

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

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EFRAIN DANILO MENDEZ a/k/a EFRAIN D.  
MENDEZ-RIVERA, ALDRAILY ALBERTO  
COISCOU, FERNANDO MELINA a/k/a JORGE  
LUIS FLORES LARIOS, SIRYI NAYROBIK  
MELENDEZ and RENE ALEXANDER OLIVIA,  
individually and on behalf of all other similarly situated,

**MEMORANDUM OF  
DECISION AND ORDER**  
12-CV-5583 (ADS) (WDW)

Plaintiffs,

v.

U.S. NONWOVENS CORP., SAMUEL MEHDIZADEH  
a/k/a SOLOMON MEHDIZADEH, SHERVIN  
MEHDIZADEH, and RODY MEHDIZADEH,

Defendants.  
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**APPEARANCES:**

**Steven John Moser, Esq.**  
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By: Michael Craig Schmidt, Esq., of Counsel

**SPATT, District Judge.**

On November 13, 2012, the Plaintiffs Efrain Danilo Mendez a/k/a Efrain D. Mendez-Rivera (“Mendez”); Aldraily Alberto Coiscou (“Coiscou”); Fernando Molina a/k/a Jorge Luis Flores Larios (“Molina”); Siryi Nayrobik Melendez (“Melendez”); and Rene Alexander Oliva (“Oliva,” and collectively, the “Original Plaintiffs”) commenced this action by filing a Complaint (the “Original Complaint”) against the Defendants U.S. Nonwovens Corp. (“U.S. Nonwovens”); Samuel Mehdizadeh a/k/a Solomon Mehdizadeh

(“Samuel”); Shervin Mehdizadeh (“Shervin”) and Rody Mehdizadeh (“Rody,” and collectively the “Defendants”).

In their Original Complaint, the Original Plaintiffs asserted the following causes of action: (1) a collective action claim pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201 et seq. (the “FLSA”), and specifically 29 U.S.C. § 216(b), alleging that the Defendants failed to pay the Original Plaintiffs overtime compensation for the hours they worked in excess of a forty hour work week; (2) a class action claim pursuant to Federal Rule of Civil Procedure (“Fed. R. Civ. P.”) 23 and New York Labor Law (“NYLL”) Article 19 alleging that the Defendants failed to pay the Original Plaintiffs and putative class members overtime compensation for the hours they worked in excess of a forty hour work week; (3) a class action claim pursuant to Fed. R. Civ. P. 23 and NYLL Article 19 alleging that the Defendants failed to pay the Original Plaintiffs and putative class members overtime compensation in a timely manner; (4) a class action claim pursuant to Fed. R. Civ. P. 23 and NYLL Article 19 alleging that the Defendants failed to pay the Original Plaintiffs and putative class members additional compensation of one hour’s pay at the minimum hourly wage rate for each day during which the spread of hours exceeded ten hours; and (5) a class action claim pursuant to Fed. R. Civ. P. 23 and the NYLL alleging that the Defendants failed to comply with the notice provisions of the Wage Theft Prevention Act (“WTPA”), Article 6 of the NYLL, and more specifically NYLL § 195-1.

Presently before the Court is a motion by the Original Plaintiffs, together with Juan Flores-Larios (“Flores-Larios”); Ramiro Cordova (“Cordova”) and Daniel Sante (“Sante,” and collectively with the Original Plaintiffs, the “Plaintiffs”) to amend the

Original Complaint under Fed. R. Civ. P. 15(a). In this regard, the Plaintiff seeks to (1) add Flores-Larios; Cordova and Sante as named Plaintiffs and class representatives; (2) insert a first cause of action asserting a collective action claim pursuant to FLSA 29 U.S.C. 201 et seq., and 29 C.F.R. § 778.106, alleging that the Defendants failed to pay the Plaintiffs overtime compensation in a timely manner; (3) renumber the first through fifth causes of action as the second through sixth causes of action; (4) add a Fed. R. Civ. P. 23 class action claim for New York State common law breach of contract, alleging that the Defendants failed to pay the Plaintiffs and the putative class members promised wages; and (5) supplement the “Nature of the Action” and “Summary of Causes of Action” portions of the Original Complaint accordingly. The Plaintiffs included with their motion a Proposed First Amended Complaint (the “Amended Complaint”). In addition, with their reply papers, the Plaintiffs have submitted a Revised Proposed First Amended Complaint (the “Revised Amended Complaint”) in order to accommodate concerns raised by the Defendants in their opposition to the Plaintiffs motion to amend.

The Court pauses here to note that the Plaintiffs’ Amended Complaint, Revised Amended Complaint, motion papers and reply use footnotes, which is contrary to this Court’s Individual Rule II.A. Notwithstanding this infraction, the Court will consider the Plaintiffs’ papers in rendering its decision. However, the Court advises the Plaintiffs’ counsel that any future filings that contain footnotes will not be considered by this Court.

For the reasons that follow, the Court grants the Plaintiffs’ motion.

## I. BACKGROUND

The following facts are derived from the Original Complaint, the Amended Complaint and the Revised Amended Complaint and are construed in the light most favorable to the Plaintiffs.

The Defendant U.S. Nonwovens, a domestic business corporation that is organized and existing under New York State law, manufactures a wide variety of products, such as household cleaning products; disposable cleaning wipes for personal hygiene and other cleaning uses; other non-woven products; and laundry cleaning and care products. U.S. Nonwovens clients include Wal-Mart, K-Mart, Sears, CVS and Walgreens. In addition to operating three factories located in Brentwood, New York, U.S. Nonwovens also maintains a warehouse and distribution center located in Hauppauge, New York. U.S. Nonwovens is considered a covered employer within the meaning of the FLSA and NYLL and has a gross volume of sales made or business done that is not less than \$500,000 per year.

The individual Defendants Samuel, Shervin and Rody Mehdizadeh (collectively, the “Individual Defendants”) are shareholders in U.S. Nonwovens and together own one hundred percent of the outstanding shares of stock of U.S. Nonwovens. Shervin and Rody are brothers, while Samuel is their father. According to the Revised Amended Complaint, the Individual Defendants obtained a controlling interest in U.S. Nonwovens in 2005.

Prior to becoming a shareholder in U.S. Nonwovens in October of 2005, on January 2, 1997, Samuel was hired by U.S. Nonwovens to serve as the General Manager. In that role, he was responsible for the U.S. Nonwovens day-to-day operations. Since

then, Samuel has served as the U.S. Nonwovens General Manager, President, Chairman and Chief Executive Officer. Although the Original Complaint identifies Samuel as the President of U.S. Nonwovens, the Revised Amended Complaint does not state what his current role is in the company beyond asserting that he is a shareholder.

Also on January 2, 1997, U.S. Nonwovens hired Shervin as Assistant Manager. Shervin has served U.S. Nonwovens in various capacities and is currently the company's Chief Executive Officer. In addition, Rody is the Chief Operating Officer of U.S. Nonwovens. The Revised Amended Complaint does not contain any factual allegations as to when Rody began his involvement with U.S. Nonwovens.

According to the Plaintiffs, the Individual Defendants are actively involved in managing U.S. Nonwovens day-to-day operations. Of relevance here, the Plaintiffs claim that the Individual Defendants have power over payroll decisions, including the power to retain time and/or wage records, as well as the power to stop any illegal practices in violation of the FLSA and/or the NYLL. The Individual Defendants also allegedly have power over personnel decisions, including the power to hire and fire employees, set wages and otherwise control the terms and conditions of an employee's employment.

The Plaintiffs who bring this action are all residents of Suffolk County, New York, and are current or former factory workers that were employed by U.S. Nonwovens. The Revised Amended Complaint describes them as "part of an immigrant workforce." (Rev. Amend. Compl., ¶ 3.) In this regard, according to the Revised Amended Complaint, Mendez was employed by the Defendants from May of 2012 to November of 2012; Coiscou was employed by the Defendants from August 20, 2012 to September 25, 2012; Molina was employed by the Defendants from August 13, 2010 to October 11, 2012;

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