

Richardson v Shake Shack Enters. LLC
2026 NY Slip Op 31282(U)
March 3, 2026
Supreme Court, New York County
Docket Number: Index No. 150786/2022
Judge: Verna L. Saunders
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. VERNA L. SAUNDERS, JSC PART 36

Justice

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INDEX NO. 150786/2022

MINA RICHARDSON and
NAYM AHMED EDRAK,

MOTION SEQ. NO. 003

Plaintiffs,

- v -

DECISION + ORDER ON
MOTION

SHAKE SHACK ENTERPRISES LLC,
Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114

were read on this motion to/for

ORDER MAINTAIN CLASS ACTION

In this action seeking to recover wages and benefits under the New York State Labor Law ("NYLL"), New York Code of Rules and Regulations ("NYCRR"), New York Wage Theft Prevention Act, and the New York City Administrative Code ("Fair Workweek Law"), plaintiffs MINA RICHARDSON and NAYM AHMED EDRAK, individually and on behalf of all other persons similarly situated who are/were employed in particular positions by defendant within the state, move the court for, among other things, an order, pursuant to CPLR 901, to certify the following class:

"All current and former employees who worked for Defendant as Team Members, Trainers, Cross Trainers, and/or Shift Managers in the State of New York from January 26, 2017 through present and who were designated as non-exempt."

Plaintiffs and the putative class also seek an order designating Bouklas Gaylord LLP as class counsel and approving for publication the proposed Notice of Class Action Lawsuit and Publication Order annexed as Exhibits A and B to the affirmation of Mark Gaylord Esq., dated July 25, 2025 (NYSCEF Doc. Nos. 53, Gaylord affirmation; 57, Proposed Notice of Class Action Lawsuit; 58, proposed publication order).

By memorandum of law, plaintiffs argue that they have satisfied the requirements of CPLR 901 and 902 (NYSCEF Doc. No. 54, plaintiffs' memorandum of law). In support of certification of class status, plaintiffs submit, inter alia, individual affidavits outlining their experience in the employ of defendant (NYSCEF Doc. Nos. 55, Richardson affidavit; 56, Edrak affidavit). Richardson indicates that she worked for the defendant from approximately September 2017 to September 2019 at two locations. Richardson commenced her employment as a Team Member, was subsequently promoted to Trainer, then Cross-Trainer, and ultimately Shift-Supervisor. Richardson describes her experience with defendant's uniform policy including, relevantly: (a) the application of the policy to each of her roles (i.e., the uniform requirements in each of these roles); (b) her experience with being provided uniforms by defendant in each of these roles (i.e., the number of t-shirts, polo shirts, and

headbands she was provided in each role and responses to requests for additional items); (c) defendant not offering to launder or maintain her uniform nor providing payment for laundering and maintaining the uniform; (d) the consequences of not complying with defendant's uniform policy. Specifically, Richardson explains the quantities of uniform items provided by defendant and her view of the sufficiency of these quantities in light of the responsibilities of each role. For example, Richardson says that (*Richardson affidavit* ¶ 19):

“working in a busy fast-food restaurant the one or two shirts and headband that I was provided would become filthy after each and every shift. While cleaning bathrooms there was constantly splash-back from the toilets; food was flying around all the time; there was oil and food products everywhere. If you worked the custard station making milkshakes then dairy products and add-ins would constantly splash. Working with food, mopping floors, among other duties, would result in my uniform being smelly and covered in food. This was inevitable in a busy restaurant setting. Further, sweat and body odor from working an 8-hour shift performing manual labor would seep into the uniforms necessitating daily cleaning.”

Edrak indicates that he worked for the defendant as a Team Member, describes his experience with defendant's uniform policy including similar matters to those described by Richardson.

Plaintiffs also submit a recent order granting provisional class certification for settlement purposes in a similar action commenced by Richardson against Sweetgreen, Inc. (NYSCEF Doc. No. 74, *Richardson v Sweetgreen, Decision and Order*); defendant's written responses to an interrogatory, and a demand for discovery and inspection (NYSCEF Doc. Nos. 61-62; 72); portions of defendant's handbook containing the uniform policy and Richardson's acknowledgement of defendant's obligations under the handbook (NYSCEF Doc. Nos. 63-64); and transcripts of depositions taken from two witnesses on behalf of defendant (NYSCEF Doc. Nos. 69-70).

In opposition to the motion for class certification, defendant disagrees with plaintiffs' characterization of its uniform policy, as well as, plaintiffs' description of the need to launder uniform items. Defendant contends that the main issue in this case is whether the “Wash and Wear” exception applies which depends on, amongst other things, the provision of sufficient quantities of uniform items to employees. This, defendant argues, requires an individualized analysis including determination of matters including:

“(1) how many Shirts, sweatshirts, and pieces of Headgear the Employee received during their employment, (2) when the Employee received these Shirts and Headgear, (3) did the store location the Employee worked out of have a differing uniform policy, (4) how many shifts did the Employee work in a week, (5) what duties or assignments did the Employee perform, (6) could the Employee wear a Shirt or Headgear multiple times between washes, and (7) what personal hygiene and comfort practices did the Employee undertake”

Defendant further contends that plaintiffs' claims are not typical of the claims of the proposed class on the basis that they lack knowledge of uniform policy and uniform distribution at stores at which they did not work and regarding uniform policy changes after their employment ended. Relying on its arguments in relation to the commonality and typicality requirements of class certification, defendant also contends that plaintiffs are unable to adequately protect the interests of the class. Defendant further relies on portions of both plaintiffs' depositions to argue that they do not

understand important aspects of their claim which further makes them unable to adequately protect the interests of the class.

Lastly, defendant contends that plaintiff's motion should be denied because class damages sought amount to a punitive penalty, claims for which are ordinarily not to be maintained as a class action, relying on *Downing v First Lenox Terrace Assoc.*, 107 AD3d 86, 89 (1st Dept 2013).

In reply, plaintiff contends that defendant's argument that an individualized analysis is necessary for purposes of establishing the "Wash and Wear" exception has been rejected by the Appellate Division, First Department.

"CPLR 902 states that a class action can only be maintained if the prerequisites promulgated by CPLR 901(a) are met." (*Pludeman v N. Leasing Sys., Inc.*, 74 AD3d 420, 421 [1st Dept 2010], citing *Weinberg v Hertz Corp.*, 116 AD2d 1, 4 [1st Dept 1986], *aff'd* 69 NY2d 979 [1987].) "Those prerequisites are (1) that 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 adequately protect the interests of the class (adequacy of representation); and (5) a class action represents the superior method of adjudicating the controversy (superiority)." (*Pludeman v N. Leasing Sys., Inc.*, 74 AD3d at 421-422; see *City of NY v Maul*, 14 NY3d 499, 508 [2010]; *Dugan v London Terrace Gardens, L.P.*, 186 AD3d 12, 19 [1st Dept 2020].) It is well-settled that CPLR 901(a) "should be broadly construed" and that "the Legislature intended article 9 to be a liberal substitute for the narrow class action legislation which preceded it" (*Stecko v RLI Ins. Co.*, 121 AD3d 542, 543-544 [1st Dept 2014], quoting *City of New York v Maul*, 14 NY3d at 509). The Appellate Division, First Department has made clear that the decision on whether a particular lawsuit qualifies as a class action rests within the sound discretion of the trial court (see *Kudinov v Kel-Tech Constr. Inc.*, 65 AD3d 481, 481 [1st Dept 2009]).

It should be noted that defendant does not contend that the numerosity prerequisite is not satisfied in this case and it is obviously satisfied given the significant number of employees in the employ of defendant at any given time. As such, only the commonality, typicality, adequacy of representation, and superiority prerequisites are at issue.

Here, the court finds that plaintiffs have sufficiently established all the requirements for class certification under CPLR 901 and 902 (see *Lavrenyuk v Life Care Servs., Inc.*, 198 AD3d 569, 570 [1st Dept 2021]; *Andryeyeva v New York Health Care, Inc.*, 33 NY3d 152, 184 [2019]; *Stecko v RLI Ins. Co.*, 121 AD3d 542, 542-543 [1st Dept 2014]). Moreover, this court is guided by recent decisions in New York County which have granted class certification in similar actions involving claims of unpaid uniform maintenance pay, accepting that these cases involved class certification for settlement purposes and therefore do not contain detailed discussion as to how the prerequisites for class certification are satisfied (see *Richardson v Sweetgreen Inc.*, [Sup Ct, NY County, May, 13, 2024, Lebovits J., Index No. 151162/2022]; *Veras v Park Ave. Bake, LLC*, [Sup Ct, NY County, May, 15, 2024, Frank J., Index No. 156197/2019]; *Griffin v Gregory's Coffee Management LLC*, [Sup Ct, NY County, June, 3, 2024, Adams J., Index No. 153397/2018]; *Quartey v Madison Security Group, Inc.*, [Sup Ct, NY County, May, 25, 2023, Billings J., Index No. 158015/2020]; *Rahab v Amy Scherber, Inc.*, [Sup Ct, NY County, Feb, 15, 2023, Kraus J., Index No. 161079/2020]; *Mudry v Stop*

& Shop Supermarket Co. LLC, [Sup Ct, NY County, Jan, 11, 2022, Hagler J., Index No. 156865/2021]; *Spratt v Diversified Maintenance System LLC*, [Sup Ct, NY County, May, 31, 2022, Frank J., Index No. 151407/2019]; *Sanchez v GFE Broadway-Brooklyn LLC*, [Sup Ct, NY County, Oct, 6, 2021, Nock J., Index No. 156045/2019]).

Defendant's arguments, in opposition, that plaintiffs have not met the elements of CPLR 901 and 902 are unavailing. Although defendant disputes plaintiffs' characterization of certain factual matters relating to defendant's uniform policy, these are, rightly, not put as arguments as to why class certification should be denied. Those are matters which may impact the ultimate success of any claim but are not at this stage relevant to the question of whether this case should proceed as a class action. Accordingly, the court turns first to defendant's specific contention that the motion be denied on the basis that individualized analysis is required for the purposes of determining whether the "Wash and Wear" exception applies.

In defense of plaintiffs' underlying claims, defendant intends to rely on the general application of the "Wash and Wear" exception to *all* employees subject to the uniform policy. To successfully make out that exception, defendant bears the burden of proving that the uniform:

- "(1) [is] made of "wash and wear" materials;
 - (2) may be routinely washed and dried with other personal garments;
 - (3) do[es] not require ironing, dry cleaning, daily washing, commercial laundering, or other special treatment; and
 - (4) [is] furnished to the employee in sufficient number, or the employee is reimbursed by the employer for the purchase of a sufficient number of uniforms, consistent with the average number of days per week worked by the employee."
- (See 12 NYCRR § 146-1.7(b).)

As set out above, defendant contends that the fourth element and specifically the reference to "sufficient" requires an individualized analysis of matters specific to each employee such that individual questions will predominate over common questions and thereby, defeat the motion for class certification. Defendant does not contend that the first three elements require any individualized analysis. In support of its preferred interpretation, defendant relies on certain decisions of federal District Courts interpreting the "Wash and Wear" exception. All but one of those cases involved a different procedural posture such as a motion for summary judgment in which the interpretation of the exception was only to determine the existence of a triable issue and is therefore of limited assistance in the present motion which requires interpretation of the exception to determine if the commonality requirement in CPLR 902 is satisfied. The one case interpreting the exception which involved a motion for class action certification, *Gregory v Stewart's Shops Corp.*, 14-CV-0033, 2016 U.S. Dist. LEXIS 89576 (NDNY July 8, 2016), only went so far as to reject the bright line rule that "sufficient number" always requires one article of uniform per day per week, but did not go further to provide that the analysis required is an individualized one on an employee-by-employee basis as defendant contends. Further, defendant relies on a letter purportedly containing guidance from the New York State Department of Labor which is instructive but not binding on this court. In any case, that letter does not provide a clear answer to the interpretive question. Accordingly, it is necessary to consider the argument on first principles.

Defendant's principal argument is one that purports to rely on fundamental canons of statutory construction. Specifically, defendant contends that while the "Wash and Wear" exception

contains clear and precise language in the first three requirements, the fourth requirement includes language that is subjective and malleable. This, defendant argues, confirms the view that determining the “sufficient number” of shirts for purposes of the “Wash and Wear” exception requires a fact-intensive analysis that varies from circumstance to circumstance. The court is not persuaded that the fourth requirement is entirely subjective and depends on each employee. Whether or not an employer provides a “sufficient number” of uniform items will depend on objective matters such as the type of uniform (e.g., if it is a shirt directly in contact with a person’s body or a sweatshirt worn on top of other clothing), the work performed, and the conditions in which such work is performed (e.g., whether the employee is cooking in a kitchen or processing payments at a teller’s desk in an air-conditioned bank branch), and the employer’s standards and requirements (such as whether the employer’s policy mandates that the uniform must be perfectly unstained and ironed). Those matters can be, and ordinarily are, determined on a generalised basis without the need for individualized analysis on an employee-by-employee basis.

There is an additional basis for this interpretation. Nothing in the text or structure of the second requirement, that uniform “may be routinely washed and dried with other personal garments” suggests the need for an individualized analysis. Rather, the language points to an objective standard grounded in a generally applicable definition of “personal garments”. One could certainly theorize an approach requiring individualized analysis under which the requirement would be assessed against the particular fabrics of an employee’s personal clothing. For example, if that employee exclusively wore silk personal garments, it may well be the case that a uniform could not be washed and dried with such delicate garments. But the more reasonable construction, and the one consistent with the “Wash and Wear” exception, is that the requirement is satisfied by reference to ordinary laundering practices. There is no reason the same logic would not apply to the fourth requirement’s reference to sufficiency which must also be understood in that light.

As to defendant’s contention that plaintiffs’ claims are not typical of the class because they are necessarily limited to their experience including the defendant’s implementation of its policy at the locations at which they worked, sufficient evidence is presented to the court in this motion in which representatives of the defendant describe the general application of defendant’s uniform policy in all stores (NYSCEF Doc Nos. 69, *Dunphy deposition*; 70, *Watkins deposition*).

As to defendant’s contention that the plaintiffs cannot adequately protect the interests of the class because they fail to establish commonality and typicality, this argument cannot be maintained in light of the foregoing. With respect to defendant’s contention that neither of the plaintiffs understand in sufficient detail the nature of their claims and progress of the litigation, defendant’s identification of short passages of plaintiffs’ depositions does not sufficiently support defendant’s argument. Instead, all that is required is that plaintiffs “demonstrate [] at least a general awareness of the claims in this action, which is sufficient for certification” (*Williams v Air Serv Corp.*, 121 AD3d 441, 442 [1st Dept 2014]). This burden has been met by plaintiffs in this case.

As to defendant’s specific contention that the recovery sought amounts to a penalty which cannot be recovered in a class action, the argument is unavailing since this court is persuaded that recovery of wages required to be paid under the Hospitality Industry Wage Order in 2011 “amount to actual compensatory damages” (*Gollman v Wendy’s International LLC*, 2023 NY Slip Op 32805[U] [Sup Ct, NY County 2023]).

Moreover, this conclusion is consistent with the statement of the Court of Appeals that “claims of uniform systemwide violations are particularly appropriate for class certification”, and

“suggest a policy or practice of unlawful action of the type our courts have previously found ripe for class treatment” (*Andryeyeva v New York Health Care, Inc.*, 33 NY3d 152, 184 [2019]). In addition, the Appellate Division, First Department has said generally that class actions are the “superior method’ for resolving wage disputes” (*Stecko v RLI Ins. Co.*, 121 AD3d 542, 543 [1st Dept 2014]). This case is no different.

Lastly, turning to the appropriateness of the proposed notice, defendant objects to plaintiffs’ proposed notice but provides no basis for so doing. Instead, defendant simply submits that should plaintiffs’ motion be granted, the parties be given an opportunity to confer and submit a joint proposed notice or submit separate proposed notices for this court’s review. Defendant had an opportunity in its memorandum of law to identify even some purported deficiencies in plaintiffs’ proposed notice but failed to do so. Accordingly, there is no reason to defer distribution of the notice on the basis of an unexplained, general objection.

All other arguments have been considered and are either without merit or need not be addressed given the findings above. Accordingly, it is hereby

ORDERED that the entirety of plaintiff’s motion seeking certification of this action as a class action (Mot. Seq. 003) is granted in its entirety; and it is further

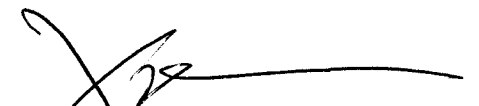
ORDERED that the branch of the motion to designate Mina Richardson and Nyam Ahmed Edrak as class representatives is granted; and it is further

ORDERED that the branch of the motion seeking to designate Bouklas Gaylord LLP as class counsel is granted; and it is further

ORDERED that the branch of the motion approving for publication the proposed Notice of Class Action Lawsuit and Publication Order annexed to the Gaylord affirmation as Exhibits A and B is granted.

This constitutes the decision and order of this court.

March 3, 2026


HON. VERNA L. SAUNDERS, JSC

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE