

Monroe v VEP Assoc. LLC

2022 NY Slip Op 30598(U)

February 24, 2022

Supreme Court, New York County

Docket Number: Index No. 159656/2019

Judge: Melissa A. Crane

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MELISSA CRANE PART 60M

Justice

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INDEX NO. 159656/2019

JOSEPH MONROE, RUSSELL DAVILA

MOTION DATE 12/17/2021

Plaintiff,

MOTION SEQ. NO. 002

- v -

VEP ASSOCIATES LLC,

AMENDED DECISION + ORDER

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 15, 16, 17, 18, 19, 20, 21, 23

were read on this motion to/for MISCELLANEOUS

The court vacates and recalls its 2/7/22 dated Decision + Order on Motion Seq. No. 002 (NYSCEF Doc. No. 23) and replaces it with the following amended decision and order.

This case arises from unpaid wages and New York Labor Law violations during the period that plaintiffs Joseph Monroe ("Monroe") and Russell Davila ("Davila") (together, the "Plaintiffs") worked for defendant VEP Associates LLC d/b/a VEP American Fire and Security ("VEP Associates").

Plaintiffs initiated this case on October 4, 2019 by filing a Summons and Complaint on behalf of themselves and a putative class of similar situated former employees of Defendant (NYSCEF Doc. No. 2). Defendant failed to timely answer plaintiffs' Summons and Complaint and, to date, has not appeared in this case. As a result, the court did not make a determination on the merits of class certification pursuant to CPLR 902. Therefore, this case remained, and still is, in the pre-certification context.

On June 23, 2020, plaintiffs moved, pursuant to CPLR 3215, for leave to enter a default judgment as against defendant VEP Associates (NYSCEF Doc. No. 4). The unopposed motion for default judgment remains pending. Plaintiffs now move, pursuant to CPLR 908, for an order approving the Proposed Court Ordered Notice of Dismissal and directing its distribution to all putative class. Plaintiffs' motion is granted in part. The proposed manner in which plaintiffs seek to provide notice to the putative class is insufficient.

Discussion

CPLR 908 provides that “[a] class action shall not be dismissed, discontinued, or compromised without the approval of the court. Notice of the proposed dismissal, discontinuance, or compromise shall be given to all members of the class in such manner as the court directs.” CPLR 908’s requirements also extend to, and apply in, the pre-certification context (*Desrosiers v Perry Ellis Menswear, LLC*, 30 NY3d 488 [2017]). Thus, “notice to putative class members of a proposed dismissal, discontinuance, or compromise must be given.” (*id.*)

In this case, plaintiffs contend that posting notice of this case’s discontinuance on the NYSCEF docketing system and on plaintiffs’ counsel’s website satisfies CPLR 908’s requirements for providing notice to putative class members (NYSCEF Doc. No. 17). In support, plaintiffs cite to *Innvite Hospitality, LLC v. Yellowstone Capital LLC*, Index No. 653712/2020. However, plaintiffs’ reliance on *Innvite Hospitality* is misplaced, as that case involved a proposed settlement, rather than a voluntary discontinuance after default judgment as is the case here. Thus, the court directs that this order, and the notice listed below, be provided to all current and former non-exempt hourly paid employees, who worked for defendant in the State of New York from October 5, 2013 through the date of this order, in the following manner:

- **Plaintiffs’ Counsel’s Law Firm Website:** Within 10 days of the court’s entry of this order on NYSCEF, plaintiffs’ counsel shall post this order and the notice to its law firm website, located at: <https://www.wagetheftny.com>. The order and notice shall remain posted on the website for at least 4 consecutive weeks and shall be titled as: “Notice of Dismissal of Class Action Lawsuit Against VEP Associates LLC d/b/a VEP American Fire and Security.”
- **Newspaper Publication:** Within 10 days of the court’s entry of this order on NYSCEF, plaintiffs’ counsel shall publish a copy of this order and the below notice in the print newspaper AM New York Metro. The notice shall be and remain posted daily for at least 4 consecutive weeks from the first day on which the notice is published, and the notice shall be titled as: “Notice of Dismissal of Class Action Lawsuit Against VEP Associates LLC d/b/a VEP American Fire and Security, NY State Supreme Court, Index No. 159656/2019.”

Furthermore, the notice must bear the following form (as reproduced on the next page):

Notice of Dismissal of Class Action Lawsuit Against VEP Associates LLC d/b/a VEP American Fire and Security, NY State Supreme Court, Index No. 159656/2019

TO: All current and former employees who worked for VEP Associates LLC (d/b/a VEP American Fire and Security) in the NYS during the period of October 5, 2013 through the present (the "Class").

This Notice relates to the dismissal of the above captioned potential class action lawsuit. The facts relating to the dismissal of this action are outlined below. As a potential class member, you have the right to be informed of the dismissal.

- This notice has been authorized by the NYS Supreme Court and may affect your legal rights. This is not a solicitation from a lawyer.
- Plaintiffs Joseph Monroe and Russell Davila worked for VEP Associates LLC ("Defendant") in NYS and brought this lawsuit on October 4, 2019 on behalf of themselves and other current and former employees who worked for Defendant dating back to October 5, 2013. Plaintiffs allege that they were made to wear a uniform and were not paid uniform maintenance pay, and did not receive hiring notice at their time of hire or any time thereafter.
- Following publication of this notice for 4 consecutive weeks, the Court will enter an Order dismissing this action as to the Class. The individual claims of Joseph Monroe and Russell Davila are to be resolved separately. The claims of all other potential class members will be dismissed without prejudice. This means that potential class members such as yourself can still file claims against Defendant seeking allegedly unpaid wages to the extent otherwise permitted by law.
- Receipt of this notice does not indicate that you are entitled to receive any monetary recovery. No determination has been made by the Court that you are owed any unpaid wages, and the Court is not endorsing the merits of this lawsuit.
- When the Court dismisses this putative class action lawsuit, any claim you may have for unpaid wages that may have been a part of the lawsuit may not be protected and will be dismissed without prejudice. That means that the time you have to file any claim for unpaid wages that you may have against Defendants will continue to expire unless you commence your own action.
- If you have any questions about this lawsuit, or would like further information, contact the Plaintiff's attorneys: Mark Gaylord, Esq. at (516) 742-4949, Bouklas Gaylord LLP, 357 Veterans Memorial Highway, Commack, NY 11725, www.wagetheftny.com.

PLEASE DO NOT CONTACT THE COURT WITH QUESTIONS INVOLVING THIS LAWSUIT

Accordingly, it is

ORDERED that Motion Seq. No. 002 is granted in part; and it is further

ORDERED that plaintiffs must notify the members of the putative class in accordance with the directives and instructions provided above; and it is further

ORDERED that plaintiffs must provide proof of compliance with this order, by e-filing on NYSCEF and emailing the court at SFC-Part60@nycourts.gov, by Monday, April 4, 2022; and it is further

ORDERED that a status conference will be held on Wednesday, April 6, 2022 at 4:00 p.m. via Microsoft Teams.

2/24/2022

DATE


MELISSA CRANE, J.S.C.

CHECK ONE:

CASE DISPOSED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE