At an IAS Term, Part 75 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 5th day of December, 2025.

P R E S E N T: HON. ANNE J. SWERN,
Justice.

----------X

NICHOLAS RIVERA, on behalf of himself and all Others similarly situated,

Plaintiffs,

- against -

SADET ISLAND HOLDINGS, LLC, PF PAYROLL LLC and PFNY, LLC,

Defendants.

----------X

DECISION & ORDER

Index No. 500474/20

The following e-filed papers read herein:	NYSCEF Doc Nos.
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations)	62-64, 66-83
Opposing Affidavits (Affirmations)	87-92
Reply Affidavits (Affirmations)	93

Upon the foregoing papers in this proposed class action, plaintiff Nicholas Rivera (Rivera or Plaintiff) moves (in motion sequence [mot. seq.] four) for an order: (1) certifying this action as a class action, pursuant to CPLR 901; (2) designating Rivera as class representative; (3) designating Bouklas Gaylord LLP as class counsel; and (4) approving for publication the proposed Notice of Class Action Lawsuit and Publication Order (NYSCEF Doc No. 62).

Background

On January 8, 2020, Rivera commenced this proposed class action on behalf of himself and other similarly situated, non-exempt, hourly paid New York employees of defendants for violations of the New York State Labor Law (Labor Law), the New York Code of Rules and Regulations (NYCRR) and the New York Wage Theft Prevention Act. The complaint alleges that "Defendants own and operate Planet Fitness locations throughout New York State" and are a "large employer" with more than 11 employees (*id.* at ¶¶ 5 and 8). Rivera allegedly "performed work for Defendants in New York City" from approximately July 2, 2019, through November 11, 2019, where he made minimum wage (Complaint at ¶¶ 6, 9 and 10).

The complaint alleges that Rivera was provided with two uniforms, which he was required to wear "every shift" in a "clean condition" and Defendants "did not launder . . ." and "never paid any uniform maintenance pay or reimbursement for the cost of maintaining the uniform[s]" (*id.* at ¶¶ 27-31). In addition to spending time "off-the-clock" to clean and maintain his Planet Fitness uniforms, the complaint alleges that Rivera was not reimbursed by Defendants for additional uniforms that he purchased (*id.* at ¶¶ 35-38). The complaint asserted two causes of action for: (1) violation of Article 19 of the Labor Law and the regulations thereunder based on Defendants' failure to pay "Plaintiff or the Class any uniform maintenance pay or reimbursement for the cost of maintaining uniforms"[1] and (2) violation of Article 19 of the Labor Law and the

[1] 12 NYCRR 146-1.7 (a) provides that "[w]here an employer does not maintain required uniforms for any

regulations thereunder based on Defendants' failure to "reimburse Plaintiff and the Class for the total cost of the uniform[s]" (*id.* at ¶¶ 41-49 and 50-54).

On October 16, 2023, Rivera moved for leave to amend his complaint to add a cause of action for unpaid spread of hours wages and to certify this action as a class action (NYSCEF Doc No. 26). By stipulation so ordered by this court on June 13, 2024, the parties resolved Rivera's motion to amend the complaint on consent and agreed that Rivera would move to certify this action as a class action within 60 days after the completion of discovery (NYSCEF Doc No. 51).

On June 24, 2024, Rivera e-filed the amended complaint, which asserted a third cause of action against defendants for violation of the New York "Spread of Hours Law" under the Labor Law[2] (NYSCEF Doc No. 52, Amended Complaint at ¶¶ 58-63). The amended complaint alleges that Rivera and the proposed Class have the following questions of law and fact in common:

> "a. whether Plaintiffs were required to wear uniforms;
>
> "b. whether Defendants failed to reimburse Class Plaintiffs for business expenses borne for the benefit and convenience of the Defendants including the laundering of said uniforms;
>
> "c. whether Plaintiff and Class Plaintiffs were required to purchase additional uniforms and were not reimbursed by Defendants;

employee, the employer shall pay the employee, in addition to the employee's agreed rate of pay, uniform maintenance pay . . ."

[2] 12 NYCRR 142-2.4 (a) provides that "[a]n employee shall receive one hour's pay at the basic minimum hourly wage rate, in addition to the minimum wage required in this Part for any day in which . . . the spread of hours exceeds 10 hours."

> "d. whether Defendants laundered or offered to launder the required uniforms;
>
> "e. whether Plaintiff and Class Plaintiffs were paid at a rate equal to or below the applicable minimum wage;
>
> "f. whether Plaintiff and the Class worked shifts or split-shifts in excess of 10 hours; and
>
> "g. whether Plaintiff and the Class were paid any additional amount for shifts or split-shifts in excess of 10 hours" (*id.* at ¶ 19).

On July 15, 2024, defendants Sadet Island Holdings LLC (Sadet), PF Payroll LLC (Payroll) and PFNY, LLC (PFNY) (collectively, defendants or Supreme Fitness Group) answered the amended complaint and denied the material allegations therein, yet admitted that "Plaintiff was entitled to payment for all hours worked . . ."; Rivera was "employed by Payroll from approximately July 2, 2019 through November 11, 2019," "Payroll has at least 11 or more employees;" "Rivera's rate of pay was set at the minimum wage . . ." and "Plaintiff was provided two t-shirts emblazoned with Defendants' logo" (NYSCEF Doc No. 53 at ¶¶ 2, 7, 9-11 and 28). Defendants asserted affirmative defenses, including that "class certification is not appropriate . . ." (*id.* at ¶¶ 64-85).

Rivera's Instant Motion for Class Certification

On June 12, 2025, after the parties engaged in discovery, Rivera moved for an order certifying this action as a class action, designating him as class representative, designating his lawyers as class counsel and approving his proposed Notice of Class Action Lawsuit and Publication Order (NYSCEF Doc No. 62). Plaintiff's counsel

submitted an attorney affirmation asserting that Rivera seeks to certify a Class consisting of:

> "[a]ll current and former employees who worked for Defendants as a Team Member, Trainer, Manager, Assistant Manager, Custodian, Fitness Instructor, Member Services Representative, or Overnight Member Services Representative in the State of New York from January 9, 2014 through present and who were designated as non-exempt" (NYSCEF Doc No. 63 at ¶ 1).[3]

Counsel argues that "Defendants employed a common scheme towards the Plaintiff and the class of current and former employees" in which they "(1) required all non-exempt employees to wear a uniform, and did not pay any uniform maintenance pay; and (2) required employees to work shifts or split shifts in excess of 10 hours without additional pay" (*id.* at ¶ 2).

Plaintiff's counsel asserts that "documents produced by Defendants and Defendants' own testimony indicates that there are several thousand potential class members[,]" including a list reflecting "**16,588 shifts over 10 hours for 2,839 individual employees for which no additional amount was paid**" (*id.* at ¶¶ 3-5). Plaintiff's counsel further asserts that "my firm has successfully represented classes in numerous class actions, and ha[s] considerable legal experience in labor law cases similar to the case at bar" (*id.* at ¶ 7). Plaintiff's counsel references documentary evidence, including the proposed Notice of Class Action Lawsuit and the proposed Publication Order, Planet Fitness's Dress Code Policy, Planet Fitness's Employee Handbook, Rivera's time and

[3] Notably, this class definition is different from the proposed class set forth in Rivera's Notice of Class Action Lawsuit (*see* NYSCEF Doc No. 66).

pay records produced during discovery and deposition transcripts (NYSCEF Doc Nos. 66-83).

Rivera submitted a moving affidavit reiterating the factual allegations in the Amended Complaint regarding his employment at Planet Fitness in New York City, defendants' "written uniform policy that was provided to [Rivera] and all other employees that made clear that [they] were required to wear a uniform and that [they] were responsible for the maintenance of the uniform" and when employees worked a shift or multiple shifts in one day, the start and end time of which exceeded 10 hours, they did not receive proper compensation (NYSCEF Doc No. 64 at ¶¶ 2-9). The record shows that Rivera, who worked one shift over 10 hours on October 9, 2019, did not receive an additional hour of pay (NYSCEF Doc Nos. 73 and 74).

Rivera also submitted a memorandum of law arguing that class certification is appropriate because the proposed class action satisfies the elements in CPLR 901 and 902. Rivera asserts that appellate courts have acknowledged that class actions are the best method of adjudicating wage and hour actions, and in a similar action for uniform maintenance pay, class treatment was appropriate for claims of systematic wage violations (NYSCEF Doc No. 65 at 6). Rivera asserted that class actions regarding unpaid uniform maintenance pay and unpaid spread of hours pay "are routinely handled as class actions in New York State Courts, including cases litigated by Plaintiff's counsel" (*id.* at 7-8).

Defendants' Opposition

Defendants, in opposition, submitted an attorney affirmation asserting that "Plaintiff cannot meet his burden to certify the class under CPLR 901 and 902" because "this case hinges on numerous individualized issues that vary location-by-location, manager-by-manager, and position-by-position" (NYSCEF Doc No. 87 at ¶ 10). Specifically, defense counsel asserts that:

> "[g]iven that issues like the provision of new t-shirts and enforcement of the t-shirt policy are handled on a location-by-location basis in 53 different clubs with different management, the issues in this proposed class action are more concerned with the decisions of individual managers rather than corporate-wide policy" (*id.*).

Defendants submit an affirmation from Russell L. Tannenbaum, (Tannenbaum) the Director of Human Resources at Sadat (d/b/a Supreme Fitness Group), who affirms that "[b]ased on franchise agreements with Planet Fitness Franchising LLC, Supreme Fitness Group (through various subsidiary entities) operates 53 Planet Fitness gym locations throughout New York State" and "[a]ll New York Supreme Fitness Group employees are employed through the Supreme Fitness Group Payroll, LLC" (NYSCEF Doc No. 88 at ¶¶ 4 and 7). Regarding Rivera, Tannenbaum affirms that he was employed by Supreme Fitness Group "as a team member at the Kings Highway location from approximately July 2, 2019, through November 11, 2019[,]"[4] and at the time of Rivera's

[4] Defendants assert that Rivera also worked at a Planet Fitness in Syracuse from 2020-2021, which location is *not* owned and operated by Defendants (*id.* at ¶ 6; NYSCEF Doc No. 86 at 2).

hiring, he was "provided two t-shirts consisting of a shirt emblazoned with the Planet Fitness logo" (*id.* at ¶¶ 8 and 11).

Tannenbaum affirms that "Supreme Fitness Group has different dress requirements for different positions within each club location," "[e]nforcement regarding these requirements and replacement practices varies store-to-store" and "generally, if a team member needs a new shirt or does not have a clean t-shirt for a shift, he or she will receive a new free shirt after speaking with their manager" and are not "required" to purchase "additional Planet Fitness branded gear" (*id.* at ¶¶ 9-10). Tannenbaum affirms that "Supreme Fitness Group has never adopted or communicated a dress code mandating the wearing of purple shirts at any of its 53 locations" and "[a]ny such practice, if it occurred, was at the discretion of local management and not the result of a centralized policy" (*id.* at ¶¶ 14-15 and 17).

Defendants submit affirmations from three current Supreme Fitness Group employees: (1) Juan Segura (Segura), a Fitness Instructor at the Castle Hill location in the Bronx since 2009; (2) Namon A. Jones (Jones), an Overnight Custodian at the Castle Hill location in the Bronx since 2013; and (3) Jordana Hidalgo (Hidalgo), a Member Services Representative at the Jamaica Avenue location in Queens since 2019.

Segura affirms that "[t]here is no policy at the Castle Hill location requiring employees to wear purple Planet Fitness t-shirts during their shift" (NYSCEF Doc No. 89 at ¶ 2). Segura and Jones also affirm that "there have always been extra Planet Fitness t-shirts available on site . . ."; "[i]f a staff member needs a shirt for a shift, they can take one from the available extras" and that they "have never been disciplined for failing to

wear a proper shirt . . .” (*id.* at ¶¶ 2-3 and 5 and NYSCEF Doc No. 90 at ¶¶ 2-4). Hidalgo similarly affirms that “[t]hroughout my employment at the Jamaica Avenue club, there have always been extra Planet Fitness t-shirts available on site for employees” . . . “I have never known of any instance where an employee was unable to obtain a replacement shirt when needed;” and “I have never been disciplined for failing to wear a proper shirt during my shift” (NYSCEF Doc No. 91 at ¶¶ 3-4).

Defendants submit a memorandum of law arguing that Rivera’s motion for class certification should be denied because “the relevant decisions [regarding the dress code] are made individually by management at each of Supreme Fitness Group’s 53 New York locations” and “[a]ssessing individual claims would involve extensive mini-investigations into the management practices of each individual club, making it unsuitable to proceed as a class action” (NYSCEF Doc No. 86 at 5). Defendants argue that “Rivera cannot satisfy his burden of showing that common questions of law and fact predominate over questions affecting individual class member” (*id.* at 10). Defendants also assert that Rivera’s proposed Class is “overbroad” and fails to meet the commonality requirement because it includes “current and former employees, regardless of whether they were paid above the minimum wage and were thus not required to be reimbursed for laundering services” and “employees with different job titles and corresponding dress requirements[,]” which “would require separate factual and legal inquiries . . .” (*id.* at 10-11).

Defendants also argue that “Rivera cannot satisfy the typicality requirement because his claims are not typical of all other employees who worked at the 53 Supreme Fitness Group clubs in New York” (*id.* at 14). Defendants assert that “Rivera only

worked at one Supreme Fitness Group location . . . for four months" and "does not have information on the work conditions, provision of new t-shirts, and the practice at the other 52 Supreme Fitness Group locations in New York, each of which has its own management which handles these matters in unique ways" (*id.*). Defendants argue that Rivera "testified that shirts were not readily available and management at his gym required all employees to wear a purple shirt, which differs from the practice at any other location and is not reflective of a common policy affecting all members of the proposed class" (*id.* at 15).

Regarding Rivera's third cause of action, defendants merely assert that "[f]or the same reasons, plaintiff's Spread of Hours claim cannot satisfy the typicality requirement under CPLR § 901 (a) (3)" without any further discussion or explanation (*id.* at 16).

If the court grants class certification, defendants urge that "any certified class must be strictly limited to employees who worked at the single Planet Fitness location where plaintiff Rivera himself was employed" since "Plaintiff has provided *no evidence* that any employees at any of the Defendants' other 52 Planet Fitness location were subjected to the same alleged violations . . ." (*id.* at 17).

Rivera's Reply

Rivera, in reply, submits an attorney affirmation arguing that "for spread of hours pay, Defendants provide no meaningful opposition at all, essentially conceding class certification" and assert that "Defendants have produced a list of over 16,000 shifts in which they admit nearly 3,000 employees are owed spread of hours pay" (NYSCEF Doc No. 93 at ¶¶ 2 and 10).

Plaintiff's counsel argues that regarding "uniform maintenance pay, Defendants concede a uniform policy that necessitates class certification . . ." regardless of the "color difference in the 'Planet Fitness' logoed shirts between Plaintiff and other class members . . ." (*id.*). Plaintiff's counsel notes that the Court of Appeals has held that "in wage and hour cases, the prerequisites for class certification are to be 'liberally construed' in favor of class certification" (*id.* at ¶ 3 [quoting *Andryeyeva v N.Y. Health Care, Inc.*, 33 NY3d 152, 183 (2019)]).

Plaintiff's counsel asserts that the three affirmations from defendants' current employees "establish that Defendants broadly required a uniform of their employees that requires a Planet Fitness logoed shirt, distinguishing only the color of the shirt, proving Plaintiff's case and recommending class certification" (*id.* at ¶ 4). Plaintiff's counsel cites to New York appellate cases holding that "affirmations by current employees denying the existence of an improper pay practice put forth by defendant-employers are not sufficient to defeat class certification" (*id.*).

Plaintiff's counsel further asserts that Tannenbaum, the Supreme Fitness Group's Director of Human Resources, testified at his deposition that defendants had a policy requiring that its hourly employees wear a uniform that included the Planet Fitness logo (*id.* at ¶ 19). Plaintiff's counsel also references the deposition testimony of Peter Calandrino (Calandrino), defendants' Vice President of Operations East, who testified that Planet Fitness Team Members, Trainers, Managers and Assistant Managers were required to wear a shirt with the Planet Fitness logo, and as of May 5, 2021, that approximately 1,000 employees were required to wear such a uniform (*id.* at ¶¶ 20-22).

Plaintiff's counsel asserts that defendants admit that Rivera and the putative class were required to wear a shirt with the Planet Fitness logo and that defendants did not offer to launder or maintain those uniforms (*id.* at ¶ 24). Plaintiff's counsel explains that "[w]hether or not replacement uniforms were made available is irrelevant . . ." because "[m]aking uniforms available for the rare occasions in which their employees forget to wear their required shirt does not equal laundering or maintaining the uniform, as required by the Labor Law" (*id.* at ¶ 25). Plaintiff's counsel argues that consideration of defendants' fact-based defense regarding their purported provision of replacement Planet Fitness logo shirts to employees is "premature" prior to class certification (*id.* at ¶ 26).

Plaintiff's counsel contends that Rivera's lack of experience at defendants' other 52 Planet Fitness locations is irrelevant since defendants admit that "there was one company-wide policy in effect at all locations at all times . . ." and "Defendants provided copious discovery in this matter in which they admit to every prong of the uniform maintenance pay violation and to the spread of hours pay violation across all locations owned and operated by defendants in New York State" (*id.* at ¶ 30).

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 [2d Dept 2019]). "A class action may be maintained in New York only after the five prerequisites of CPLR 901 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 [2d Dept 2014] [quoting CPLR 902]). "New York's statutory class certification provisions are to be liberally construed" (*Andryeyeva v New York Health Care, Inc.*, 33 NY3d 152, 183 [2019]; *see also Krobath*, 178 AD3d at 806). The determination of whether to grant class certification is vested in the sound discretion of the trial court (*Cooper*, 120 AD3d at 743).

Notably, the Court of Appeals has admonished that in making the initial determination regarding class certification, the merits of the plaintiff's causes of action are *not* considered (*City of New York v Maul*, 14 NY3d 499, 514 [2010] ["(i)n upholding class certification, we emphasize that, at this early stage of the litigation, we are not expressing an opinion on the merits of plaintiffs' causes of action"]).

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] '[t]here is no mechanical test to determine whether . . . numerosity has been met'" (*Globe Surgical Supply v GEICO Ins*. Co., 59 AD3d 129, 137 [2d Dept 2008], quoting *Friar v Vanguard Holding Corp*., 78 AD2d 83, 96 [2d Dept 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 [SDNY 1999]).

Defendants' interrogatory responses and Calandrino's deposition testimony confirm that approximately 1,000 Planet Fitness employees, consisting of Team Members, Managers, Assistant Managers and Trainers, were required to wear a shirt with

the Planet Fitness logo as of May 5, 2021, and were admittedly not paid for uniform maintenance (NYSCEF Doc No. 75 at 4-5 and NYSCEF Doc No. 76 at 18). In addition, as plaintiff's counsel asserts, "Defendants have produced a list of over 16,000 shifts in which they admit nearly 3,000 employees are owed spread of hours pay" (NYSCEF Doc No. 93 at ¶ 10 and NYSCEF Doc No. 82). Based on discovery produced by defendants, the numerosity requirement is satisfied.

CPLR 901 (a) (2) requires that there be "questions of law or fact common to the class which predominate over any questions affecting only individual members." Importantly, New York courts have 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). Where there is evidence of underpayment of statutorily 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, Rivera attests that he and other Planet Fitness employees did not receive "spread of hours" pay when their workday exceeded 10 hours and that they did not receive pay to launder, maintain and replace their Planet Fitness uniforms. Rivera asserts that this illegal underpayment of wages took place in the context of a uniform policy adopted by the Supreme Fitness Group, which is supported by defendants' own documents. While defendants contend that their policies regarding uniforms varied at various Planet Fitness locations, the Planet Fitness Employee Handbook produced by

defendants during discovery indicates that all Planet Fitness location share a "standardized dress code," which includes a "Company supplied" Planet Fitness shirt (NYSCEF Doc No. 71 at 6). Defendants seemingly concede that class certification for the alleged spread of hours pay violation is warranted, since they have failed to identify any reason to deny class certification. Under these circumstances, the commonality requirement set forth in CPLR 901 (a) (2) has been satisfied.

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). Rivera attests that he and other putative class members were subject to the same illegal and systemic uniform and wage policies instituted by the Supreme Fitness Group. Rivera's claims arise from the same facts as Planet Fitness employees in the proposed class, and thus, the typicality requirement is satisfied.

CPLR 901 (a) (4) requires that a party moving for class certification demonstrate that the representative plaintiff "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).

Here, Rivera stands to gain a pecuniary benefit through the successful prosecution of this action and seeks the same relief as the putative class members, and thus, there are

no potential conflicts of interests between Rivera and the proposed class. It is also undisputed that plaintiff's counsel is experienced in class actions and labor and employment law issues and has successfully represented similar classes of employees in prior class action lawsuits. The requirements of CPLR 901 (a) (4) are thus satisfied.

CPLR 901 (a) (5) provides 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." Rivera's proposed class action is superior to the prosecution of individualized claims in view of the anticipated litigation costs, the Planet Fitness employees' likely insubstantial means and the modest damages likely to be recovered by each individual employee. Accordingly, plaintiff has satisfied the requirements of CPLR 901 (a) (5), as well as the other prerequisites under CPLR 901.

Having determined that Rivera has satisfied CPLR 901 (a), the court must consider the additional factors contained in CPLR 902 which include:

> "(1) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (2) the impracticability 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 and discussed in the foregoing analysis of CPLR 901. The remaining factors in CPLR 902 are not relevant here, because there are no pending litigations concerning the Labor Law claims asserted against the Supreme Fitness Group in this case. This court is an

appropriate forum for the instant Labor Law dispute, since the proposed class members were employed by the Supreme Fitness Group in the State of New York.

Plaintiff's counsel cites a litany of class actions that his law firm has litigated regarding unpaid uniform maintenance pay and unpaid spread of hours pay, demonstrating that those claims are routinely handled as class actions in New York State courts (NYSCEF Doc No. 65 at 13-14).

Based on the foregoing, Rivera's motion for class certification is granted and leave is granted for Rivera to prosecute this action on behalf of a class consisting of:

> All current and former non-exempt employees who worked for Defendants PF Payroll LLC and/or PFNY LLC (doing business as 'Supreme Fitness Group' or 'Planet Fitness') as a Team Member, Trainer, Manager, Assistant Manager, Custodian, Fitness Instructor, Member Services Representative, or Overnight Member Services Representative in the State of New York at any time between January 9, 2014, through today and: (1) were not paid "Spread of Hours" pay, and/or (2) were not paid for uniform laundering, maintenance and replacement."

After post-certification discovery, the class may be sub-divided, as needed. The proposed Notice of Class Action Lawsuit attached to Plaintiff's motion papers as Exhibit A (NYSCEF Doc No. 66) shall be revised to reflect the foregoing class and is otherwise approved for publication.

As a final matter, within 45 days after service of this decision and order with notice of entry thereof, defendants shall furnish plaintiff's counsel with a class list containing the names of all individuals employed by Supreme Fitness Group's 52 Planet Fitness locations in New York State between January 9, 2014, and today, including the

individuals' last known mailing and email addresses; such list is to be furnished in electronic form, to the extent possible.

Within 30 days after plaintiff's counsel receives this list, plaintiff shall cause 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 plaintiff's 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 plaintiff's counsel's website.

Accordingly, it is hereby

ORDERED that plaintiff's motion (MS#4) is granted, this action is hereby certified as a class action, Bouklas Gaylord LLP is designated as class counsel and the proposed Notice of Class Action Lawsuit and Publication Order (NYSCEF Doc Nos. 66 and 67), shall be amended by Plaintiff to reflect the properly defined class (*supra* at 18), and are otherwise approved for publication, and it is further

ORDERED that the court, having considered the parties' remaining contentions, finds them to be unavailing and all relief not expressly granted herein is denied.

This constitutes the decision and order of the court.

E N T E R,

_____

HON. ANNE J. SWERN, J.S.C.