

Paribello v Osaic, Inc.
2026 NY Slip Op 31651(U)
April 14, 2026
Supreme Court, New York County
Docket Number: Index No. 151618/2025
Judge: Hasa A. Kingo
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. HASA A. KINGO PART 65M

Justice

-----X

JOSEPHINE PARIBELLO,

Plaintiff,

- v -

OSAIC, INC.,LADENBURG THALMANN ASSET
MANAGEMENT INC.

Defendant.

-----X

INDEX NO. 151618/2025

MOTION DATE N/A

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16

were read on this motion for DISMISSAL.

Defendants Osaic, Inc. and Ladenburg Thalmann Asset Management Inc. (collectively, “defendants”) move, pursuant to CPLR § 3211(a)(7), to dismiss the complaint on the ground that it fails to state a cause of action. Plaintiff Josephine Paribello (“plaintiff”) opposes the motion. Upon careful review of the parties’ submissions and the applicable law, and for the reasons that follow, the motion is granted.

In seeking the aforementioned relief, defendants contend that the complaint, even when afforded the liberal construction required on a motion pursuant to CPLR § 3211(a)(7), fails to set forth any legally cognizable claim. The pleading purports to assert causes of action sounding in breach of a compensation agreement, deprivation of wage compensation in violation of Labor Law §§ 191 and 198, retaliation in violation of Labor Law § 215, and retaliation in violation of Labor Law § 740. In opposition to the motion, plaintiff attempts to expand the scope of her claims by characterizing certain allegations in the complaint as sounding in fraudulent inducement and by invoking Labor Law § 193, notwithstanding that no separate cause of action under that provision is expressly pleaded in the complaint.

As reflected in the motion papers, the gravamen of plaintiff’s claims arises from an employment-related dispute concerning her title and compensation following a corporate acquisition. Specifically, plaintiff alleges that, although she previously held the title of vice president at Ladenburg, after Osaic’s acquisition of that entity she was retained in the position of director with an annual salary of \$160,000. Plaintiff thereafter concluded that she should have retained the vice president title and the compensation she associates with that position, voiced complaints regarding that circumstance, and contends that she subsequently experienced retaliatory mistreatment because of those complaints.

BACKGROUND AND PROCEDURAL HISTORY

According to the complaint, plaintiff worked for Ladenburg for many years and, during that tenure, held the title of vice president. After Osaic acquired Ladenburg, plaintiff alleges that she was told by senior executives that she would retain her vice president title and would be paid in a salary band consistent with that status. Plaintiff nevertheless acknowledges, both in the motion papers and in her opposition, that when she was formally brought into Osaic's system she accepted the title of director and a salary of \$160,000 through defendants' electronic human resources platform. Defendants' memorandum characterizes the complaint in precisely that fashion, and plaintiff's opposition does not meaningfully dispute that she accepted the director title and the quoted compensation, but instead argues that she did so while unaware that she was supposedly being paid below what an Osaic vice president would have earned.

Plaintiff commenced this action on February 4, 2025. Defendants thereafter moved pre-answer to dismiss pursuant to CPLR § 3211(a)(7). In support of dismissal, defendants argue, among other things, that the breach of contract claim is deficient because plaintiff does not identify the agreement with the requisite specificity, does not plead definite contractual terms, and does not adequately allege breach; that Labor Law §§ 191 and 198 do not furnish a cause of action on the facts alleged because those provisions do not regulate the adequacy of a salaried employee's title or market-rate pay; that any fraud theory is either duplicative of the contract claim or insufficiently pleaded; and that the retaliation claims fail because plaintiff did not engage in activity protected by Labor Law §§ 215 or 740.

In opposition, plaintiff submits that executives told her during the transition that she would retain her vice president title and be paid consistent with that role; that she later discovered Osaic had internally classified her as a director and compensated her at a lower level; and that after she objected, defendants subjected her to hostile treatment, including criticism, digital intrusion, altered emails, and other conduct that she characterizes as sabotage, ultimately culminating in what she describes as a coerced resignation. Plaintiff further argues that defendants' conduct constituted retaliation under Labor Law §§ 215 and 740, and, in her opposition memorandum, also invokes Labor Law § 193 on the theory that defendants unlawfully "deducted" from her pay the difference between what she received and what she believes a vice president should have been paid.

ARGUMENTS

More specifically, defendants argue first that the contract claim fails because plaintiff does not plead the existence of an enforceable compensation agreement with sufficiently definite terms. They contend that the complaint does not identify the precise agreement sued upon, the compensation promised, any objective formula by which such compensation was to be determined, the duration of the alleged promise, or the specific manner in which any such agreement was breached. Defendants also stress that plaintiff concedes she accepted the title and salary formally offered by Osaic, thereby undercutting any claim that defendants failed to pay the compensation that was actually offered and accepted.

Defendants next contend that plaintiff's statutory wage claim is legally defective. They argue that Labor Law § 191 governs the frequency of wage payment for specified categories of

workers, such as manual workers, clerical workers, railroad workers, and commission salespersons, and does not provide a remedy to a salaried employee who contends that she should have held a different title and received greater compensation. Defendants further argue that Labor Law § 198 is remedial only and does not create a standalone substantive claim. Finally, they argue that any attempt to invoke Labor Law § 193 is both un-pleaded and meritless because plaintiff alleges, at most, a failure to pay more, not an unlawful deduction from wages actually earned and payable.

As to fraud, defendants contend that although the complaint does not expressly plead a separate fraud cause of action, plaintiff attempts to advance a fraudulent inducement theory. Defendants argue that any such theory is duplicative of the contract claim because it rests on the same supposed promise regarding title and compensation, and that, in any event, the allegations do not satisfy CPLR 3016(b) because plaintiff does not plead with particularity a knowingly false misrepresentation of present fact, justifiable reliance, and out-of-pocket damages. Defendants emphasize that plaintiff was given an offer reflecting the title and salary she accepted, and that dissatisfaction with the downstream consequences of that accepted arrangement does not transmute a compensation dispute into actionable fraud.

With respect to retaliation, defendants argue that plaintiff did not engage in protected activity under Labor Law § 215 because generalized complaints that she deserved a higher salary or a different title are not complaints about conduct that she reasonably and in good faith believed violated the Labor Law. They similarly argue that the Labor Law § 740 claim fails because plaintiff's allegations concern a private employment dispute over title and compensation, not activity that she reasonably believed violated law within the meaning of the statute.

Plaintiff, for her part, contends that she sufficiently pleaded an enforceable agreement by alleging that Ladenburg executives told her she would retain her vice president title and be paid in a salary band consistent with that title after the acquisition. She argues that she did not realize she was being underpaid until she discovered that Osaic's internal records reflected her as a director rather than a vice president and that, as a result, she was outside the vice president salary band. Plaintiff maintains that defendants thus misrepresented the wages she would receive, concealed the discrepancy, and induced her to continue working under false pretenses.

Plaintiff further argues that after she complained about that underpayment, defendants retaliated against her by undermining her reputation, electronically altering her emails, compromising her credentials, and otherwise sabotaging her work. Based on those allegations, she argues that she has adequately stated retaliation claims under both Labor Law §§ 215 and 740. She also argues in opposition that defendants violated Labor Law § 193 because they effectively deducted from her wages the amount by which her pay purportedly fell below what a vice president would have received.

DISCUSSION

On a motion to dismiss pursuant to CPLR § 3211(a)(7), the court must afford the pleading a liberal construction, accept the facts as alleged as true, accord the plaintiff the benefit of every possible favorable inference, and determine only whether the facts alleged fit within any

cognizable legal theory, though bare legal conclusions and factual claims that are inherently incredible or contradicted by documentary evidence are not entitled to such favorable inference (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994]; see also *Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 142 [2017]). While the court's role is not to weigh the ultimate merits of the claim, dismissal is warranted where the pleading fails to allege facts establishing the essential elements of a recognized cause of action (*EBC I, Inc. v Goldman, Sachs & Co.*, 5 NY3d 11, 19 [2005]).

Even when the plaintiff submits affidavits in opposition to remedy pleading defects, those submissions may be considered only to determine whether the plaintiff has a cause of action, not whether one has been artfully stated (*Cron v Hargro Fabrics, Inc.*, 91 NY2d 362, 366 [1998]). Applying these settled principles here, the complaint, even as supplemented by plaintiff's opposition submissions, fails to state any legally cognizable claim.

I. Breach of Contract

The first cause of action, sounding in breach of a supposed compensation agreement, must be dismissed because plaintiff has failed to plead the existence of an enforceable contract with sufficiently definite terms.

To state a claim for breach of contract under New York law, a plaintiff must allege the existence of a contract, the plaintiff's performance, the defendant's breach, and resulting damages. It is equally well settled that a contract cannot be enforced where the alleged promise is so indefinite that the court cannot determine what the parties actually agreed upon or fashion an objective standard for enforcement. The Court of Appeals has held that a purported agreement fails as a matter of law where essential terms are left unresolved or stated only in general or aspirational language, because courts may not supply material terms that the parties themselves did not fix (*New York Univ. v Continental Ins. Co.*, 87 NY2d 308, 318 [1995]; *Matter of 166 Mamaroneck Ave. Corp. v 151 E. Post Rd. Corp.*, 78 NY2d 88, 91 [1991]; *Joseph Martin, Jr., Delicatessen v Schumacher*, 52 NY2d 105, 109-110 [1981]).

The requirement of definiteness is particularly important in compensation disputes, where the court must be able to identify a specific salary, formula, or objective benchmark against which performance and damages can be measured. Where the alleged promise is framed only in terms of compensation "consistent with" a title or market level, without reference to a fixed amount or ascertainable standard, the agreement is unenforceable because it leaves the court to speculate about the parties' intent. Indeed, the Court of Appeals has emphasized that an agreement cannot be enforced if it requires the court to impose its own conception of what the parties should have agreed to rather than enforcing the bargain actually made (*Joseph Martin, Jr., Delicatessen*, 52 NY2d at 109-110).

Applying these settled principles here, plaintiff does not plead a sufficiently definite contractual promise. Her theory is that certain executives allegedly assured her that she would retain a vice president title and be paid within a compensation band associated with that position. Yet neither the complaint nor plaintiff's submissions identify any specific salary amount, formula, duration of employment, or objective compensation schedule incorporated into the alleged

agreement. Instead, plaintiff asserts that she later concluded that individuals holding a vice president title earned more than she did and that her compensation therefore should have been higher. Such allegations do not establish the existence of a definite contractual term; they reflect a retrospective comparison to an unspecified market benchmark.

Equally significant, plaintiff does not allege that defendants failed to pay the salary that was expressly offered and accepted. The record reflects that plaintiff accepted a formal offer identifying her title as director and her salary as \$160,000 through defendants' electronic onboarding system, and there is no allegation that defendants thereafter paid her less than that amount or failed to pay her wages when due. Rather, the gravamen of the complaint is that plaintiff should have been hired into a different position and compensated at a higher level. New York law does not permit a plaintiff to recast dissatisfaction with the terms of accepted employment into a breach of contract claim absent a clear and enforceable promise to the contrary. Indeed, the Appellate Division, First Department, has held that where an employee accepts employment at a stated salary, subsequent disagreement with that compensation does not constitute breach of contract in the absence of a specific promise to pay a different amount (*Hunter v Deutsche Bank AG, N.Y. Branch*, 56 AD3d 274, 274-275 [1st Dept 2008]).

This principle applies with particular force in the context of corporate transitions or mergers, where preliminary discussions or informal assurances may precede the issuance of formal employment terms. Once the employee accepts a written offer that clearly defines the position and salary, those terms govern the employment relationship. Oral statements made during negotiations cannot override the unambiguous terms of the accepted offer absent allegations of fraud or mutual mistake. The Appellate Division, First Department, has underscored that a plaintiff cannot sidestep clear written employment terms by relying on vague antecedent assurances that were superseded by the final agreement (*Hunter*, 56 AD3d at 274-275).

Accordingly, because plaintiff has not alleged the existence of a definite and enforceable compensation agreement, and because the complaint reflects that she accepted and received the salary specified in her employment offer, the breach of contract claim must be dismissed as a matter of law.

II. Fraud / Fraudulent Inducement — Duplicative and Insufficiently Pleaded

To the extent plaintiff attempts to reframe the same allegations as a claim for fraudulent inducement, that claim must likewise be dismissed because it is duplicative of the contract claim and fails to satisfy the heightened pleading requirements applicable to fraud.

A cause of action for fraud requires a material misrepresentation of present fact, knowledge of its falsity, intent to induce reliance, justifiable reliance, and damages. In addition, fraud must be pleaded with particularity pursuant to CPLR § 3016(b), which requires the plaintiff to identify the specific statements alleged to be false, the speaker, the time and place of the statements, and the manner in which they were misleading. The Court of Appeals has held that conclusory allegations of misrepresentation are insufficient to sustain a fraud claim where the complaint fails to set forth the factual circumstances constituting the alleged wrongdoing (*Mandarin Trading Ltd. v Wildenstein*, 16 NY3d 173, 178-179 [2011]).

Critically, a fraud claim may not be maintained where it arises from the same facts as a breach of contract claim and seeks identical damages. The Court of Appeals has held that a plaintiff cannot transform a contract dispute into a fraud action merely by alleging that the defendant never intended to perform the promised obligations, because such allegations do not describe a misrepresentation of present fact independent of the contract itself (*Connaughton*, 29 NY3d at 142-143).

The Appellate Division, First Department, has repeatedly applied this principle, holding that a fraud claim is duplicative where the alleged misrepresentation concerns the same subject matter as the contractual promise and the damages sought are the same as those recoverable for breach of contract. Indeed, the court has explained that dismissal is warranted where the purported fraud is not collateral to the contract but instead relates directly to the performance of contractual obligations (*Non-Linear Trading Co. v Braddis Assoc., Inc.*, 243 AD2d 107, 118 [1st Dept 1998]).

Here, the alleged misrepresentation identified by plaintiff—that she would retain a vice president title and receive compensation associated with that position—is identical to the promise underlying her breach of contract claim. The alleged damages are likewise identical: the difference between the salary she received and the salary she believes she should have received. Such allegations do not describe a separate and distinct tort; they merely restate the contract claim in different terminology.

Nor has plaintiff pleaded with the requisite particularity a knowingly false statement of present fact independent of the alleged promise. At most, she alleges that oral assurances were made during a period of organizational transition, followed by the issuance of formal employment terms that clearly identified her title and salary. Under those circumstances, the complaint does not plausibly allege that defendants made a false statement of existing fact or that plaintiff justifiably relied on statements inconsistent with the written terms she later accepted. The Court of Appeals has reaffirmed that reliance is not justifiable where the alleged misrepresentation contradicts the clear terms of a written agreement (*Connaughton*, 29 NY3d at 142-143).

Stated differently, plaintiff's fraud theory rests on the same alleged promise that forms the basis of her contract claim, seeks the same damages, and arises from the same factual predicate. Under controlling precedent, such allegations are legally insufficient to sustain a claim for fraudulent inducement.

Accordingly, because the purported fraud claim is duplicative of the breach of contract claim and fails to satisfy the particularity requirements of CPLR § 3016(b), that claim must be dismissed as a matter of law.

III. Labor Law §§ 191 and 198

Plaintiff's statutory wage claims under Labor Law §§ 191 and 198 must likewise be dismissed because the complaint fails to allege facts bringing her within the scope of those provisions.

Labor Law § 191 governs the frequency with which certain categories of employees must be paid, not the adequacy of their compensation or the level of wages they receive. The statute establishes timing requirements for wage payments and is designed to ensure that covered employees are paid at regular intervals, but it does not regulate the amount of compensation an employer chooses to provide. The Court of Appeals has held that the statute addresses the timing of wage payments and does not provide a remedy for employees who claim they were paid too little rather than too late (*Matter of Vega [Postmates Inc.—Commissioner of Labor]*, 35 NY3d 131, 137-138 [2020]).

The Court of Appeals has likewise explained that the statute is intended to ensure prompt payment of wages to employees within defined statutory categories and does not serve as a general vehicle for litigating compensation disputes. Indeed, the Court has emphasized that the Legislature enacted Labor Law § 191 to regulate the intervals at which wages must be paid, not to create a cause of action whenever an employee believes that her salary should have been higher (*Matter of Angello v Labor Ready, Inc.*, 7 NY3d 579, 584-586 [2006]).

Consistent with these principles, courts have repeatedly held that Labor Law § 191 applies only where an employer fails to pay wages at the intervals required by statute, and not where the employee disputes the amount of wages paid. Accordingly, a claim that an employee should have received greater compensation, whether premised on market conditions, job title, or internal salary structures, does not fall within the statute's coverage. Indeed, the Court of Appeals has reaffirmed that the statute regulates payment frequency rather than wage sufficiency, and therefore does not provide relief where the employee's grievance concerns the level of compensation rather than the timing of payment (*Vega*, 35 NY3d at 137-138).

Applying these settled principles here, plaintiff does not allege that defendants failed to pay her wages at the intervals required by law. She does not allege that she was a manual worker, clerical worker, or other category of employee entitled to payment at specific statutory intervals, nor does she allege that her wages were delayed, withheld, or otherwise untimely. Instead, the complaint reflects that plaintiff was paid the salary she accepted in accordance with the employer's regular payroll schedule. Her claim is not that she was paid *late*, but that she believes she should have been paid *more* because she expected to hold a different job title. Such allegations, even if accepted as true, do not state a claim under Labor Law § 191.

Nor does Labor Law § 198 provide an independent basis for relief. Section 198 is remedial in nature and operates only in conjunction with a substantive violation of another provision of the Labor Law. It authorizes the recovery of damages and attorneys' fees where a plaintiff has established a violation of the wage-payment statutes, but it does not create a standalone cause of action. The Court of Appeals has held that Section 198 merely provides remedies for violations of other provisions of the Labor Law and does not itself establish an independent substantive right (*Konkur v Utica Academy of Science Charter Sch.*, 38 NY3d 38, 42-45 [2022]).

This distinction is dispositive here. Because the complaint fails to allege a violation of Labor Law § 191 or any other wage-payment provision, there is no statutory predicate for invoking the remedies set forth in Section 198. Courts have consistently dismissed claims under Section 198 where the plaintiff has not established an underlying statutory violation, recognizing that the

statute cannot be used to expand the substantive reach of the Labor Law beyond its intended scope (*Konkur*, 38 NY3d at 42-45).

Indeed, the gravamen of plaintiff's claim is not that defendants failed to comply with statutory wage-payment requirements, but that defendants should have assigned her a different title and compensated her at a higher level. Such allegations describe a dispute over compensation expectations, not a violation of the wage-payment statutes. Labor Law § 191 does not regulate job titles, salary classifications, or internal compensation structures, and it does not provide a cause of action whenever an employee believes that her compensation was insufficient. The Court of Appeals has made clear that the statute's purpose is to ensure prompt payment of wages that are due, not to adjudicate disagreements over the amount of wages an employer elects to pay (*Angello*, 7 NY3d at 584-586).

Stated differently, the statute addresses when wages must be paid, not how much wages must be paid. Where, as here, the employee receives the agreed-upon salary in a timely manner, the statutory requirements are satisfied, and no claim lies under Labor Law § 191. The Court of Appeals has reiterated that the statute cannot be invoked to challenge compensation decisions unrelated to payment frequency, because such disputes fall outside the statutory framework (*Vega*, 35 NY3d at 137-138).

Accordingly, because plaintiff has failed to allege that defendants violated any payment-frequency requirement or other substantive provision of the Labor Law, her claims under Labor Law §§ 191 and 198 must be dismissed as a matter of law.

IV. Labor Law § 193

Plaintiff's attempt to invoke Labor Law § 193 is similarly unavailing and must be rejected as a matter of law.

Labor Law § 193 prohibits employers from making unauthorized deductions from wages that have already been earned and are otherwise payable to the employee. The statute is not a vehicle for challenging the adequacy of compensation or the employer's decision regarding salary level or job classification. Rather, it is directed at the improper withholding or diversion of wages that the employee has already earned pursuant to an agreed-upon compensation structure. The Court of Appeals has explained that the statute applies only where an employer takes or withholds a portion of wages that are concededly due, not where the dispute concerns whether additional compensation should have been paid in the first instance (*Ryan v Kellogg Partners Institutional Servs.*, 19 NY3d 1, 16 [2012]).

The Appellate Division, First Department, has consistently adhered to this distinction, holding that a claim alleging underpayment of wages, failure to pay additional compensation, or disagreement over salary level does not constitute an unlawful deduction within the meaning of the statute. Indeed, the court held that a plaintiff's allegation that she was entitled to greater compensation did not state a claim under Labor Law § 193 because the statute addresses deductions from earned wages, not disputes concerning the amount of wages an employee believes

she should have received (*Perella Weinberg Partners LLC v Kramer*, 153 AD3d 443, 449 [1st Dept 2017]).

This principle reflects the statutory structure and purpose of Labor Law § 193. The statute protects employees from the improper removal of wages that have already vested, but it does not impose liability where the employee contends that the employer should have paid more compensation than was agreed upon. Courts have therefore repeatedly rejected attempts to transform compensation disputes into deduction claims, recognizing that such claims fall outside the scope of the statute (*Perella Weinberg*, 153 AD3d at 449).

Applying these settled principles here, plaintiff does not allege that defendants withheld or diverted wages that she had earned under the terms of her employment agreement. She does not allege that any portion of her paycheck was docked, seized, or otherwise removed after it became payable. Instead, the gravamen of her claim is that she should have been compensated at a higher level because she believes she should have held a different job title. Such allegations, even if accepted as true, describe a disagreement over compensation, not an unlawful deduction of wages.

Nor does plaintiff's reliance on Labor Law § 193 in opposition papers cure the pleading deficiency. As an initial matter, the complaint does not assert a separate cause of action under that statute, and it is well settled that a plaintiff may not amend the complaint by advancing new legal theories for the first time in opposition to a motion to dismiss. The Court of Appeals has held that a party cannot alter the theory of recovery through motion practice and must instead seek leave to amend the pleading in accordance with the procedural rules governing amendments (*Alvord & Swift v Stewart M. Muller Constr. Co.*, 46 NY2d 276, 281-282 [1978]).

Even if the court were to consider plaintiff's newly asserted theory, it would fail on the merits. The complaint does not allege that defendants made any deduction from wages that were otherwise earned and payable. Rather, plaintiff contends that she should have received a higher salary based on her expectation that she would retain a different title following a corporate transition. Such allegations fall squarely outside the scope of Labor Law § 193, because the statute does not regulate the amount of compensation an employer chooses to pay, nor does it provide a remedy for an employee's dissatisfaction with salary level or job classification.

Indeed, the Court of Appeals' decision in *Ryan* underscores the limited reach of the statute. There, the Court permitted a claim to proceed because the employer had failed to pay a specific, earned bonus that was contractually promised and vested, thereby depriving the employee of wages that were already due (*Ryan*, 19 NY3d at 16). By contrast, the present case involves no allegation that defendants failed to pay wages that had already been earned or contractually guaranteed. Instead, plaintiff asserts that she should have been paid more than she received—a contention that, as a matter of law, does not constitute an unlawful deduction.

Stated differently, the distinction between a deduction and an underpayment is dispositive. A deduction occurs when an employer subtracts or diverts wages that are otherwise owed. An underpayment occurs when an employee believes she should have been paid a greater amount in the first instance. Labor Law § 193 addresses the former, not the latter. Indeed, the Appellate Division, First Department, has made clear that the statute cannot be invoked to challenge

compensation decisions or salary structures, because such disputes do not involve the removal of earned wages (*Perella Weinberg*, 153 AD3d at 449).

Here, plaintiff's allegations fit squarely within the category of underpayment claims that courts have repeatedly held are not actionable under Labor Law § 193. Because the complaint does not allege that defendants made any unauthorized deduction from wages that plaintiff had earned, the statutory claim fails as a matter of law.

Accordingly, plaintiff's reliance on Labor Law § 193 provides no basis for relief, and the claim must be dismissed.

V. Labor Law § 215 — Retaliation

Plaintiff's retaliation claim under Labor Law § 215 must be dismissed because she has not alleged engagement in protected activity within the meaning of the statute.

Labor Law § 215 protects an employee who complains to the employer that the employer has engaged in conduct that the employee, reasonably and in good faith, believes violates the Labor Law (Labor Law § 215[1][a]). Thus, while a complaint about actual or reasonably perceived wage-law violations may constitute protected activity, the complaint must still plausibly allege that the employee protested conduct of a kind covered by the Labor Law (*Schmidt-Sarosi v Offices for Fertility & Reprod. Medicine, P.C.*, 195 AD3d 479, 481 [1st Dept 2022]; *Reyes v Seaqua Delicatessen, Inc.*, 234 AD3d 88, 93 [2d Dept 2024]). Here, plaintiff did not complain about nonpayment of minimum wage, overtime, spread-of-hours pay, wage statements, unlawful deductions, or improper pay frequency. Rather, as pleaded, she complained that defendants classified her as a director rather than a vice president and paid her less than she believed a vice president should have earned. That is a private disagreement over title and compensation structure, not a plausible complaint about conduct violating the Labor Law. Since the underlying conduct of which plaintiff complained does not, as pleaded, fall within the Labor Law provisions she invokes, the complaint does not adequately allege protected activity under § 215 (*Schmidt-Sarosi*, 195 AD3d at 481).

Accordingly, plaintiff's allegations do not establish protected activity under Labor Law § 215.

VI. Labor Law § 740 — Whistleblower

Finally, plaintiff's whistleblower claim under Labor Law § 740 must be dismissed because the complaint fails, as a matter of law, to allege engagement in protected activity within the meaning of the statute.

To state a claim under Labor Law § 740, a plaintiff must allege that she disclosed, threatened to disclose, or objected to conduct that she reasonably believed violated a law, rule, or regulation. While the statute does not require the plaintiff to prove an actual violation at the pleading stage, it nevertheless requires that the complaint identify the allegedly unlawful conduct with sufficient specificity to place the employer on notice of the claimed illegality. The Court of

Appeals has explained that a whistleblower claim cannot proceed where the complaint merely recites conclusory allegations of wrongdoing without identifying the conduct that allegedly violated the law, because the statute is designed to protect employees who expose unlawful practices—not those who raise generalized workplace grievances (*Webb-Weber v Community Action for Human Servs., Inc.*, 23 NY3d 448, 451-453 [2014]).

The Court of Appeals further emphasized that the statute requires a factual nexus between the employee's complaint and a reasonably perceived legal violation, such that the employer can understand the nature of the alleged misconduct and the legal basis for the objection (*Webb-Weber*, 23 NY3d at 453). In other words, while technical precision is not required, the complaint must still articulate conduct that could plausibly be understood as unlawful, rather than merely unfair, undesirable, or inconsistent with the employee's expectations.

Following the 2021 amendments to Labor Law § 740, which broadened the statute to protect employees who reasonably believe an employer's conduct violates the law, the Appellate Division, First Department, has consistently held that the statute does not dispense with the requirement that the plaintiff identify conduct that is objectively capable of constituting a legal violation. Indeed, the Appellate Division, First Department, has reiterated that even under the expanded statutory framework, a plaintiff must still allege facts connecting the complained-of conduct to a specific legal standard or regulatory prohibition, because the statute does not transform every workplace dispute into protected whistleblowing activity (*Clendenin v VOA of Am.-Greater N.Y., Inc.*, 214 AD3d 496, 497 [1st Dept 2023]).

In a similar vein, the Appellate Division, First Department, has consistently held that allegations of mistreatment or retaliation, standing alone, do not suffice to state a viable whistleblower claim unless the underlying complaint concerns conduct that could reasonably be understood as unlawful within the meaning of the governing statute. Indeed, the court has made clear that a plaintiff's claim fails as a matter of law where the pleading does not identify conduct that plausibly violates a statute, rule, or regulation, even where the plaintiff subjectively believes that she has been treated unfairly in the workplace (*Spiegel v 226 Realty LLC*, 231 AD3d 562, 563-565 [1st Dept 2024]).

The Appellate Division, First Department, has further reaffirmed that the statute demands a concrete factual predicate demonstrating the alleged legal violation, and that conclusory assertions of wrongdoing are insufficient to satisfy the applicable pleading standard. Dismissal is therefore warranted where a plaintiff fails to articulate how the employer's conduct contravened any identifiable law or regulation, notwithstanding the plaintiff's belief that the conduct was improper (*Señal v Lynch*, 217 AD3d 466, 467-468 [1st Dept 2023]).

Applying these settled principles here, plaintiff has not alleged engagement in protected activity within the meaning of Labor Law § 740. The only predicate conduct identified in the complaint concerns a dispute over plaintiff's job title and compensation level following a corporate acquisition. Plaintiff alleges that she should have been retained as a vice president and compensated at a higher salary band. Such allegations, even if accepted as true, do not implicate any law, rule, or regulation governing employment practices, wage payment, or workplace safety.

Rather, they describe a disagreement over compensation and job classification—matters that are fundamentally contractual and managerial in nature.

Nor do plaintiff's additional allegations regarding workplace hostility, electronic interference, or reputational harm cure this threshold deficiency. Those allegations are pleaded as retaliatory acts, not as the underlying unlawful conduct itself. The statute, however, protects employees who object to illegal conduct—not employees who merely experience adverse treatment after raising workplace concerns. To be sure, the Court of Appeals has made clear that the existence of retaliation does not substitute for the statutory requirement of protected activity, because the statute's protections are triggered only when the employee complains about conduct that could reasonably be understood as unlawful (*Webb-Weber*, 23 NY3d at 451-453).

Indeed, courts applying Labor Law § 740 have consistently distinguished between complaints about unlawful conduct and complaints about workplace dissatisfaction. Where the employee's grievance concerns compensation, job title, performance expectations, or managerial decisions, dismissal is warranted because such matters do not constitute whistleblowing activity within the meaning of the statute (*Clendenin*, 214 AD3d at 496-497; *Spiegel*, 231 AD3d at 563-565; *Señal*, 217 AD3d at 467-468).

Here, plaintiff does not identify any statute, rule, or regulation that defendants allegedly violated. She does not allege that defendants engaged in unlawful wage practices, regulatory misconduct, or activity affecting public health or safety. Instead, she alleges that defendants classified her at a different job level than she expected and compensated her accordingly. Even assuming that plaintiff believed this conduct was unfair or misguided, such belief does not transform a private employment dispute into protected whistleblowing activity.

Stated differently, the gravamen of plaintiff's claim is not that defendants violated the law, but that defendants made a business decision with which she disagreed. Labor Law § 740 does not provide a remedy for such disputes. The statute is intended to safeguard employees who expose unlawful conduct, not to convert routine employment disagreements into whistleblower claims. Indeed, the Appellate Division, First Department, has reiterated that dismissal is appropriate where the complaint fails to connect the employee's objection to conduct that plausibly violates a law or regulation, because the statute does not protect generalized workplace complaints (*Spiegel*, 231 AD3d at 563-565).

Accordingly, because plaintiff has failed to allege that she disclosed or objected to conduct that she reasonably believed violated any law, rule, or regulation, the whistleblower claim under Labor Law § 740 must be dismissed as a matter of law.

CONCLUSION

In sum, the complaint fails, as a matter of law, to state any cognizable claim upon which relief may be granted. Plaintiff has not pleaded the existence of a definite and enforceable compensation agreement, but instead alleges only generalized assurances concerning title and compensation that lack the specificity required to support a contract claim. Nor has plaintiff identified a misrepresentation of present fact independent of the alleged contractual promise, and

her fraud theory is therefore duplicative of the contract claim and insufficiently pleaded under the heightened requirements of CPLR § 3016(b).

The statutory claims fare no better. The allegations describe a dispute over job classification and salary level, not the untimely payment of wages, the unauthorized deduction of earned compensation, or the disclosure of unlawful conduct within the meaning of the Labor Law. The court’s determination rests on settled principles of New York law that distinguish between dissatisfaction with employment terms and legally actionable wrongdoing, and the complaint, even when construed liberally, does not cross that threshold.

In reaching this conclusion, the court has considered plaintiff’s opposition in full. Even affording plaintiff the benefit of every favorable inference and crediting her assertion that executives orally represented she would retain the vice president title and be paid accordingly, those allegations do not supply the missing definiteness for contract, do not create a nonduplicative and particularized fraud claim, and do not transform her dispute over title and compensation into viable claims under the Labor Law provisions invoked. Indeed, the Court of Appeals held that affidavits submitted in opposition may be considered to remedy pleading defects, but only where they demonstrate the existence of a viable cause of action, not where they merely restate conclusory allegations (*Cron v Hargro Fabrics, Inc.*, 91 NY2d 362, 366 [1998]). The complaint, even as amplified by the opposition papers, fails to fit within any cognizable legal theory.

Accordingly, it is hereby

ORDERED that defendants’ motion to dismiss pursuant to CPLR § 3211(a)(7) is granted in its entirety; and it is further

ORDERED that the complaint is dismissed as against defendants Osaic, Inc. and Ladenburg Thalmann Asset Management Inc.; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly in favor of defendants, with costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs.

This constitutes the decision and order of the court.

4/14/2026

DATE

HASA A. KINGO, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED

<input type="checkbox"/>	NON-FINAL DISPOSITION	
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER

APPLICATION:

<input type="checkbox"/>	SETTLE ORDER
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<input type="checkbox"/>	SUBMIT ORDER
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CHECK IF APPROPRIATE:

<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN
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<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE
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