

**Su Yi Gao v Szechuan Mtn. House Inc**

2025 NY Slip Op 32970(U)

July 22, 2025

Supreme Court, New York County

Docket Number: Index No. 650005/2023

Judge: Suzanne Adams

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. SUZANNE ADAMS** PART **40M**

*Justice*

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SU YI GAO,

Plaintiff,

- v -

SZechuan Mountain House Inc, Szechuan  
Mountain House NY LLC, S&F Szechuan Inc, Fang  
Yi He, Ming Lin

Defendants.

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INDEX NO. 650005/2023

MOTION DATE N/A

MOTION SEQ. NO. 002

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 82 were read on this motion to/for EXTEND - TIME.

Upon the foregoing documents, it is ordered that plaintiff's motion is granted in part, as discussed hereinbelow. Plaintiff commenced this putative class action in December 2022, seeking damages for failure to pay wages in violation of the Federal Labor Standards Act ("FLSA") and New York Labor Law ("NYLL"). Plaintiff now moves for an order pursuant to CPLR 2004 to extend the date to file a motion for class certification until such time that a preliminary conference has been convened and the court has set dates to complete pre-class certification discovery and for plaintiffs to move for class certification; and pursuant to 29 USC § 216 (b) granting conditional collective action status. Defendants oppose the motion as it pertains to the request for conditional certification of a collective action under the FLSA.

Extension of Time

"Pursuant to CPLR 902, within sixty days after the time to serve a responsive pleading has expired for all persons named as defendants in an action brought as a class action, the plaintiff shall move for an order to determine whether it is to be so maintained" (*Shah v Wilco*)

*Sys., Inc.*, 27 AD3d 169, 173 [1st Dept 2005], *lv denied* 7 NY3d 859 [2006] [citations omitted]).

“This filing deadline is mandatory” (*id.* [citations omitted]). “[T]he time period for making a motion for class certification is not measured from service of the answer but rather from the date on which the defendant’s time to answer expires” (*id.* at 174). However, “CPLR 2004 vests the trial court with discretion to extend the time to perform any act, including the filing of the . . . notice, upon such terms as may be just and upon good cause shown” (*Tewari v Tsoutsouras*, 75 NY2d 1, 11–12 [1989] [internal quotation marks omitted]).

Here, although the deadline to move for class certification was January 2, 2024, the parties were in court-supported settlement discussions at the time, and plaintiff’s notice of motion was filed with the Court on February 1, 2024. As such, plaintiff’s very brief delay [in moving for an extension of time] was minimal (*see Gerard v Clermont York Assoc., LLC*, 143 AD3d 478, 478 [1st Dept 2016]). Further, defendants have failed to demonstrate that it would be prejudiced if plaintiff was granted the requested extension of time. Plaintiff’s request is therefore granted.

#### FLSA Collective Action Certification

Plaintiff’s second request is for an order granting collective action status under the FLSA and 29 USC § 216 (b). “Courts generally follow a two-step process when deciding whether to certify a representative action” (*Iglesias-Mendoza v. La Belle Farm, Inc.*, 239 FRD 363, 367 [SD NY 2007] [citations omitted]). “At the first stage, the court will look at the pleadings and affidavits. If the plaintiff satisfies the minimal burden of showing that the similarly situated requirement is met, the court certifies the class as a collective action” (*id.* [internal quotation marks and citations omitted]). “At this junction—also termed the notice stage—the court applies a fairly lenient standard and (when it does so) typically grants conditional certification” (*id.* [internal quotation marks omitted]). “Potential class members are then notified and provided with the opportunity to

opt in to the action” (*id.* [citations omitted]). “[C]ourts have held that at the preliminary or conditional certification stage, plaintiffs can satisfy the similarly situated requirement by making a modest factual showing sufficient to demonstrate that they and potential plaintiffs together were victims of a common policy or plan that violated the law” (*id.* at 367-368 [citations omitted]).

Here, plaintiff provided a detailed affidavit describing the hours he worked at two of the defendant restaurants as a chef in 2021: Szechuan Mountain House Inc. (“Szechuan Mountain House”), and S&F Szechuan Inc. d/b/a Chai (“Chai”) (NYSCEF Doc No. 58 ¶ 3). At Szechuan Mountain House, plaintiff allegedly worked for four days for a total of nine hours per day with an hour break (*id.* ¶ 4). At Chai, plaintiff allegedly worked for three weeks at nine and a half hours per day for six days a week for a total of 57 hours per week (*id.* ¶ 5). Plaintiff allegedly did not receive overtime compensation (*id.* ¶ 8). Plaintiff’s affidavit states that other employees also worked the same schedule and were not properly compensated, alleging that he personally observed that coworkers “would typically arrive around and leave around the same time” as his schedule, and provides other details of his understanding of fellow employees’ hours and compensation at the three defendant restaurants (*id.* ¶¶ 21-42). Plaintiff further submitted the affidavit of Jiyuan Lin, a former employee of defendants (NYSCEF Doc No. 77 ¶ 4). Lin worked at Che Li in Manhattan from 2020 until 2021, which was owned by defendants (*id.* ¶ 7). She quit because she had no time to eat (*id.* ¶¶ 7-10). She later worked at defendant Szechuan Mountain House NY LLC (the “Flushing Location”), but was earning the least amount of the people in her position, and only received a \$100 per month increase upon request, therefore she quit (*id.* ¶¶ 11-15). She further attested that the restaurants deducted some of the tips to provide bonuses to the kitchen staff (*id.* ¶ 17).

In sum, plaintiff and Lin's affidavits detail defendants' employment of the affiants, and their policy and practice of refusal to pay overtime to employees with similar job duties and similar work hours (*see Slamna v API Rest. Corp.*, 2013 US Dist LEXIS, \*5, 2013 WL 3340290, \*2 [SD NY 2013]). "Based on such descriptions, this [c]ourt may infer that other [] workers worked similar shifts for comparable pay, thereby suffering the same violations of the FLSA" (*Genxiang Zhang v Hiro Sushi at Ollie's Inc.*, 2019 US Dist LEXIS 22745, \*24, 2019 WL 699179, \*8 [SD NY 2019] [citations omitted]). Additionally, this court previously held, in the decision and order dated October 17, 2023, that plaintiff has pled sufficient facts to show that Szechuan Mountain House, the Flushing Location, and Chai constituted a single integrated enterprise (*see* NYSCEF Doc No. 47). Therefore, plaintiff's request for conditional certification of a collective comprised of all non-exempt non-managerial workers that worked at all three defendant restaurants is granted.

In connection with conditional certification, the notice period shall be for three years prior to the date of the filing of the complaint, and equitable tolling shall apply. "Under the FLSA, the statute of limitations is three years for willful violations and two years for non-willful violations" (*see* 29 USC § 255 [a]). "When willfulness is disputed, courts typically apply the three-year limitations period in defining the scope of a collective action" (*Bittencourt v Ferrara Bakery & Café Inc.*, 310 FRD 106, 116 [SD NY 2015] [citations omitted]).

However, "[b]ecause equitable tolling issues often arise for prospective plaintiffs, courts frequently permit notice to be keyed to the three-year period prior to the filing of the complaint, with the understanding that challenges to the timeliness of individual plaintiffs' actions will be entertained at a later date" (*id.*).

#### Disclosure of Contact Information

Plaintiff seeks production of potential opt-in plaintiffs' first and last names, address, telephone numbers, email addresses, WhatsApp, WeChat ID and/or Facebook usernames, work

location, dates of employment and position from December 30, 2019, to the present. “In light of the broad remedial purposes of the FLSA, the [c]ourt has the power to direct [defendants] to produce the names and contact information of potential plaintiffs” (*Martin v Sprint/United Mgmt. Co.*, 2016 WL 30334, \*19 [SD NY 2016] [internal quotation marks and citation omitted]). “Courts in this District commonly grant requests for the production of names, mailing addresses, email addresses, telephone numbers, and dates of employment in connection with the conditional certification of a FLSA collective action” (*id.* [citation omitted]). This Court grants plaintiff’s request to compel defendants to produce the putative plaintiffs’ job titles, last known mailing addresses, e-mail addresses, all known telephone numbers (*see Uraga v Amici 519 LLC*, 2018 WL 3579850, \*6 [SD NY 2018] [granting the production of the titles, compensation rates, last known mailing addresses, email addresses, all known telephone numbers and dates of employment for all non-exempt employees employed by defendants at each of their restaurants]; *see also Islam v LX Ave. Bagels, Inc.*, 2019 WL 5198667, \*12 [SD NY 2019] [granting the production of the work locations of all potential collective action members who worked for defendants at any of defendants’ locations]).

Recently, some courts in this district have ordered the production of social media information such as WhatsApp, WeChat, and Facebook information. The Court is mindful of possible privacy concerns, but also must consider putative collective members’ interest in possibly joining the litigation, the possibility that some members may not have phone numbers or stable addresses, and efficient administration of this case. On balance, the Court finds it is appropriate for defendants to provide social media information such as WhatsApp, WeChat and Facebook information (*see Qiang Lu v Purple Sushi Inc.*, 447 F Supp 3d 89, 97 [SD NY 2020]).

## Notice

CPLR 904 provides in relevant part that “reasonable notice of the commencement of a class action shall be given to the class in such manner as the court directs” (*see* CPLR 404 [b]). As such, it is well-settled that the law requires that the parties provide the best notice practicable under the circumstances to class members (*see Eisen v Carlisle & Jacquelin*, 417 U.S. 156, 173 [1974]). Courts have wide discretion to regulate notice (*see Mendoza v Casa De Cambio Delgado, Inc.*, 2008 US Dist LEXIS 27519, \*4 [SD NY 2008]). Regarding the form of notice, due to defendant’s objections, and typographical errors in the proposed notice presented by plaintiff, this court agrees with defendants that the class notice should be jointly prepared and presented to this court for approval, and failing agreement each side should submit a proposed notice to the court for its decision (*see id.* at \*11).

Plaintiff’s request for dissemination of the notice in the relevant languages via mail, email, text message, website or social media messages, chats or posts to the members of the putative class is granted. Courts generally permit notices to be translated into the language of non-English speaking groups of potential plaintiffs (*see Dong Hui Chen v Thai Greenleaf Rest. Corp.*, 2024 US Dist LEXIS 142120, \*26 [ED NY 2024], quoting *Yi Mei Ke v JR Sushi 2 Inc.*, US Dist LEXIS 8045, \*41 [SD NY 2021] [“Generally, courts permit notice to be translated into the mother tongue of non-English speaking groups of potential plaintiffs”]). Here, it appears that the relevant languages are English and Chinese<sup>1</sup>, therefore, the notices shall be distributed in those two languages (*see Chen v Dun Huang Corp.*, US Dist LEXIS 216989, \*30 [SD NY 2021] [allowing notices to be disseminated in both English and Chinese since plaintiffs attested the coworkers were from Chinese-speaking countries]). Contrary to defendants’ contentions, the standard methods of

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<sup>1</sup> The Court notes that plaintiff’s requested relief in the notice is for Hindi language, which appears to be an error.

delivery of the class action notice in a wage and hour is by mail, email and text messages (*see Zhao v Surge Priv. Equity LLC*, 2023 WL 3477591, \*8 [SD NY 2023] [“The [c]ourt approves sending the notice by mail, email, and text messages, which methods of distribution have become standard in this Circuit”] [citations omitted]). The court also grants plaintiff’s request that the notice be posted by the employers in conspicuous and unobstructed locations where putative plaintiffs are employed (*see id.*). Additionally, the notice may also be posted on plaintiff’s counsel’s website (*see Qiang Lu*, 447 F Supp 3d at 97).

Plaintiff further requests to send reminder notices half-way through the notice period via mail, e-mail, and text (*see* NYSCEF Doc Nos. 66-68). “Courts have authorized plaintiffs to send reminder emails as under the FLSA, notices are intended to inform as many potential plaintiffs as possible of the collective action and their right to opt-in” (*Dong Hui Chen*, 2024 US Dist LEXIS 142120 at \*27). Here, plaintiff is authorized to send one reminder notice by mail, email and text prior to the expiration of the opt-in period in order to alert potential plaintiffs of the upcoming deadline (*see Lin v JD Produce Maspeth LLC*, 2021 US Dist LEXIS 214855, \*37 [ED NY 2021]).

Finally, plaintiff’s proposed notice includes a 90-day opt-in period (*see* NYSCEF Doc No. 63). However, an opt-in period of 60 days is consistent with FLSA certifications (*see Genxiang Zhang*, 2019 WL 699179, \*12, 2019 US Dist LEXIS 22745, \*37 [SD NY 2019]). The proposed class in this matter is relatively localized and not extremely large, therefore a 60-day opt-in period is sufficient for the return of consent forms (*see Singh v Anmol Food Mart, Inc.*, 2024 WL 308241, \*5, 2024 US Dist LEXIS 14475, \*13 [ED NY 2024]). Plaintiff has not explained why a longer-than-usual opt-in period is necessary. As such, the court will limit the opt-in period to 60 days.

### Discovery

The parties are directed to confer with each other to seek an agreement on a pre-certification discovery schedule and file a signed stipulation with the court. Should the parties not come to an agreement, both parties are directed to submit proposed discovery schedules two days in advance of a preliminary conference to be set.

### Leave to Amend the Complaint

Furthermore, plaintiff's motion for leave to amend the complaint to add opt-in employees as plaintiffs and additional allegations pertaining to such employee is premature. These employees are unknown and have not yet opted-in to the action, nor has any proposed amended complaint been attached to plaintiff's request (*see* CPLR 3025 [b]). Therefore, this request is denied.

### Adequacy of Counsel

Lastly, defendants' argument that plaintiff's counsel is inadequate to represent this collective action, citing the performance history of the Troy Law Firm is meritless. There is no "[n]eglect or inadequate performance by the Troy Law Firm or its attorneys [alleged in this case], and the Court will not deny class certification based solely on the firm's history of deficient performance in other cases" (*Leong v Laundry Depot, LLC*, 2023 WL 6226415, \*9 (ED NY [2023])). The court has considered defendants' remaining arguments and finds them unavailing.

Accordingly, it is hereby

ORDERED that plaintiff's motion pursuant to CPLR 2004 to extend time for class certification is granted; and it is further

ORDERED that plaintiff's motion to conditionally certify all non-exempt and non-managerial employees as a collective action pursuant to FLSA and 29 USC § 216 (b) is granted; and it is further

ORDERED that, within fourteen (14) days of the notice of entry of this Order, defendants shall produce an Excel spreadsheet containing the first and last name, last known address, the last known telephone numbers, last known e-mail addresses, WhatsApp, WeChat ID and/or Facebook usernames (if applicable), and work location, dates of employment and position of all current and former non-exempt and non-managerial employees employed at any time from December 30, 2019, through the notice of entry of this Order; and it is further

ORDERED that the parties shall submit to the court a mutually agreeable class notice in accordance with this Order, or, if their efforts at an agreement are unsuccessful, competing proposed notices, by August 26, 2025, at 5:00 p.m.; and it is further

ORDERED that the opt-in period is granted for 60 days from the day of dissemination of the notice and its translation; and it is further

ORDERED that plaintiff is authorized to disseminate the court approved notice in the relevant languages via mail, e-mail, text message, social media messages, chats or posts to the members of the putative class is granted; and it is further

ORDERED that plaintiff's counsel is authorized to publish the full opt-in notice on plaintiff's counsel's website, and defendants shall post the full opt-in notice in conspicuous and unobstructed locations likely to be seen by all currently employed members at the workplace; and it is further

ORDERED that plaintiff's motion for leave to amend its complaint pursuant to CPLR 3025 (b) is denied without prejudice.

This constitutes the decision and order of the court.

7/22/2025  
DATE

SA  
SUZANNE ADAMS, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	REFERENCE