor Law § 652 easily satisfies the CPLR pleading requirements for stating a cause of action (*see Reyes*, 234 AD3d at 92-93; *Cabrera*, 226 AD3d at 744; *Kirby v. Carlo’s Bakery 42<sup>nd</sup> & 8<sup>th</sup> LLC*, 212 AD3d 441, 442 [1st Dept 2023]). Contrary to Defendants’ position, the Complaint is “sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved and the material elements of each cause [of] action (CPLR 3013)” (*Silvers*, 218 AD3d at 819-820 [internal quotation marks omitted]).

Defense counsel’s persistent attempt at downplaying the significance of *Cabrera* (in which the Appellate Division, Second Department, on a Motion to Dismiss, recently upheld the analogous counts of a Complaint for failure to pay overtime wages and to recover for other Labor Law violations) is unavailing.

Failure to Provide Wage Notices under Labor Law § 195 (“Notice and Record-Keeping Requirements”)

Plaintiff’s fourth and final count for failure to provide wage notices under Labor Law § 195 is likewise sufficient to state a cause of action (*see Reyes*, 234 AD3d at 93; *Cabrera*, 226 AD3d at 744; *Silvers*, 218 AD3d at 819).

The parties’ remaining arguments either are without merit or need not be reached in light of the foregoing determination.

Conclusion

Based on the foregoing and after oral argument, it is hereby:

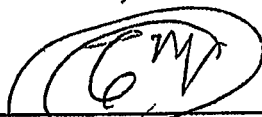
**ORDERED** that Defendants' motion is GRANTED SOLELY TO THE EXTENT that: (1) the entirety of Plaintiff's first count for failure to pay wages within the statutory period under Labor Law § 191 ("Frequency of Payments"), and (2) the portion of Plaintiff's second count, *insofar as the second count is limited to the period prior to August 19, 2021*, for unlawful wage deductions under Labor Law § 193 ("Deductions from Wages"), are both dismissed without costs or disbursements; and the remainder of Defendants' motion is denied; and it is further

**ORDERED** that Plaintiff's counsel is directed to electronically serve a copy of this Decision and Order with notice of entry on Defendants' counsel and to electronically file an affidavit of said service with the Kings County Clerk; and it is further

**ORDERED** that Defendants shall answer the extant portions of the complaint within ten (10) days after electronic service of this Decision and Order with notice of entry by Plaintiff's counsel on Defendants' counsel.

This constitutes the Decision and Order of the Court.

ENTER,



HON. CAROLYN E. WADE  
SUPREME COURT JUSTICE  
Hon. Carolyn E. Wade  
Supreme Court Justice

2025 JUN -5 A 10:01  
FILED  
KINGS COUNTY CLERK