UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

WENDY RATH, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,

Plaintiff,

v.

DECISION AND ORDER
21-CV-791S

JO-ANN STORES, LLC,

Defendant.

I. Introduction

In this diversity action Plaintiff (for herself and a class of similarly situated employees) contends that Defendant Jo-Ann Stores, LLC, paid her biweekly, rather than weekly as required for a manual worker such as her, violating New York Labor Law § 191 (Docket No. 24, First Am. Compl.; see Docket No. 1, Compl.).

Defendant moved to dismiss the original Complaint, arguing in part that Plaintiff lacked Article III standing (Docket No. 13). On August 26, 2022, this Court terminated that Motion to Dismiss and granted Plaintiff leave to amend her Complaint to allege her standing, Rath v. Jo-Ann Stores, LLC, No. 21CV791, 2022 WL 3701163 (W.D.N.Y. Aug. 26, 2022) (Skretny, J.) (Docket No. 23); familiarity with that Decision is presumed. That earlier Decision left open the question whether Labor Law § 191 has a private right of action.

Plaintiff then filed her Amended Complaint (Docket No. 24, First Am. Compl.), expressly stating her grounds for standing (id. ¶¶ 11-16). Defendant does not now challenge Plaintiff's standing (cf. Docket No. 25, Def. Memo. at 2 (accepting alleged facts

as true for purposes of Motion)). Plaintiff alleges Defendant's violation of Labor Law § 191, seeking (among other relief) liquidated damages under Labor Law § 198(1-a) (Docket No. 24, First Am. Compl.).

Currently before this Court is Defendant's Motion to Dismiss this Amended Complaint and to dismiss her claim therein seeking liquidated damages (Docket No. 25[1]). Responses to this Motion were due by October 25, 2022, and reply by November 1, 2022 (Docket No. 26). Upon the timely submissions of both sides, the Motion was deemed submitted without oral argument. This Court also considers the relevant arguments made in Defendant's initial Motion to Dismiss the original Complaint[2].

The remaining questions are whether New York Labor Law § 191 establishes a private right of action and, if so, can Plaintiff claim liquidated damages. On the first point, both sides present competing New York State and federal court precedents on the existence of this private right of action based upon other courts accepting the First Department's decision in Vega v. CM & Associates Construction Management, LLC, 176 A.D.3d 1144, 107 N.Y.S.3d 286 (1st Dep't 2019).

For reasons stated herein, Defendant's Motion to Dismiss the Amended Complaint and deny Plaintiff's claim for liquidated damages (Docket No. 25) is **denied**.

---

[1]In support of the pending Motion to Dismiss, Defendant submits its attorney's Declaration with exhibits and Memorandum of Law, Docket No. 25, and its Reply Memorandum of Law, Docket No. 30.

In opposition, Plaintiff submits her Memorandum of Law in opposition, Docket No. 27; her attorney's Declaration with exhibits, Docket No. 28; and supplemental authority, Docket No. 29.

[2]Docket Nos. 13, 17, 18, 19, 20-22.

II. Background

A. Alleged Facts

According to the Complaint (Docket No. 1) and the First Amended Complaint (Docket No. 24), Defendant failed to pay Plaintiff and the putative class of manual workers on a timely basis by paying them biweekly rather than weekly as required by Labor Law § 191(1). Plaintiff seeks to recover the amount of untimely paid wages as liquidated damages, attorney's fees, costs, pre- and post-judgment interest. (Docket No. 24, First Am. Compl. ¶¶ 25-27.)

Plaintiff was employed by Defendant at its Batavia, New York, Fabric & Crafts store from July 2019 to January 2021 then at its Williamsville, New York, store from January to June 2021 (id. ¶ 11). She claims that at least a quarter of her job responsibilities included manual labor (such as cutting fabrics for customers, stocking inventory, and working on the sales floor and at the cash register) (id.). She was paid biweekly and Plaintiff now alleges the harm from the late payment of her weekly wages to establish her standing to sue in this Court (id. ¶¶ 11, 12-16). Defendant also does not argue that Plaintiff lacks standing as alleged in her First Amended Complaint.

The Complaint also alleges a class of all persons who worked as manual workers for Defendant in New York for six years before July 13, 2021 (when Plaintiff filed her Complaint) (id. ¶ 12).

B. Proceedings

Defendant moved to dismiss the Complaint (Docket No. 13) arguing that Labor Law § 191 does not have a private right of action and Plaintiff failed to allege standing for proceeding in this Court (id., Def. Memo. at 4-15, 17). It alternatively argued that Plaintiff

is not entitled to liquidated damages (id. at 15-17). This Court's August 26, 2022, Decision terminated that Motion and ordered Plaintiff to amend her Complaint to allege grounds for her standing, Rath, supra, 2022 WL 3701163.

After Plaintiff amended her Complaint (Docket No. 24, First Am. Compl.), Defendant promptly filed the present Motion to Dismiss the First Amended Complaint (Docket No. 25).

III. Discussion

A. Applicable Standards

1. Motion to Dismiss

As previously observed, Rath, supra, 2022 WL 3701163, at *2, under Rule 12(b)(6), this Court cannot dismiss a Complaint unless it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957). As the Supreme Court held in Bell Atlantic Corp. v. Twombly, 550 U.S. 554, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007), a Complaint must be dismissed pursuant to Rule 12(b)(6) if it does not plead "enough facts to state a claim to relief that is plausible on its face," id. at 570 (rejecting longstanding precedent of Conley, supra, 355 U.S. at 45-46).

To survive a Motion to Dismiss, the factual allegations in the Complaint "must be enough to raise a right to relief above the speculative level," Twombly, supra, 550 U.S. at 555. As reaffirmed by the Court in Ashcroft v. Iqbal, 556 U.S. 662, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009),

> "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' [Twombly, supra, 550 U.S.] at 570 . . . . A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the

> reasonable inference that the defendant is liable for the misconduct alleged. Id., at 556 . . . . The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully. Ibid. Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of "entitlement to relief."' Id., at 557 . . . (brackets omitted)."

Iqbal, supra, 556 U.S. at 678 (citations omitted).

A Rule 12(b)(6) Motion is addressed to the face of the pleading. The pleading is deemed to include any document attached to it as an exhibit, Fed. R. Civ. P. 10(c), or any document incorporated in it by reference, Goldman v. Belden, 754 F.2d 1059 (2d Cir. 1985).

In considering such a Motion, the Court must accept as true all the well pleaded facts alleged in the Complaint. Bloor v. Carro, Spanbock, Londin, Rodman & Fass, 754 F.2d 57 (2d Cir. 1985). However, conclusory allegations that merely state the general legal conclusions necessary to prevail on the merits and are unsupported by factual averments will not be accepted as true. New York State Teamsters Council Health and Hosp. Fund v. Centrus Pharmacy Solutions, 235 F. Supp. 2d 123 (N.D.N.Y. 2002).

2. New York Labor Law and Payment of Wages

a. Labor Law § 191 and Its Enforcement

Again as previously noted, Rath, supra, 2022 WL 3701163, at *3-5, under Article 6 for Payment of Wages of the New York Labor Law New York State requires employers to make weekly payments of manual workers' salaries "and no later than seven calendar days after the end of the week in which the wages are earned," N.Y. Labor Law § 191(1)(a). An employer with one thousand employees or more may be authorized by the New York State Commissioner of Labor to pay its employees less frequently than

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.