

Escobar v 24 W. Food Corp.

2025 NY Slip Op 34725(U)

December 10, 2025

Supreme Court, New York County

Docket Number: Index No. 151803/2024

Judge: Lyle E. Frank

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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. LYLE E. FRANK PART 11M

Justice

-----X

DENIS ESCOBAR, ABEL ZORRILLA MENA,

Plaintiff,

- v -

24 WEST FOOD CORP. D/B/A FOOD DYNASTY, 2343
JEROME FOOD CORP. D/B/A FOOD DYNASTY
SUPERMARKET, ABDEL ABUZAHRIEH, MOHAMMED
ABUZAHRIEH

Defendant.

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INDEX NO. 151803/2024

MOTION DATE 07/23/2025

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72

were read on this motion to/for MISCELLANEOUS.

Upon the foregoing documents, the motion is granted in part.

Background

Plaintiffs are former employees of the supermarket 24 West Food Corp. (collectively with 2343 Jerome Food Corp. the “Corporate Defendants”). Plaintiff Abel Zorilla Mena was a part-time watchman, and plaintiff Denis Escobar was a full-time grocery clerk. The Corporate Defendants are owned by Abdel Abuzahrieh and Mohammed Abuzahrieh (the “Individual Defendants”, collectively with the Corporate Defendants “Defendants”). Plaintiffs seek to create a class of every non-exempt employee at the Corporate Defendants’ two Food Dynasty locations from February 2018 to the present. The allegations are that the putative class members were not paid their minimum wages, overtime compensation, and spread of hours compensation. Plaintiffs also allege that the putative class members were not provided with the necessary wage notices and wage statements.

Plaintiffs and other employees at the two locations were often paid in part by check and in part in cash. The employees would sign their time report totals and receipt of payment on a weekly basis. It is Plaintiffs' contention that the employees were required to sign this report or be fired, regardless of what it stated. Plaintiffs filed this underlying proceeding in February of 2024, and Defendants timely answered. In April of 2025, Plaintiffs moved to compel Defendants to produce documents responsive to a first set of pre-class certification interrogatories and document demands. This motion was granted unopposed.

Discussion

Plaintiffs now move for class certification pursuant to CPLR § 901 and to strike Defendants' answer for failure to produce responses to their discovery demands. Defendants oppose the motion. For the reasons that follow, the motion is granted as to the class action certification but denied as to the request to strike the answer.

Class Action Certification Is Appropriate Here

Under CPLR § 901(a), a putative class may be certified if the five factors of numerosity, predominance, typicality, adequacy, and superiority are met. Plaintiffs have argued that they meet all five prongs. Defendants are only contesting the predominance or commonality prong. This part of the certification process requires that there are "questions of law or fact common to the class which predominate over any questions affecting only individual members." CPLR § 901(a)(2). They argue that due to the timekeeping reports that the putative class members signed, liability and damages must now be proven for each class member individually, thus defeating the appropriateness for class certification.

The commonality prong requires predominance of common issues but not "identity or unanimity" and may encompass "harm effected through a variety of approaches but within a

common systematic plan.” *Maddicks v. Big City Props., LLC*, 34 N.Y.3d 116, 125 [2019]. The claim here is that Defendants required their employees to sign falsified timekeeping reports and subsequently underpaid said employees. While it is true that there is no commonality when “each of the claims would require individualized proof concerning the various bases of liability and are subject to individualized defenses”, this situation is distinguishable. *Banks v. Carroll & Graf Publs., Inc.*, 267 A.D.2d 68, 69 [1st Dept. 1999]. Here, the potentially different level of damages does not defeat commonality. *See, e.g., Kudinov v. Kel-Tech Constr. Inc.*, 65 A.D.3d 481, 482 [1st Dept. 2009]; *Pesantez v. Boyle Envtl. Servs., Inc.*, 251 A.D.2d 11, 12 [1st Dept. 1998]. The commonality would be, if the allegations are true, that the putative class members were required to sign off on inaccurate timekeeping records and were in fact underpaid for the hours worked. *See Lewis v. Hallen Constr. Co., Inc.*, 193 A.D.3d 511, 512 [1st Dept. 2021] (holding that commonality was established when all claims arose from an alleged failure to pay prevailing wages).

To the extent that Defendants argue that the signed records constitute a waiver or otherwise conclusively defeat the merits of Plaintiffs’ claims, this argument is unavailing in the context of class certification. For instance, the Court is unconvinced at this point that a purported waiver of minimum wages would be valid. And it is premature at this stage to consider too strongly the merits of Plaintiffs’ claims as opposed to the signed records. The appropriate inquiry at this stage is “to determine whether on the surface there appears to be a cause of action for relief which is neither spurious nor sham.” *Simon v. Cunard Line, Ltd.*, 75 A.D.2d 283, 288 [1st Dept. 1980]. Plaintiffs here have satisfied that standard and have adequately established commonality. The Court also finds that Plaintiffs have satisfied the other prongs of the class certification test, and that certification is appropriate in this matter. *See, e.g., Stecko v. RLI Ins.*

Co., 121 A.D.3d 542, 543 [1st Dept. 2014] (noting that class actions are the “superior vehicle” for wage disputes).

The Court Declines to Issue Sanctions

The second portion of Plaintiffs’ motion seeks sanctions for Defendants’ alleged failure to respond to discovery requests. Defendants argue that they have fully complied and turned over all pay records they possess for the named Plaintiffs as well as a cross-section of some potential plaintiffs. They admit that there was a delay in responding to one of the orders by this Court but point to the open lines of communication between the two sets of counsel during the delay. Moreover, at oral argument, the plaintiffs’ counsel indicated that should they receive class certification, they would withdraw the remainder of their motion. Striking the answer is permitted only when there is a clear showing of a willful, contumacious, or bad faith failure to comply. *Rodriguez v. United Bronx Parents, Inc.*, 70 A.D.3d 492, 492 [1st Dept. 2010]. The Court does not find that there has been such a showing here, and therefore this portion of the motion will be denied. Accordingly, it is hereby

ADJUDGED that the motion is granted as to the class certification and denied as to the sanctions request; and it is further

ORDERED and ADJUDGED that Plaintiffs’ claims are certified as a CPLR § 901 class action on behalf of a class defined as: all current and former *non-exempt* employees of 24 West Food Corp. d/b/a Food Dynasty Supermarket, 2343 Jerome Food Corp. d/b/a Food Dynasty Supermarket, Abdel Abuzahrieh, and Mohammed Abuzahrieh who performed grocery market related in classifications that *include but are not limited to* grocery clerks, produce department clerks, meat department clerks, dairy department clerks, frozen department clerks, delivery clerks, cashiers and baggers from February 2018 to the present; and it is further

ORDERED and DECLARED that the named Plaintiffs are appointed as representatives for the Class and counsel for Plaintiffs are appointed as Class Counsel.

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12/10/2025
DATE

LYLE E. FRANK, 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