

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

-----	:	Hon. Stanley R. Chesler, U.S.D.J.
JOSE ORTIZ, SAUL HERNANDEZ, and	:	Civil Action No.: 2:19-cv-19003-SRC-CLW
PEDRO URENA, individually and on behalf	:	
of all others similarly situated,	:	
	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
GOYA FOODS, INC. and A.N.E.	:	
SERVICES, INC.,	:	
	:	
	:	
Defendants.	:	

**BRIEF IN SUPPORT OF DEFENDANTS’ MOTION FOR RECONSIDERATION OF
THE ORDER DENYING DEFENDANTS’ MOTION TO DISMISS FIRST AMENDED
COMPLAINT**

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PRELIMINARY STATEMENT

It is with great respect and only after thoughtful deliberation that Defendants A.N.E. Service, Inc. (“ANE”) and Goya Foods, Inc. (“GFI”) submit this motion seeking reconsideration and partial reversal of the Court’s order denying Defendants’ motion to dismiss the First Amended Complaint [D.E. 59]. Defendants respect the Court’s conclusions, while respectfully disagreeing with them, and are not suggesting that the order must be reversed in its entirety. However, for the reasons explained in greater detail below, the order should be reversed to the extent the Court would permit Plaintiffs to proceed with their claims to recover: (1) unreimbursed business expenses, and (2) alleged unlawful deductions to fund the Plaintiffs’ “bad debt reserve accounts”, as such claims fail as a matter of well-established law.¹

To be clear, even if Plaintiffs are assumed to be employees of Defendants, the PWPCL does not recognize a claim for failure to reimburse business expenses, where, as here, the putative employer has not agreed to reimburse them. Plaintiffs did nothing to challenge this established legal premise, and the Court did not specifically address it in its opinion. As such, this claim should be dismissed.

¹ While Plaintiffs plead a single count that Defendants have violated the Pennsylvania Wage Payment and Collection Law (“PWPCL”), they pursue two distinct legal claims: (1) unreimbursed business expenses due to alleged illegal shifting of costs; and (2) alleged unlawful deductions, including deductions for workers’ compensation insurance, “bad/uncollected invoices,” and to fund “reserve accounts” to cover “bad debts.” See First Amended Complaint at ¶¶ 10, 20, 33, 70, and 75. **While Plaintiffs appear to challenge two “bad debt” “deductions,” the only “bad debt” “deduction” at issue in this motion is the retention of 15% of Plaintiffs’ explicitly unearned commissions, pursuant to Paragraph 16 of the Broker Agreements, to fund the “bad debt” reserve accounts referenced therein. Although Plaintiffs sometimes refer to amounts so retained as the “reserve account” deduction [First Amended Complaint at ¶ 33], “reserve fund deduction” [D.E. 54 at 7], or “first unlawful deduction” [*id.*], for purposes of consistency, such retentions will be referred to herein as amounts retained to fund the “bad debt reserve account.” To the extent Plaintiffs claim there was some other “deduction” relating to bad debts, sometimes referred to as by Plaintiffs as “bad/uncollected invoices” [First Amended Complaint at ¶ 33], “the second unlawful deduction” [D.E. 54 at 7], or “the bad debts deduction” [*id.*] (hereinafter “bad debt uncollected invoices”), such alleged unlawful deductions are not the subject of this motion and would be unaffected should the Court decide this motion in Defendants’ favor. Thus, to the extent Plaintiffs make any references to some other “bad debt” deduction in opposition to this motion, Defendants respectfully submit such references should be ignored.**

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