

Gui Zhu Chen v Reardon
2025 NY Slip Op 35534(U)
January 15, 2025
Supreme Court, Albany County
Docket Number: Index No. 908146-23
Judge: Gerald William Connolly
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STATE OF NEW YORK
SUPREME COURT

ALBANY COUNTY

GUI ZHU CHEN, YA YUN LI, MARIA RODRIGUEZ,
GUIA HUA SONG, and CHUN FENG ZHUANG

Petitioners,

- against -

DECISION AND ORDER

Index No.: 908146-23

ROBERTA REARDON, as Commissioner of the New York
State Department of Labor,

Respondent.

(Supreme Court, Albany County, Special Term)

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CONNOLLY, J:

Gui Zhu Chen, Ya Yun Li, Maria Rodriguez, Gui Hua Song, and Chung Zeng Zhuang (collectively, “Petitioners”) commenced this Article 78 proceeding seeking class certification and an order directing the New York State Department of Labor (“NYSDOL”) to reopen and investigate complaints that Petitioners previously filed with NYSDOL. The Court previously granted the petition in part but declined to rule on Petitioners’ request for class certification. Before the Court is Petitioners motion to reargue the issue of class certification. NYSDOL opposes reargument.

I. BACKGROUND

Petitioners are (or were) employed as home care aides who provided live-in services to elderly patients. Each of the Petitioners worked for a home care agency and was a member of a union—Chen, Li, Rodriguez, and Song were members of 1199SEIU United Health Care Workers (“1199SEIU”) and Zhuang was a member of Local 1770, Home Healthcare Workers of America (“Local 1770”)—that had collective bargaining agreements with Petitioners’ respective employers. Those agreements included mandatory arbitration provisions requiring that any claims alleging violations of the New York Labor Law go through mandatory arbitration.

Prior to 2018 or so, Petitioners typically worked 24-hour shifts for which they were paid for 13 hours of work. During the course of their shifts, Petitioners never received five hours of uninterrupted sleep or three hours of meal breaks. Between 2018 and 2022, Petitioners filed complaints with NYSDOL, alleging that their compensation violated the Minimum Wage Act’s “13-Hour Rule.” NYSDOL accepted Petitioners’ complaints and began investigating them.

In January of 2019, 1199SEIU filed a class-action grievance alleging violations of the 13-Hour Rule on behalf of its members. On February 25, 2022, the arbitrator issued a class-wide

award in favor of 1199SEIU and its members that required covered home care agencies to establish a monetary fund to be distributed to the impacted employees. The award required employees to opt-in to receive compensation. Chen, Li, Rodriguez, and Song all declined to do so. On February 24, 2023, counsel for Local 1770 informed NYSDOL that—like 1199SEIU—it planned to investigate and pursue Zhuang’s 13-Hour Rule claim.

On May 3, 2023, and May 23, 2023, NYSDOL informed Petitioners that it was terminating investigation of their complaints and closing their cases. NYSDOL asserted that it was doing so because Petitioners’ claims were subject to mandatory arbitration.

On August 24, 2023, Petitioners filed an Article 78 petition that sought an order directing NYSDOL to re-open and investigate Petitioners’ closed complaints. Petitioners alleged that NYSDOL’s policy of closing investigations into complainants that were subject to mandatory arbitration was a “rule” that was adopted without a notice of proposed rulemaking.

The Article 78 petition was brought as a class action, and Petitioners also sought a court order certifying a class consisting of all home care aides:

- a. who filed claims with the NYSDOL because they were paid for no more than 13 hours per shift when they worked 24 hours,
- b. whose unions entered into arbitration agreements with their employers covering their claims,
- c. who have not filed claims pursuant to a union arbitration award, and
- d. whose cases have been closed by the NYSDOL.

The same day they filed their Article 78 petition, Petitioners filed a document captioned “Notice of Verified Petition and Summons for Class Action Complaint.” The Notice stated:

PLEASE TAKE NOTICE THAT upon the annexed verified petition and class action complaint in this action, an application will be made to this Court at the Albany County Courthouse on October 13, 2023, at 10:00 am, or as soon thereafter as counsel may be heard for a judgment pursuant to Articles 9, 78 and 81 of the CPLR and providing the following relief:

- a. Directing Respondent Reardon to re-open and fully investigate the labor standards complaints filed by Petitioners;

- b. Certifying this action and proceeding, pursuant to CPLR Article 9, as a class action, consisting of all home care aides:
 - (i) who filed claims with the NYSDOL because they were paid for no more than 13 hours per shift when they worked 24 hours,
 - (ii) whose unions entered into arbitration agreements with their employers covering their claims,
 - (iii) who have not filed claims pursuant to a union arbitration award, and
 - (iv) whose cases were closed by the NYSDOL.
- c. Appointing Petitioners' counsel as counsel for the class;
- d. Ordering Respondent Reardon to (i) identify all class members whose labor standards complaints were closed by the NYSDOL because their unions had entered into mandatory arbitration agreements with their employers, and (ii) re-open and fully investigate the labor standards complaints filed by class members;
- e. Converting, if necessary, the Article 78 proceeding to an action;
- f. Awarding attorneys' fees, costs and disbursements in an amount to be determined; and
- g. Granting Petitioners and the putative class such other and further relief as the Court may deem just and proper.

On October 9, 2024, the Court entered an order granting Petitioners' Article 78 petition in part. The Court held that NYSDOL's "policy" of closing investigations into grievances by complainants subject to mandatory arbitration agreements through their unions was a "rule" within the meaning of SAPA § 102. (*see* State Administrative Procedure Act § 202). Because NYSDOL did not comply with any of SAPA's procedural requirements before adopting and relying on this rule, their decisions terminating the investigations in Petitioners' grievances was annulled.¹

In a footnote, the Court observed that the Article 78 petition was brought as a class action. While both parties had briefed the issue of class certification, it did not appear that Petitioners had ever filed a motion for class certification as required by CPLR § 902. Accordingly, the Court declined to rule on class certification.

¹ Petitioners asked the Court to annul the NYSDOL decisions terminating Petitioners' complaints and order NYSDOL to "re-open and fully investigate" the complaints. The Court annulled the termination decisions but did not opine on whether full investigation of the complaints was necessary or appropriate.

On October 22, 2024, Petitioners filed the instant motion for leave to reargue the class certification issue. Petitioners claim that their August 23, 2024, “Notice of Verified Petition and Summons for Class Action Complaint” was performing double duty as (1) a notice of petition; and (2) a notice of motion for an order for class certification pursuant to CPLR § 902. Petitioners ask the Court to rule on the portion of their notice of petition that was also a notice of motion for class certification.

II. DISCUSSION

A. Motion to Reargue

Under CPLR 2221, a party may file a motion to reargue a prior motion (see CPLR 2221). “[A] motion to reargue must ‘be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion’” (see *People v. D'Alessandro*, 13 N.Y.3d 216, 219 [2009], quoting CPLR 2221[d][2]; see also *Bueno v. Allam*, 170 A.D.3d 939, 940 [3d Dept. 2019]). Generally, “a motion to reargue ‘is not an appropriate vehicle for raising new questions ... which were not previously advanced’” (see *D'Alessandro*, 13 N.Y.3d at 219, quoting *People v. Bachert*, 69 N.Y.2d 593, 597 [1987]). “[E]ven in situations where the criteria for granting [a] motion [to reargue] are not technically met,” however, “courts retain flexibility to grant such a motion when it is deemed appropriate” (*Davis v. Zeh*, 200 A.D.3d 1275 [3d Dept. 2021], quoting *Loris v. S & W Realty Corp.*, 16 A.D.3d 729, 730 [3d Dept. 2005]).

The procedure for determining whether an action should proceed as a class action is governed by CPLR § 902, which provides that “[w]ithin 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” (see CPLR § 902; see also *Maddicks v. Big City Properties, LLC*, 34 N.Y.3d 116, 126 [2019]). The

motion requirement is mandatory, and a trial court should generally not grant class action status sua sponte (*see O'Hara v. Del Bello*, 47 N.Y.2d 363, 367 [1979]; *Ackerman v. N.Y. Hosp. Med. Ctr. of Queens*, 127 A.D.3d 794, 796 [2d Dept. 2015]; *Green v. Blum*, 84 A.D.2d 840, 840 [2d Dept.1981]).

Petitioners' "Notice of Verified Petition and Summons for Class Action Complaint" satisfied the general requirements of a motion that would have perhaps been more appropriately captioned "Notice of Motion for Class Certification Pursuant to CPLR § 902" (*see* CPLR § 2211 ["A motion is an application for an order."]; CPLR § 2214[a] ["A notice of motion shall specify the time and place of the hearing on the motion, the supporting papers upon which the motion is based, the relief demanded and the grounds therefor. Relief in the alternative or of several different types may be demanded."])). In its October 9, 2024, order, the Court overlooked this and neglected to rule on Petitioners' motion for class certification. Accordingly, the Court will grant Petitioners' motion to reargue (*see* CPLR 2221; *cf. Empire Mut. Ins. Co. v. Palladino*, 54 A.D.2d 863, 864 [1st Dept. 1976] ["While the first pleading in a special proceeding is a petition, we think the supporting affidavit in this case sufficiently meets that requirement."])). To the extent Petitioners' motion for class certification was premature, the Court believes that it is appropriate to excuse that deficiency and address the motion's merits (*see David B. Lee & Co. v. Ryan*, 266 A.D.2d 811, 812 [4th Dept. 1999] [holding that plaintiff's motion for class certification was "premature because it was made before the time for service of an answer had expired" and explaining that "the court should have either denied that . . . motion with leave to renew or disregarded the irregularity . . . and afforded defendants the opportunity to oppose . . . [the] motion on its merits"])).

B. Motion for Class Certification

In a class action, “one or more members of a class may sue or be sued as representative parties on behalf of all” (*see* CPLR § 901[a]). A class action may only be maintained when five prerequisites are satisfied:

1. the class is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable;
2. there are questions of law or fact common to the class which predominate over any questions affecting only individual members;
3. the claims or defenses of the representative parties are typical of the claims or defenses of the class;
4. the representative parties will fairly and adequately protect the interests of the class; and
5. a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

(CPLR § 901[a]; *see also Morrissey v. Nextel Partners, Inc.*, 72 A.D.3d 209, 212-133 [3d Dept. 2010]). Respectively, “[t]hese factors are commonly referred to as the requirements of numerosity, commonality, typicality, adequacy of representation and superiority” (*see City of N.Y. v. Maul*, 14 N.Y.3d 499, 508 [2010]).

“If all of the CPLR 901 prerequisites are satisfied, the court must then consider the discretionary factors listed in CPLR 902” (*Jenack v. Goshen Operations, LLC*, 222 A.D.3d 36, 44 [2d Dept. 2023]; *see also Fleming v. Barnwell Nursing Home & Health Facilities, Inc.*, 309 A.D.2d 1132, 1134 [3d Dept. 2003]). Those factors are:

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;
5. The difficulties likely to be encountered in the management of a class action.

(CPLR § 902).

The proponent of class action certification has the burden of establishing that both the CPLR § 901 prerequisites and the CPLR § 902 discretionary factors are satisfied (*see Williams v. Air Serv Corp.*, 121 A.D.3d 441, 441–42 [1st Dept. 2014]; *Burdick v. Tonoga, Inc.*, 179 A.D.3d 53, 56 [3d Dept. 2019]). “This burden must be met by providing an evidentiary basis for class certification” (*Kudinov v. Kel-Tech Const. Inc.*, 65 A.D.3d 481, 481 [1st Dept. 2009]; *see also Yonkers Contracting Co. v. Romano Enterprises of N.Y., Inc.*, 304 A.D.2d 657, 658 [2d Dept. 2003] [“A class action certification must be founded upon an evidentiary basis.”]). General or conclusory allegations in the pleadings or affidavits are insufficient to sustain th[e proponent’s] burden” of satisfying CPLR §§ 901 and 902 (*Rallis v. City of N.Y.*, 3 A.D.3d 525, 526 [2d Dept. 2004]; *see also Pludeman v. N. Leasing Sys., Inc.*, 74 A.D.3d 420, 422 [1st Dept. 2010] [“Conclusory assertions are insufficient to satisfy the statutory criteria.”]). When the proponent of class action is unable to conclusively demonstrate that certification is appropriate, limited discovery followed by a hearing may be appropriate (*see Maddicks*, 34 N.Y.3d at 126 [“That motion practice allows a would-be class representative to demonstrate satisfaction of the CPLR 901(a) prerequisites with evidence – as opposed to mere allegations – tested at a hearing.”]; *Stewart v. Roberts*, 163 A.D.3d 89, 95–96 [3d Dept. 2018] [“Timely requests for disclosure on the issue of numerosity must be granted.”]; *Meraner v. Albany Med. Ctr.*, 199 A.D.2d 740, 742 [3d Dept. 1993] [“[P]laintiffs are entitled to discovery to adduce evidence to meet their burden of showing that the statutory prerequisites for certification of a class are met.”]; *Chimenti v. Am. Express Co.*, 97 A.D.2d 351, 352 [1st Dept. 1983] [“Special Term should have held the ‘mini-hearing’ referred to in the Practice Commentary, preceded by limited discovery, to determine whether the prerequisites

to class certification listed in CPLR 901 are present, and to assess the feasibility considerations listed in CPLR 902 in relation to the particular facts.”)).

i. Governmental Operations Rule

NYSDOL’s sole argument against class certification is that class action is inappropriate in an Article 78 proceeding against a government body.

Generally, “where governmental operations are involved, and where subsequent petitioners will be adequately protected under the principles of *stare decisis*, . . . class action relief is not necessary” (*Martin v. Lavine*, 39 N.Y.2d 72, 75 [1976], quoting *Jones v. Berman*, 37 N.Y.2d 42, 57 [1975]). This general rule, often referred to as the “governmental operations rule,” bars class certification in cases raising only “prospective claims” because “*stare decisis* will protect the potential class members by ensuring prospective application of a favorable judgment” (*see Stewart*, 163 A.D.3d at 94). The rule does not apply when the challenged government conduct occurred in the past and petitioners seek “retroactive benefits for potential class members” (*see id.*; *see also Graves v. Doar*, 62 A.D.3d 874, 876 [2d Dept. 2009] [holding that rule did not apply where petitioners sought to “to recover damages or to an award of retroactive reimbursement of food-stamp allotments wrongfully withheld”]; *Watts v. Wing*, 308 A.D.2d 391, 392 [1st Dept. 2003] [explaining that rule does not apply where “putative class is composed of those for whom the complained-of harm is not merely prospective but . . . already a *fait accompli*”])). The rule will also not bar class certification when (1) the government agency “fails to prose any form of relief that purports to protect the [prospective class]” (*see N.Y.C. Coal. to End Lead Poisoning v. Giuliani*, 245 A.D.2d 49, 51 [1st Dept. 1997]; *see also Seittelman v. Sabol*, 217 A.D.2d 523, 526 [1st Dept. 1995]); or (2) “the [petitioners]’ ability to commence individual suits is highly

compromised, due to indigency or otherwise” (*see N.Y.C. Coal. to End Lead Poisoning*, 245 A.D.2d at 51; *see also Tindell v. Koch*, 164 A.D.2d 689, 695 [1st Dept. 1991]).

Here, Petitioners challenge NYSDOL’s wrongful termination of their complaints and seek an order directing NYSDOL to reopen them. In other words, they seek retroactive relief for past government conduct (*see Stewart*, 163 A.D.3d at 94). Further, while NYSDOL asserts that the principles of stare decisis will protect members of the prospective class who suffered the same harm as Petitioners, it does not elaborate or propose any remedy that would afford members of the prospective class this protection (*see N.Y.C. Coal. to End Lead Poisoning*, 245 A.D.2d at 51). Under these circumstances, the Court does not believe that the governmental operations rule should bar class certification.

ii. Merits of Motion for Class Certification

As an initial matter Petitioners seek certification of a class consisting of

All home care aides:

- (i) who filed claims with the NYSDOL because they were paid for no more than 13 hours per shift when they worked 24 hours,
- (ii) whose unions entered into arbitration agreements with their employers covering their claims,
- (iii) who have not filed claims pursuant to a union arbitration award, and
- (iv) whose cases were closed by the NYSDOL.

This definition would include any claimant who had their case closed by NYSDOL for any reason at all. Only claimants whose cases were closed through the prohibited application of NYSDOL’s unnoticed rule of closing investigations into grievances by complainants subject to mandatory arbitration agreements would have a cause of action. Accordingly, the proposed definition must be modified to include this limitation (*see, e.g., Batas v. Prudential Ins. Co. of Am.*, 37 A.D.3d 320, 321 [1st Dept. 2007] [holding that class definition was “overbroad” because it included individuals who “do[] not have a viable cause of action”]; *Klein v. Robert’s Am. Gourmet*

Food, Inc., 28 A.D.3d 63, 71 [2d Dept. 2006] [“Those individuals would not have suffered any injury as a result of the defendants' alleged misrepresentations, and therefore their inclusion in the Class suggests that the definition is too broad.”]).

With the class appropriately defined, this appears to be an ideal case for class certification in many respects. The claims of the representatives are identical to the claims of the class and there are no questions of law or fact that affect only individual members (*see* CPLR § 901[a][2]-[3]). Indeed, the very essence of Petitioners' claim is NYSDOL's failure to consider individual circumstances when terminating investigations into grievances by complainants subject to mandatory arbitration agreements (*see, e.g., Andryeyeva v. N.Y. Health Care, Inc.*, 33 N.Y.3d 152, 184 [2019] [“Claims of uniform systemwide violations are particularly appropriate for class certification.”]). There is no need to calculate damages or fashion individual awards, and the relief would be the same for every class member (*cf. Weinberg v. Hertz Corp.*, 116 A.D.2d 1, 6–7 [1st Dept. 1986] [discussing difficulty of determining damages where some class members “have been subjected to less than all of the conduct complained of”], *aff'd*, 69 N.Y.2d 979 [1987]). The Court also believes that Petitioners have adequately established that they and their attorneys will fairly and adequately protect the interests of the class (*see* CPLR § 901[a][4]; *Ferrari v. Nat'l Football League*, 153 A.D.3d 1589, 1592 [4th Dept. 2017]). As for the CPLR § 902 factors, the Court does not believe any class member could reasonably have a strong interest in individually controlling the prosecution of a separate action; the Court is unaware of any other litigation involving the present claims; it would be appropriate to concentrate any litigation of these claims in a single forum and the Court does not anticipate any exceptional difficulty likely to arise in the management of this case as a class action (*see* CPLR § 902[1],[3]-[5]).

Significantly, however, the Court is not confident that the actual size of this class has been adequately established. Under CPLR § 901, this has a direct bearing on numerosity and is closely related to superiority (*see* CPLR § 901[a][1],[5]), and under CPLR § 902, it is closely related to the impracticability or inefficiency of prosecuting or defending separate actions (*see* CPLR § 902[2]).

CPLR § 901(a)(1) only permits certification of a class large enough “that joinder of all members . . . is impracticable.” There is no “mechanical test” that can be used to determine whether the numerosity requirement has been satisfied, and there is no “set rule for the number of prospective class members which must exist before a class is certified” (*see Friar v. Vanguard Holding Corp.*, 78 A.D.2d 83, 96 [2d Dept. 1980], quoting *Kelley v Norfolk & Western Ry. Co.*, 584 F.2d 34, 35 [4th Cir. 1978]). Instead, “[e]ach case depends upon the particular circumstances surrounding the proposed class, and the court should consider the reasonable inferences and common sense assumptions from the facts before it” (*Friar*, 78 A.D.2d at 96; *see also Stewart*, 163 A.D.3d at 94 “[T]here is no bright-line test for determining whether the requirement of numerosity has been met; rather, each case depends on the particular circumstances of the proposed class.”). In a typical case, the numerosity threshold is usually somewhere around 40 members (*see Consol. Rail Corp. v. Town of Hyde Park*, 47 F.3d 473, 483 [2d Cir. 1995] “[N]umerosity is presumed at a level of 40 members”]; *see also Borden v. 400 E. 55th St. Assocs., L.P.*, 24 N.Y.3d 382, 399 [2014] [citing *Consol. Rail Corp.* with approval]). But a class involving “as few as 18 members” might be appropriately certified “where the members would have difficulty communicating with each other, such as where ‘barriers of distance, cost, language, income, education or lack of information prevent those who are aware of their rights from communicating

with others similarly situated” (see *Borden*, 24 N.Y.3d at 399, quoting Mem. of St. Consumer Protection Bd. at 3, Bill Jacket, L. 1975, ch. 207).

In a legal memorandum, Petitioners assert that “at least 120 home care aides are members of the putative class.” The only evidence provided by Petitioners in support of this assertion is their Article 78 petition and its attachments. The petition alleges that, “[b]y March 2020, approximately 120 home care aides covered by 1199SEIU’s class-wide grievance had filed complaints with the NYSDOL” that alleged violations of the 13-hour rule. Since May of 2023, the petition alleges that “NYSDOL has closed its investigations into complaints filed by hundreds of home care aides.” Twenty closing letters sent by NYSDOL to unidentified claimants are attached to the petition. Fifteen of the closing letters stated: “We have learned that a grievance has been filed on your behalf by your Union Your claim and claim period are included in it. As such you have chosen that venue to pursue your claim.” The remaining four closing letters simply stated: “We decline to investigate the allegations presented any further.” The petition alleges that these and other cases were closed “most likely because of the NYSDOL’s new policy” on closing cases that are subject to mandatory arbitration.

One hundred and twenty class members would likely be sufficiently large to render joinder impracticable (see, e.g., *Borden*, 24 N.Y.3d at 399). The Court does not believe, however, that Petitioners have carried their burden of providing an evidentiary basis for this number (see, e.g., *Yonkers Contracting Co.*, 304 A.D.2d at 658). First, while the Article 78 petition is verified and can be used to satisfy Petitioners’ burden to provide an evidentiary basis for numerosity (see *Yoon Jung Kim v. Gahee An*, 150 A.D.3d 590, 594 [1st Dept. 2017] [“CPLR 105(u) permits the use of verified pleadings in lieu of affidavits, and that a verified pleading can be used to create an issue of fact sufficient to defeat summary judgment.”]), the Court is not certain that it is appropriate to

credit each of the petitioners claims to have personal knowledge of the more than 120 other home care aides with complaints that were closed by NYSDOL (*cf. Thornton v. Saugerties Cent. Sch. Dist.*, 145 A.D.3d 1138, 1140–41 [3d Dept. 2016] [“In her opposing affidavit, petitioner failed to controvert the facts stated in the affidavits submitted by respondents, and her verified petition asserts, in only conclusory fashion and without indicating the basis of her knowledge, that BOCES did not have sufficient staff to perform the duties transferred.”])), and the closing letters attached to the petition fall well short of establishing this number.

Second, Petitioners have provided no evidence establishing the reason the bulk of these complaints were closed. Instead, they only guess at the reasons, asserting that the closures were “most likely” the result of NYSDOL’s mandatory arbitration rule.

Finally, an element of Petitioners’ proposed class definition is that any prospective members did “not file[] claims pursuant to a union arbitration award.” The only evidence provided by Petitioners that is relevant to this aspect of the class definition is that “[m]any home care aides” *did* file claims pursuant to the 1199SEIU arbitration award.

In light of their request for disclosure in their notice of petition, the Court finds that limited discovery on issues related to numerosity is appropriate (*see Stewart*, 163 A.D.3d at 96 [“The petition seeks a judgment directing respondent to identify all individuals meeting the characteristics of the proposed class Timely requests for disclosure on the issue of numerosity must be granted.”])). Petitioners’ evidence, supplemented by what it learns in discovery, will be tested at a hearing to be scheduled at a later date (*see Maddicks*, 34 N.Y.3d at 126).

The premises considered, it is hereby

ORDERED that Petitioners’ motion to reargue is **GRANTED** in part; it is further

ORDERED that Petitioners’ motion for disclosure is **GRANTED**;

ORDERED that, within thirty (30) days of this order, Petitioners shall serve any document demand or demands for interrogatories bearing on the size of a potential class consisting of:

All home care aides:

- (i) who filed claims with NYSDOL alleging that they were paid for no more than 13 hours per shift when they worked 24 hours;
- (ii) whose unions entered into arbitration agreements with their employers covering their claims;
- (iii) who have not filed claims pursuant to a union arbitration award; and
- (iv) whose cases were closed by NYSDOL through application of NYSDOL's policy or rule of closing cases where claimants were subject to mandatory arbitration;

it is further

ORDERED that NYSDOL will serve responses to Petitioners' demands within the time provisions of the CPLR or by stipulation between the parties; and it is further

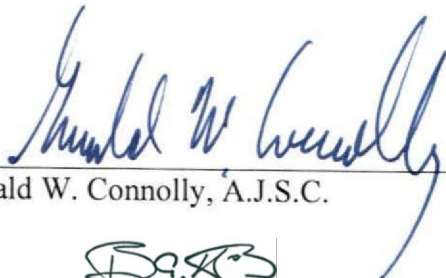
ORDERED that, upon receipt of responses to its demands, Petitioners will contact the Court so that a hearing may be scheduled on their motion for class certification; and it is further

ORDERED that the parties appear for a conference in this matter on **Tuesday, February 11, 2025 at 2:00 p.m.** in Chambers (Room 357) at the Albany County Courthouse.

This shall constitute the Decision and Order of the Court. The original Decision and Order is being filed with the Albany County Clerk via NYSCEF. The signing of this Decision and Order shall not constitute entry or filing under CPLR § 2220. Counsel is not relieved from the applicable provisions of that rule regarding notice of entry.

SO ORDERED.
ENTER.

Dated: January 15, 2025
Albany, New York



Gerald W. Connolly, A.J.S.C.

01/15/2025

Papers considered:

1. Verified Article 78 Petition, dated August 24, 2023;
2. Notice of Verified Petition and Summons for Class Action Complaint, dated August 24, 2023;
3. Affirmation of Carmella Huang in support of Article 78 Petition, dated August 24, 2023, with exhibits 1-57
4. Memorandum of Law in Support of Article 78 Petition dated September 8, 2023;
5. Memorandum of Law in Support of Class Certification, dated September 8, 2023;
6. Affirmation of Carmela Huang in Support of Class Certification, dated September 8, 2023;
7. Affirmation of Richard Blum in Support of Class Certification, dated September 8, 2023;
8. Verified Answer, dated April 8, 2024, with exhibits A-K;
9. Affirmation of Jeanette Lazelle, dated April 8, 2024, with exhibits A-B;
10. Affirmation of Maura McCann, dated April 8, 2024, with exhibits A-M;
11. Memorandum of Law in Support of Answer, dated April 8, 2024;
12. Reply Memorandum in Support of Article 78 Petition, dated May 31, 2024; and
13. Affirmation of Carmela Huang, dated May 31, 2024, with exhibits 1-13;
14. Notice of Motion for Leave to Reargue Pursuant to CPLR § 2221 and Motion for Relief Pursuant to CPLR §§ 2001 and 2004, dated October 22, 2024;
15. Memorandum of Law in Support of Motion for Leave to Reargue, dated October 22, 2024, with exhibit 1;
16. Affirmation of Carmela Huang in Support of Motion to Reargue, dated October 22, 2024;
17. Memorandum of Law in Opposition to Motion to Reargue, dated November 14, 2024;
18. Affirmation of Matthew J. Gallagher, dated November 14, 2024; and
19. Reply Memorandum of Law in Support of Motion to Reargue, dated November 25, 2024.