Arroyo v Level 5 Carpentry Corp.
2025 NY Slip Op 34780(U)
November 12, 2025
Supreme Court, New York County
Docket Number: Index No. 158215/2022
Judge: Dakota D. Ramseur
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DAKOTA D. RAMSEUR, Justice — PART 34M

INDEX NO. 158215/2022
MOTION DATE 09/20/2024
MOTION SEQ. NO. 001

MICHELL ARROYO,

Plaintiff,

- v -

LEVEL 5 CARPENTRY CORP., MITCHELL BLONDER

Defendant.

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 44, 45, 46, 47, 48, 49, 50

were read on this motion to/for MISCELLANEOUS.

In September 2022, plaintiff Michell Arroyo commenced this class action against corporate defendant Level 5 Carpentry Corp. ("Level 5") and individual defendant Mitchell Blonder ("Blonder"). Plaintiff, a former employee of Level 5 from January 2022 to August 2022, alleges that defendants engaged in wage and hour violations under 12 NYCRR § 142-2.2 and New York Labor Law Article 6 §§ 190 *et seq.* and Article 19 § 663. In this motion sequence, plaintiff moves pursuant to CPLR 901 and 902 for class certification. The proposed class consists of "[a]ll individuals currently or formerly employed by Level 5 Carpentry Corp. ("Level 5") who performed construction work for Level from the period from September 2016 to the present, including but not limited to laborers, carpenters, sheet rockers, and/or tapers. The defined class shall not include any owners, corporate officers, or directors (hereinafter the 'Class' or 'Class Members')". (NYSCEF doc. no. 32.) The motion is opposed in its entirety. For the following reasons, plaintiff's motion is granted.

BACKGROUND

Plaintiff worked as a carpenter for defendants Level 5 and Blonder from approximately January 2022 to August 2022. (NYSCEF doc. no. 21, Arroyo affidavit.) Level 5 is a construction company that performs services including carpentry, framing, and drywall, for which Blonder serves as vice-president since 2018. (NYSCEF doc. no. 19 at p. 58, Blonder deposition.) Level 5 is owned by non-party Lyndon Emptage. (*Id.* at pp. 9-10, 26-29.) Level 5 and Blonder jointly determine the payrate and decide on promotion matters regarding Level 5 workers. (*Id.* at pp. 56-58.)

Plaintiff was assigned a work schedule from 7:00 a.m. to 3:30 p.m., Monday through Friday. (NYSCEF doc. no. 21.) This notwithstanding, plaintiff testified to having typically worked more than the scheduled shift times and upwards of 40 hours a week, including

weekends. (*Id.*; *see also* NYSCEF doc. no. 19 at p. 62.) Plaintiff avers that this was held out to be a requirement to keeping his job. (NYSCEF doc. no. 21.) Further, plaintiff avers that he was required to arrive at work at 6:45 a.m. and often worked until 5:00 p.m. or 6:00 p.m. (*Id.*) Approximately twice per month, plaintiff worked Saturdays from 9:00 a.m. to 3:00 p.m. (*Id.*; NYSCEF doc. no. 19 [Blonder testimony that it was possible that plaintiff worked on Saturdays for defendants, and that it was likely that defendants asked plaintiff to work beyond his scheduled shift].) Plaintiff claims that, despite working from 6:45 a.m. to, at times, 5:00 p.m. or 6:00 p.m. during the week and from 9:00 a.m. to 3:30 p.m. on Saturdays, defendants only paid plaintiff regular compensation for 40 hours per week. Specifically, plaintiff avers he was not paid the overtime rate of one and one-half his regular pay rate for overtime, nor for the extra time he worked when starting at 6:45 a.m. Instead, plaintiff was paid in cash, at his regular rate of pay, for any hours worked in excess of 40 hours per week, and, at least once, had one hour deducted from his wages by defendants when he was five to ten minutes late. (*Id.*) Plaintiff would receive these cash payments in "a small yellow envelope that was included with [his] paycheck." (NYSCEF doc. no. 21 at p. 2.)

Plaintiff asserts that his co-workers have similarly been subject to defendants' practices and policies in that they have also not received overtime compensation for time worked over 40 hours per week. (NYSCEF doc. no. 19 at pp. 73, 75, 130.) Defendants oppose plaintiff's motion in its entirety and challenge plaintiff's showings as to all elements of class certification pursuant to CPLR 901 *et seq*. Chiefly, defendants contend that plaintiff has made an insufficient showing of numerosity as based solely on his testimony and affidavit, that some employees were, according to their affirmations, properly compensated, and that plaintiff is an inadequate representative of the proposed class. Defendants also raise arguments that a class action is not the superior adjudicatory mechanism for this action, and that the proposed notice of class action and publication order are improper.

DISCUSSION

CPLR 902 provides that a class action may only be maintained if the five prerequisites promulgated by CPLR 901 (a) are met. (*Pludeman v Northern Leasing Sys., Inc.*, 74 AD3d 420, 421 [1st Dept 2010]; CPLR 902.) These prerequisites are: (a) (1) the class is so numerous that joinder of all members is impracticable (numerosity); (2) questions of law or fact common to the class predominate over questions of law or fact affecting individual class members (commonality); (3) the claims or defenses of the class representatives are typical of those in the class (typicality); (4) the class representatives will fairly and accurately protect the interest of the class; and (5) a class action represents the superior method of adjudicating the controversy (superiority). (*Id.*; CPLR 901 [a].)

The party seeking class certification bears the burden of establishing the prerequisites provided by CPLR 901 (a) by tendering evidence in admissible form. (*Weinstein v Jenny Craig Operations, Inc.*, 138 AD3d 546, 547 [1st Dept 2016]; *Kudinov v Kel-Tech Constr. Inc.*, 65 AD3d 481, 481 [1st Dept 2009].) Conclusory allegations are insufficient to satisfy the moving party's burden. (*Feder v Staten Island Hosp.*, 304 AD2d 470, 471 [1st Dept 2003]; *Pludeman*, 74 AD3d at 422.) Whether these prerequisites have been met and, thus, whether a lawsuit qualifies as a class action, rests within the trial court's sound discretion. However, the court must be

mindful that class certification should be liberally construed. (*Kudinov*, 65 AD3d at 481.) Further, the Court recognizes that "claims for uniform systemwide wage violations are particularly appropriate for class certification" since the cost of litigating individually often outweighs the value of the individual's claim. (*Andryeyeva v New York Health Care, Inc.*, 33 NY3d 152, 184 [2019].)

Numerosity—CPLR 901 (a) (1)

To establish numerosity, plaintiff has identified at least 13 putative class members and provided a comparison of their cash statements and paystubs. (NYSCEF doc. no. 30, cash and paystub comparison sampling.) Further, in his affidavit, plaintiff avers that he has spoken to eight named coworkers who, according to plaintiff, were "not paid all the wages they are due." (NYSCEF doc. no. 21 at p. 3.) Defendants testified to employing at least 138 workers, which plaintiff asserts are putative class members similarly injured by defendants' wage and hour practices. (*See* NYSCEF doc. no. 20 at p. 9, defendants' interrogatory responses.) Defendants also stated that they employed a total of 276 individuals between September 2018 and April 26, 2023 and that at least half of all employees worked as sheet rockers, laborers, carpenters, and tapers. (*Id.*; NYSCEF doc. no. 19 at pp. 157-59.) Nevertheless, defendants argue that named plaintiff has proffered insufficient evidence to support class certification, when considering that plaintiff's testimony shows he did not know whether the eight workers identified actually worked overtime, and that their identification is supported solely by plaintiff's affidavit.

The Court finds the numerosity prerequisite for class certification has been met. Indeed, though the exact number of class members has yet to be determined, the number of workers alleged to have been underpaid is high enough to warrant class certification, irrespective of the affirmations of some workers stating that they have not been injured by the same wage and hour policies or practices as plaintiff. (*See Kudinov*, 65 AD3d at 481 ["While it is true the exact number of the putative class has not been determined, and that some members of the putative class have submitted affidavits affirmatively stating that they were not aggrieved by the allegations against defendants, the number of workers alleged to have been underpaid was high enough to justify the court's exercise of its discretion in certifying the class."]; *Borden v 400 E. 55th St. Assoc., L.P.*, 24 NY3d 382, 399 [2014] [acknowledging that the legislature envisioned, however remotely, a properly certified class containing as few at 18 members]; *Globe Surgical Supply v GEICO Ins. Co.*, 59 AD3d 129, 137-138 [2d Dept 2008] [finding the numerosity requirement satisfied where the proposed class was "at a minimum between 10 and 100 (class members)"].)

Further, plaintiff has shown, based on his own personal observations, testimony, and affidavit, along with the defendants' own testimony and discovery responses, that the putative class consists of at least 13 and up to 138 workers employed by defendants to perform work enumerated in the proposed class. (*See Esposito v Hair Bar NYC Inc. et al*, 2024 NY Slip Op 30608 [U] [Sup Ct, NY County].) In *Esposito*, the Court found the numerosity requirement to have been met where a plaintiff submitted one affidavit wherein she averred she worked in multiple salons and described personal observations that she and her coworkers, anywhere between 40 to 100, worked overtime and were not paid. (*Id.*) The same reasoning applies here. Therefore, the numerosity requirement has been met.

Commonality and Typicality—CPLR 901 (a) (2)-(3)

Plaintiff contends that essential questions of law and fact common to all members of the class predominate over questions particular to each individual member and that plaintiff's and the putative members' claims derive from the same practice or course of conduct and are based on the same legal theory. To meet these prerequisite, plaintiff asserts that his co-workers have similarly been subject to defendants' wage-and-hour practices and policies. (NYSCEF doc. no. 19 at pp. 73, 75, 130.) Blonder, in turn, testified that the defendants' pay policies and practices with respect to the payment of overtime wages in cash applied to all putative class members. (*Id.* at 135-136.) It was further testified that the putative class members were required to arrive at the job site at 6:45 a.m. to sign in and attend a "pre-task safety meeting" prior to commencing their respective tasks by 7:00 a.m. (*Id.* at pp. 71-72, 74.)

Defendants used timesheets as a timekeeping system for all putative class members. (NYSCEF doc. no. 19 at 86-87; NYSCEF doc. no. 22, timesheets sampling.) Same were used for processing payroll, and plaintiff asserts that neither he nor the putative class members were paid for their work until 7:00 a.m., regardless of earlier arrival. (NYSCEF doc. no. 19 at pp. 79-80.) Plaintiff and the putative class were paid a flat rate of eight hours per day, deducting a 30-minute lunch break irrespective of whether a worker reported working more than forty hours per week on their timesheets, such that, plaintiff argues, they are inaccurate to indicate the workday start time. (NYSCEF doc. no. 19 at pp. 144-50, 151-52.) Plaintiff and the putative class members were provided the same paystub with their check per pay period, which reflected the wages paid only by check. (*Id.* at 121-22; *see* NYSCEF doc. no. 27, paystub sampling.)

According to Blonder's testimony, for putative class members to be paid in cash, they were required to sign a "cash statement" which would purportedly reflect cash payments made weekly. (NYSCEF doc. 19 at 94-102, 117-17; NYSCEF doc. no. 28, cash statement sampling.) Defendants did not otherwise keep a record of how many or which workers received cash payments for overtime work. (NYSCEF doc. 19 at 94-98.) Same cash statements, plaintiff argues, do not reflect the hours paid for nor the date on which the work was performed. Plaintiff further compares his own and certain named putative class members' paystubs and the sample cash statements to argue that defendants failed to pay either, whether in cash or check, at the overtime rate for all hours worked in excess of 40 per week but instead paid him at the regular payrate. (*See* NYSCEF docs. no. 23-26, paystub samplings of Sloane, Jovel, Ramirez, and Devignes [sign-in sheet for Ramirez reflects 42.5 hours of work, yet his paystub shows he was paid for only 40 hours].) Moreover, plaintiff maintains that defendants provided no overtime payrate. (NYSCEF doc. no. 31, payrate form sampling.)

In opposition to plaintiff's submissions as to both commonality and typicality requirements, defendants argue that questions affecting individual putative class members predominate over questions common to the class because there was no common policy or plan pursuant to which overtime was paid. Instead, defendants contend, several employees were paid appropriate compensation for their overtime. (NYSCEF docs. no. 36, 40, sampling of paystubs; *see Mitchell v Barrios-Paoli*, 253 AD2d 281 [1st Dept 1999] [holding that wrongs that are individual in nature, albeit committed pursuant to a common plan or pattern "does not permit

invocation of the class action mechanism"].) However, plaintiff argues that the possibility that individualized damages determinations may become complicated does not preclude a finding that the commonality element commonality requirement is met. (*Maddicks Big City Props., LLC*, 34 NY3d 116, 126-27 [2019].) The Court agrees.

"Individualized damages assessments in wage-and-hour actions based on systematic policies do not undermine commonality or weigh substantially against class certification." (*Brown v Mahdessian*, 206 AD3d 511, 512 [1st Dept 2022].) The fact that damages may vary by class member does not per se foreclose class certification, as "the legislature enacted CPLR 901 (a) with a specific allowance for class actions in cases where damages differed among the plaintiffs, stating 'the amount of damages suffered by each class member typically varies from individual to individual, but that fact will not prevent the suit from going forward as a class action if the important legal or factual issues involving liability are common to the class.'" (*Andryeyeva v New York health Care, Inc.*, 33 NY3d 152, 185 [2019].) Thus, it having been shown that plaintiff and putative class members were potentially subject to the same wage and hour policy and practices by defendants, defendants' contention that some similarly situated workers were compensated appropriately is of no moment. The ability to resolve individual inquiries by referring to payroll and other documentary evidence distinguishes this case from those in which such inquiries defeat commonality. (*See Kudinov v Kel-Tech Constr. Inc.*, 65 AD3d 481, 482 [1st Dept 2009] citing *Batas v Prudential Ins. Co. of Am.*, 37 AD3d 320, 322 [2007].) Therefore, this contention does not preclude class certification.

The typicality prerequisite is satisfied where a plaintiff's claim derives from the same practice or course of conduct that gave rise to the claims of the other class members and is based on the same legal theory. (*Pludeman*, 74 AD3d at 423, citing *Friar v Vanguard Holding Corp.*, 78 AD2d 83, 99 [2d Dept 1980]; *Ackerman v Price Waterhouse*, 252 AD2d 179, 201-202 [1st Dept 1998].) Though defendants argue that putative class members were not injured in an "identical manner to plaintiff," in assessing whether certification is appropriate, courts do not consider whether a plaintiff's claims have merit; instead, the inquiry is minimal and limited to whether, on the surface of the complaint, there appears to be a cause of action that is not a sham. (*See*, *Pludeman*, 74 AD3d at 422; *Brandon v Chefetz*, 106 AD2d 162, 168 [1st Dept 1985].) Under this standard, plaintiff's sworn testimony based on personal knowledge, and supporting documents, is clearly sufficient. (*See Jenny Craig Operations, Inc.*, 138 AD3d 546, 547 [1st Dept 2016].) Therefore, the commonality and typicality requirements have been met.

Representative—CPLR 901 (a) (4)

Whether a plaintiff "will fairly and adequately protect the interests of the class" involves a number of considerations: whether a conflict of interest exists between the representative and the class members, the representative's background and personal character, the representative's familiarity with the lawsuit, a determination of the representative's ability to assist counsel and, if necessary, "to act as a check on the attorneys" and the competence, experience and vigor of the representative's attorneys and the financial resources available to prosecute the action. (*Pruitt v Rockefeller Ctr. Props.*, 167 AD2d 14, 24 [1st Dept 1991] [citations omitted]; CPLR 901 [a] [4].)

To establish adequacy of representation, plaintiff relies on his affidavit to assert that he has demonstrated sufficient understanding of the case and proposed class, that he has expressed desire to represent the class, and that he is prepared to cooperate with counsel throughout the litigation. (*See* NYSCEF doc. no. 21.) Defendants argue plaintiff is an inadequate representative because he is not sufficiently familiar with the litigation and does not possess sufficient knowledge of this action, as, in his deposition, plaintiff stated that he did not know that Mitchell Blonder is a named defendant in this action, and that he did not know what a class action was, understand what a class representative is, or know that he was representing a group of individuals whose interests he was required to protect. (*See* NYSCEF doc. no. 41 at pp. 17, 24-25.) Further, in his deposition, plaintiff also stated that he had not seen the complaint or his responses to interrogatories. (*Id.* at p. 25.) Plaintiff, in turn, argues that, on multiple occasions during his deposition, he raised issues with the translation provided by defendants' interpreter, yet no remedy was proffered, aside from continuing with the deposition without an interpreter. (*See* NYSCEF doc. no. 41 at pp. 38-41.) Plaintiff asserts that same issues pertained to significant material matters including corrections as to who kept track of hours worked and how late he worked. (*Id.* at pp. 58-59, 72-73.)

This notwithstanding, the Court finds plaintiff has shown, by averring in his affidavit, to have the requisite "general awareness of the claims" involved in this case. (*See Rodriguez v Tri-Borough Certified Home Care, Ltd.*, 227 AD3d 557, 557-58 [1st Dept 2024].) The Court herein finds in favor of class certification, based upon plaintiff's affidavit and the issues raised regarding Spanish translation, as a tenuous grasp of the English language is insufficient to render a putative class representative inadequate. (*Nawrocki v Proto Constr. & Dev. Corp.*, 82 AD3d 534, 535 [1st Dept 2011].) Indeed, to the extent that plaintiff asserts that any apparent deficiency in his understanding of certain terms or questions in his deposition was due explicitly to issues related to deposition interpreter/translator issues (*see* NYSCEF doc. no. 41 at pp. 9-10, 45-47), such issues, without more, do not warrant denial of this application considering the affidavit filed in support of this motion. In any case, minor and collateral issues of impeachment are insufficient to disqualify a class representative. (*Lamarca v Great Atl. & Pac. Tea Co., Inc.*, 55 AD3d 487, 488 [1st Dept 2008].)

Defendants also argue that plaintiff's character makes him an improper class representative, based on the averments made in the Blonder affirmation wherein it is stated that plaintiff solicited and contacted several putative class members to join in this wage-and-hour class action. (*See* NYSCEF doc. no. 36, Blonder affirmation.) Further, defendants argue that plaintiff has an ulterior motive to bring this action, in that it is believed by Blonder that plaintiff brought this suit in retaliation to an altercation had between plaintiff and Lyndon Emptage weeks prior to the commencement of this action. (*Id.*) Plaintiff argues in further support of his application that an ulterior motive is not established by the altercation but that, significantly, plaintiff chose not to sue Emptage individually. Whether the representative party will fairly and adequately protect the interests of the class involves a number of considerations. (*Pruitt v Rockefeller Center Properties, Inc.*, 167 AD2d 14, 24 [1st Dept 1991].) The representative's background and personal character is but one of them. Considering that plaintiff has shown familiarity with this action, and sufficient knowledge thereof, as well as a lacking conflict of interest between him and the putative class members, it cannot be said that plaintiff's character warrants denial of class certification of this wage-and-hour action, based solely on one

altercation with the non-party owner of the defendant employer. Accordingly, the Court finds that the prerequisites set forth in CPLR 901 (a) (4) have been met.

Superiority—CPLR 901 (a) (5)

As to the superiority prerequisite of CPLR 901, plaintiff has commenced this action alleging that he and similarly situated coworkers have been injured by defendants' wage and hours practices and policies. Defendants oppose and argue that a class action is not superior, as an individualized examination of each worker's employment history is required and would this defeat the class action's goal of saving judicial resources. The Court finds the defendants' arguments against superiority to be unavailing. "[A] class action is the 'superior vehicle' for resolving wage disputes 'since the damages allegedly suffered by an individual class member are likely to be insignificant, and the costs of prosecuting individual actions would result in the class members have no realistic day in court.'" (*Stecko v RLI Ins. Co.*, 121 AD3d 542, 544 [1st Dept 2014] citing *Nawrocki v Proto Constr. & Dev. Corp.*, 82 AD3d 534, 536 [1st Dept 2011]; *see also Dabrowski v Abax, Inc.*, 84 AD3d 633, 635 [1st Dept 2011].) Here, the proposed class consists of workers who have allegedly suffered relatively modest damages that may not otherwise motivate them to bring actions individually due to the costs of litigation. Thus, the Court finds class action to be the superior method for adjudicating the disputes in this action.

Notice of Class Action Lawsuit and Publication Order—CPLR 904

Finally, defendants oppose the propriety of the proposed Notice of Class Action Lawsuit (NYSCEF doc. no. 32) and the proposed Publication Order (NYSCEF doc. no. 33) on the grounds that (1) the contact information for defendants' counsel should be provided, (2) the notice should explain to class members alternatives to joining the class action (specifically, their right to bring their own action), and (3) plaintiff's request for e-mail addresses and telephone numbers should be denied due to privacy concerns.

"The law requires that the parties provide the best notice practicable under the circumstances to class members." (*See Drizin v Sprint Corp.*, 7 Misc 3d 1018 [A] [Sup Ct, NY County 2005].) The notice must be approved by the court. (CPLR 904 [c].) Here, despite defendants' contentions, the Court finds that the proposed notice of class action lawsuit (NYSCEF doc. no. 32) contains an adequate and sufficient description of the class so that an individual may determine whether they are a member and likewise contains an appropriate statement as to the putative class members' rights, including the alternative options of individuals to consult with an attorney, initiate their own action, or opt out of the class. (*Id.*, *see e.g. Drizin* at 1.) The Court finds the proposed publication order (NYSCEF doc. no. 33), wherein plaintiff seeks the names, last known mailing and e-mailing addresses, and telephone numbers of putative class members to be appropriate as well, as plaintiffs are entitled to discovery about workers who may participate in the instant action. (*See Aponte v Fedcap Rehabilitation Servs.*, 2022 NY Slip Op 30318[U] [Sup Ct, NY County 2022]; *Moran v JLJ IV Enters., Inc.*, 2020 NY Slip Op 31924[U] [Sup Ct, NY County 2020].)

Accordingly, it is hereby,

ORDERED that plaintiff Michell Arroyo's motion for class certification pursuant to CPLR 901 and 902 is granted; and it is further

ORDERED that this action is certified as a class action, with the class being defined as follows: all individuals currently or formerly employed by Level 5 Carpentry Corp. who performed construction work for Level 5 Carpentry Corp. from the period from September 2016 to the present, including but not limited to laborers, carpenters, sheet rockers, and/or tapers. The defined class shall not include any owners, corporate officers, or directors; and it is further

ORDERED that plaintiff Michell Arroyo is appointed Lead Plaintiff and Class Representative; and it is further

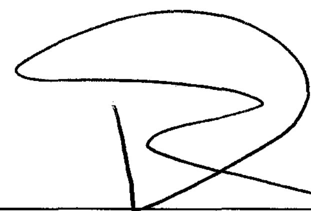
ORDERED that Virginia & Ambinder, LLP shall serve as class counsel; and is further

ORDERED that the annexed Notice of Class Action shall be served in accordance to So-Ordered Publication Order, as annexed to this Decision and Order; and it is further

ORDERED that the parties shall appear for an in-person status conference on February 3, 2026 at 9:30 a.m. in Room 341, 60 Centre Street, New York, New York; and it is further

ORDERED that within ten (10) days of entry counsel for plaintiff shall serve a copy of this order, along with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.



11/12/2025
DATE

DAKOTA D. RAMSEUR, J.S.C.

CHECK ONE:	[ ]	CASE DISPOSED		[X]	NON-FINAL DISPOSITION	
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