

<b>Rongfa Zheng v T &amp; W Rest., Inc</b>
2026 NY Slip Op 30605(U)
February 17, 2026
Supreme Court, New York County
Docket Number: Index No. 650016/2022
Judge: Phaedra F. Perry-Bond
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. PHAEDRA F. PERRY-BOND PART 35

*Justice*

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INDEX NO. 650016/2022

RONGFA ZHENG, FENG LI, JINPING XIE, and YAPING LI,

MOTION DATE 09/22/2023

Plaintiffs,

MOTION SEQ. NO. 001

- v -

T & W RESTAURANT, INC, T & W PAYROLL SERVICES,  
INC., BIN HU, ANDY WU, and HENRY DOE (Last Name  
Unknown)

**DECISION + ORDER ON  
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 22, 23, 24

were read on this motion to/for

DISMISSAL

Upon the foregoing documents, Defendant T&W Restaurant, Inc.'s ("TW Restaurant"), T&W Payroll Services, Inc. ("TW Payroll"), and Bin Hu ("Hu") (collectively "Moving Defendants") motion to dismiss Plaintiffs Rongfa Zheng ("Zheng"), Feng Li ("Li") Jinping Xie, and Yaping Li 's (collectively "Plaintiffs") Complaint is denied.

**I. Background**

As alleged in the Complaint, Plaintiffs are former employees of a restaurant named Shun Lee West located at 43 West 65<sup>th</sup> Street, New York, NY 10023 ("Shun Lee West") which is owned and operated by Defendants. Shun Lee West allegedly employs over 100 people. TW Restaurant allegedly does business as Shun Lee West and TW Payroll issues checks and paystubs to the employees of Shun Lee West. Defendants Hu, Andy Wu ("Wu"), and Henry Doe ("Doe") assumed ownership and management of TW Payroll and TW Restaurant in January 2016. Allegedly, Hu, Wu, and Doe were engaged in the day-to-day operations of Shun Lee West, determined the wages

and compensation of Shun Lee West's employees, and had the authority to hire and fire Shun Lee West's employees.

Plaintiffs were each allegedly employed by Defendants from various points in the early 2000s until February or March of 2020 and were responsible for delivering food, typing credit information, stocking shelves, preparing items for delivery, and helping with certain tasks in the kitchen. Plaintiffs sue Defendants for violations of the New York Labor Law, Specifically, Plaintiff claim they were not paid minimum wages for the amount of hours worked, they were not paid earned overtime premiums, they were not provided written wage notice requirements in their primary language, they were not provided with the requisite detailed paystub information, and they were not reimbursed for the costs and expenses with maintaining the "tools of the trade"<sup>1</sup> The Moving Defendants respond with the instant pre-answer motion to dismiss, arguing that Plaintiffs fail to establish they were employees of TW Payroll and Hu, that Plaintiffs failed to allege the Defendants operated as a single enterprise, and that declarations from Zheng and Xie establish there is no liability on the fourth, fifth, and sixth causes of action against TW Restaurant.

## II. Discussion

### A. Standard

When reviewing a pre-answer motion to dismiss for failure to state a claim, the Court accepts all factual allegations as true, gives Plaintiffs the benefit of all favorable inferences which may be drawn from the pleadings, and determines only whether the alleged facts fit within any cognizable legal theory (*Sassi v Mobile Life Support Services, Inc.*, 37 NY3d 236, 239 [2021]). The pleadings are to be afforded a liberal construction, and it is not the Court's role to determine whether Plaintiffs will ultimately be successful on their claims (*see CSC Holdings, LLC v Samsung*

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<sup>1</sup> Plaintiffs were required to use bicycles for their delivery jobs. Defendants allegedly required Plaintiffs to purchase their own bicycles and did not reimburse for bicycle repairs.

*Electronics America, Inc.*, 192 AD3d 556 [1st Dept 2021]). All that is requires is a determination as to whether the facts alleged fit within a cognizable legal theory (*Leon v Martinez*, 84 ny2d 83, 87-88 [1994]). With this standard in mind, and based on the pleadings before the Court and the Moving Defendants' proffered arguments, the motion to dismiss is denied in its entirety.

### **B. Hu and TW Payroll as "Employers"**

Defendants Hu and TW Payroll's motion to dismiss based on the argument that Plaintiffs failed to sufficiently allege they were Plaintiffs' employer is denied. Accepting the allegations as true and giving Plaintiffs the benefit of all favorable inferences which may be drawn from the pleadings, as this Court must on a pre-answer motion to dismiss, Defendants have adequately alleged that Hu was an employer within the meaning of New York's Minimum Wage Act and the accompanying regulations (*see Bonito v Avalon Partners, Inc.*, 106 AD3d 625, 626 [1st Dept 2013]).

Specifically, it is alleged that Hu, who is an owner, chief executive officer, and/or managing agent of both TW Payroll and TW Restaurant, was known as the "Big Boss," determined Plaintiffs' wages, participated in TW Payroll and TW Restaurant's day to day operations, and had the authority to hire and fire employees (*see* NYSCEF Doc. 1 at ¶¶ 16-17). These allegations are bolstered by the affirmations of Li and Zheng, submitted in opposition, and reiterating that Hu was involved in their employment, could fire them, and set their wages (NYSCEF Doc. 22-23). For purposes of a pre-answer motion to dismiss, this is sufficient to allege that Hu is an employer under the "economic realities" test (*see also Carver v State*, 87 AD3d 25 [2d Dept 2011]; *Fonville v Legends Hospitality, LLC*, 67 Misc.3d 1233[A] at \*2 [Sup Ct., Bronx County 2020]; *Pugliese v Actin Biomed LLC*, 2012 N.Y. Sip Op. 31566[U] [Sup. Ct., New York County 2012] [Scarpulla, J.]).

Plaintiffs have also alleged that TW Payroll is an “employer” since it is part of a single enterprise with TW Restaurant. As stated by the Second Circuit, there are four factors which may be utilized to determine whether two nominally distinct entities are a single employer: (1) interrelation of operations, (2) centralized control of labor relations, (3) common management, and (4) common ownership or financial control.” (*Shiflett v Scores Holding Co.*, 601 Fed.Appx. 28, 30 [2d Cir 2015]).

Here, the allegations in the Complaint, which must be accepted as true, satisfy all four factors. First, the operations between TW Payroll and TW Restaurant are interrelated since TW Payroll issued the paystubs and checks to TW Restaurant’s employees.<sup>2</sup> It is alleged that TW Payroll and TW Restaurant have common management and common ownership since it is alleged that Hu, Wu, and Doe are each the owners and/or managing agents of both TW Payroll and TW Restaurant. Indeed, TW Restaurant TW Payroll, and Hu are even represented by the same counsel in this litigation, showing their interrelatedness and unity in interest. Because the owners are the same and the TW Payroll supports TW Restaurant’s operations by paying TW Restaurant’s employees, the allegations also lead to the inference that the labor relations for both TW Payroll and TW Restaurant are centralized in the hands of Hu, Wu, and Doe. While the Moving Defendants may be able to refute this assertion at later stage in litigation, at the pre-answer motion to dismiss stage their arguments as to the insufficiency of the pleadings are without merit (*see also Yu v Mask Pot, Inc.*, 241 AD3d 726 [2d Dept 2025]).

### C. TW Restaurant’s Motion

TW Restaurant’s motion to dismiss the fourth through sixth causes of action based on declarations from Zheng and Xie is denied. Those declarations regarding certain employment

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<sup>2</sup> Even their names, both containing “TW” give rise to an inference that the two are interrelated and part of a single enterprise.

practices were made while TW Restaurant was allegedly under different management and pre-date the allegedly wrongful acts set forth in this action. The prior statements and change in conditions are further attested to in the affirmations of Zheng and F. Li submitted in opposition to the motion (NYSCEF Docs. 22-23). While the prior declarations raise an issue of fact as to the veracity of Plaintiffs' allegations, they do not definitively contradict the allegations in the Complaint and are therefore insufficient for purposes of a pre-answer motion to dismiss.

Accordingly, it is hereby,

ORDERED that the Moving Defendants' motion to dismiss is denied, and within twenty days from this Decision and Order, the Moving Defendants shall serve an Answer to Plaintiffs' Complaint; and it is further

ORDERED that the parties shall immediately meet and confer and submit a proposed preliminary conference order to the Court via e-mail, but in no event shall the proposed order be submitted any later than March 31, 2026; and it is further

ORDERED that if the parties elect to resolve this dispute through the Court's ADR program, they shall notify the Court via e-mail so the appropriate referral order may be made; and it is further

ORDERED that within ten days of entry, counsel for Plaintiff shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

2/17/26  
DATE

  
HON. PHAEDRA F. PERRY-BOND, J.S.C.

CHECK ONE:  CASE DISPOSED  DENIED  NON-FINAL DISPOSITION  OTHER

APPLICATION:  GRANTED  SETTLE ORDER  SUBMIT ORDER

CHECK IF APPROPRIATE:  INCLUDES TRANSFER/REASSIGN  FIDUCIARY APPOINTMENT  REFERENCE