UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

AURA SALAZAR, DAMARIS VENTURA, on behalf of themselves and all others similarly situated, Plaintiffs, v. FULFILLMENT AMERICA, INC., JOHN BARRY SR., and JOHN BARRY JR., Defendants.	)	Civil No. 23-11625-LTS

ORDER ON MOTION FOR CLASS CERTIFICATION (DOC. NO. 29)

October 16, 2024

SOROKIN, J.

Plaintiffs Aura Salazar and Damaris Ventura bring this action on behalf of themselves and a putative class alleging violations of the Worker Adjustment and Retraining Notification Act of 1988 ("WARN Act"), 29 U.S.C. §§ 2101-2109, and the Massachusetts Payment of Wages Act ("Wage Act"), Mass. Gen. Laws ch. 149, §§ 148, 150. Pending before the Court is the plaintiffs' motion for class certification, appointment of class representatives, and approval of class counsel. For the reasons that follow, the plaintiffs' motion is ALLOWED.

I. BACKGROUND

The following facts are drawn from the complaint, supplemented by evidence submitted in the current motion and exhibits. The plaintiffs and others worked as hourly production workers at Fulfillment America through a staffing agency called Job Done. Doc. No. 1 ¶¶ 11-12. Around December 21, 2022, Fulfillment America abruptly terminated its contract with Job Done

and consequently terminated the employment of the plaintiffs and many others like them. Id. ¶¶ 12-13. The plaintiffs and others received a text message on December 31, 2022, stating that their last day of work was December 30, 2022. Id. ¶ 15. They did not receive their final wages until approximately two weeks following their end of employment. Id. ¶ 22.

The plaintiffs, on behalf of themselves and others similarly situated, brought this action on July 20, 2023, alleging violations of the WARN Act and the Wage Act. Doc. No. 1. The WARN Act prohibits employers of 100 or more employees from ordering a "a plant closing or mass layoff until the end of a 60-day period after the employer serves written notice of such an order." 29 U.S.C. § 2102(a). The Wage Act provides that "any employee discharged from [their] employment shall be paid in full on the day of [their] discharge." Mass. Gen. Laws ch. 149, § 148. The defendants filed their answer on October 21, 2023, amending it in June 2024. Doc. Nos. 8, 36. The parties jointly filed a proposed schedule for motion practice and discovery on November 13, 2023. Doc. No. 14. In May, the plaintiffs moved to certify the class. Doc. No. 29. The defendants opposed, challenging the motion's timeliness, and arguing that the plaintiffs failed to establish the proposed class's commonality and numerosity under Federal Rules of Civil Procedure 23(a) ("Rule 23(a)"), and other requirements under 23(b) ("Rule 23(b)"). Doc. No. 38.

II. LEGAL STANDARD

A court may certify a class only if it finds that the proposed class satisfies the four requirements of Rule 23(a)—numerosity, commonality, typicality, and adequacy of representation—and that class-wide adjudication is appropriate for one of the reasons set forth in Rule 23(b). See Smilow v. Sw. Bell Mobile Sys., Inc., 323 F.3d 32, 38 (1st Cir. 2003). A court must conduct a "rigorous analysis," and, to the extent that the merits overlap with these requirements, it may "look beyond the pleadings" and predict how specific issues will become

relevant to facts in dispute. In re New Motor Vehicles Canadian Exp. Antitrust Litig., 522 F.3d 6, 25 (1st Cir. 2008); see also Amgen Inc. v. Conn. Ret. Plans & Tr. Funds, 568 U.S. 455, 466 (2013).

III. DISCUSSION

The plaintiffs bear the burden to establish class certification is warranted. See Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 350 (2011) ("A party seeking class certification must affirmatively demonstrate his compliance with the Rule . . . ."). The defendants make several arguments opposing the plaintiffs' motion. The Court takes each prerequisite for class certification in turn.

A. Timeliness of Motion to Certify Class

The defendants first argue that the Court should not consider the question of class certification until after discovery has ended and they have submitted a dispositive motion. Doc. No. 38 at 5. The argument fails for at least three reasons.

First, the argument contravenes the Federal Rules of Civil Procedure, which provide that "the court must determine by order whether to certify the action as a class action" "[a]t an early practicable time after a person sues or is sued as a class representative." Fed. R. Civ. P. 23(c)(1)(A). Because it is currently an early practicable time after the filing of the complaint, the timeliness of the motion is appropriate.

Second, the motion for class certification was filed about two weeks after the date established on the Joint Statement setting out the timetable for discovery and motion practice. See Doc. No. 14 at 2. In short, the request the defendants now challenge as premature was filed later than the parties proposed. Id. The defendants, with the plaintiffs, proposed an even earlier deadline for the motion, and the Court adopted it. Id. Then, when the plaintiffs sought a slight extension of time, the defendants assented. Doc. No. 22. The defendants never suggested that

changed circumstances justified delaying a determination on class certification prior to their opposition.

Third, granting a motion for class certification does not preclude the defendants from filing dispositive motions after the fact. Indeed, certifying the class does not conclusively resolve the underlying disputed issues. The defendants are free to move for summary judgment as planned.

B. Numerosity

Rule 23(a) requires that a class "is so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). Numerosity is a "low threshold." Garcia-Rubiera v. Calderon, 570 F.3d 443, 460 (1st Cir. 2009). "[G]enerally if the named plaintiff demonstrates that the potential number of plaintiffs exceeds 40, the first prong of Rule 23(a) has been met." Id. (quoting Stewart v. Abraham, 275 F.3d 220, 226-27 (3d Cir. 2001)).

Here, the plaintiffs allege that approximately 100 others were laid off by the defendants between December 31, 2022, and January 8, 2023, and did not receive the full wages they were owed when their employment was terminated. Doc. No. 1 ¶¶ 23-24. This easily meets the numerosity standard. Nevertheless, the defendants assert that "discovery will show" both that some employees were offered other jobs and that some class members ended their employment. Doc. No. 38 at 8. Both these facts would reduce the number of purported class members, causing the plaintiffs, possibly, to fail to meet the numerosity requirement. See id. But the defendants offer no evidence supporting these assertions, nor do they specify how many class members would fall into either category. See Waste Mgmt. Holdings, Inc. v. Mowbray, 208 F.3d 288, 298 (1st Cir. 2000) ("We are unwilling to fault a district court for not permitting arguments woven entirely out of gossamer strands of speculation and surmise to tip the decisional scales in a class certification ruling."). The current record before this Court

demonstrates that the plaintiffs' purported class would be sufficiently numerous under Rule 23(a). Should the defendants later advance evidence showing otherwise, the Court may alter its judgment. See New Motor Vehicles, 522 F.3d at 26 n.27 (noting judge may modify certification "if it becomes clear, as the case develops, that the class action vehicle is in fact inappropriate").

C. Commonality

Next, the defendants contend that the plaintiffs failed to establish that "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). Specifically, the defendants argue that because "discovery will show" that many employees did not experience employment loss as defined by the statute, the plaintiffs fail to meet the standard. Doc. No. 38 at 9.

"Rule 23(a)'s requirement of commonality is a low bar, and courts have generally given it a 'permissive application.'" New Motor Vehicles, 522 F.3d at 19 (citation omitted). Here, the class would be comprised of "workers who were laid off by Fulfillment America between December 31, 2022 and January 8, 2023, who suffered a loss of employment and/or did not receive full wages owed at termination." Doc. No. 29 at 16. Common questions might include whether the class members were "employees" of Fulfillment American within the meaning of the WARN Act, whether a mass layoff occurred, whether Fulfillment America provided the notice required of a mass layoff, and the measure of damages for violations of the WARN Act or the Wage Act. Even if the defendants are correct that some workers did not experience employment loss, the plaintiffs' proposed class will not include such individuals. And even if these workers were included in the class, a court may certify a class with a "de minimis" number of uninjured individuals, where those members may be "picked off in a manageable, individualized process at or before trial." In re Asacol Antitrust Litig., 907 F.3d 42, 53 (1st Cir. 2018). The plaintiffs therefore satisfy the commonality requirement.

D. Typicality & Adequacy

The defendants do not dispute that the plaintiffs also satisfy the typicality and adequacy requirements, but the Court addresses them for the sake of completeness. A class representative's claims must be typical of the claims of the class as a whole. Fed. R. Civ. P. 23(a)(3). This is met when the representative's claims "arise[] from the same event or practice or course of conduct that gives rise to the claims of other class members, and . . . are based on the same legal theory." Garcia-Rubiera, 570 F.3d at 460 (citation omitted). Here, the representatives' claim arises from the same conduct that would apply to the entire class: the putative class members were all laid off suddenly by the same employer roughly around the same time, and their claims arise from the defendants' alleged failure to provide notice and wages in accordance with state and federal law. See Doc. No. 29 at 16. The injury suffered by the representatives gave rise to the same causes of action that would also apply to the class. Typicality is thus met.

Adequacy is satisfied where "the representative parties will fairly and adequately protect the interests of the class." Andrews v. Bechtel Power Corp., 780 F.2d 124, 130 (1st Cir. 1985). This requires showing both "that the interests of the representative party will not conflict with the interests of any of the class members," and "that counsel chosen by the representative party is qualified, experienced and able to vigorously conduct the proposed litigation." Id. The Court does not see any potential conflict of interest, nor does it doubt that chosen counsel is sufficiently qualified and experienced to conduct the litigation. For the reasons stated in the plaintiffs' brief, Doc. No. 29 at 10-12, adequacy is also met.

E. Rule 23(b) Requirements

In addition to the requirements of Rule 23(a), the plaintiffs must also satisfy Rule 23(b), which states that the Court must find that "questions of law or fact common to class members

predominate over any questions affecting only individual members" ("predominance") and that a class action is superior to other methods for adjudicating the controversy ("superiority"). Fed. R. Civ. P. 23(b)(3). "The aim of the predominance inquiry is to test whether any dissimilarity among the claims of class members can be dealt with in a manner that is not 'inefficient or unfair.'" In re Asacol Antitrust Litig., 907 F.3d at 51 (quoting Amgen, Inc. v. Conn. Ret. Plans & Tr. Funds, 568 U.S. 455, 469 (2013)). The superiority inquiry asks whether the "putative class members could sensibly litigate on their own for these amounts of damages, especially with the prospect of expert testimony required." Gintis v. Bouchard Transp. Co., 596 F.3d 64, 68 (1st Cir. 2010). While considering both inquiries, courts evaluate:

> (A) the class members' interests in individually controlling the prosecution or defense of separate actions;
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> (B) the extent and nature of any litigation concerning the controversy already begun by or against class members;
>
> (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
>
> (D) the likely difficulties in managing a class action.

Fed. R. Civ. P. 23(b)(3).

Here, the proposed class consists of employees who allegedly were all part of a single "mass layoff," within a few weeks of each other. Even if some class members may have been laid off at different times, and even if some may have been recalled temporarily or offered other placements, the case involves several common, overarching questions: whether the plaintiffs were "employees" of Fulfillment America, whether the plaintiffs were subjected to a mass layoff without the required statutory notice, and whether their wages were delayed in violation of the Wage Act. See Tyson Foods, Inc. v. Bouaphakeo, 577 U.S. 442, 453 (2016) ("The predominance inquiry 'asks whether the common, aggregation-enabling, issues in the case are

more prevalent or important than the non-common, aggregation-defeating, individual issues.'" (citation omitted)). Many of the defendants' affirmative defenses, such as Fulfillment America not being an "employer" or the class members not qualifying as "affected employees" under the Act, apply equally to each potential class member. Thus, the predominance requirement is met.

The plaintiffs also satisfy the superiority requirement. Here, a class action is superior to 100 individual claims, particularly given the relatively small value of individual WARN Act claims compared to the aggregate relief sought by the putative class. Litigating WARN Act violations in a single class action will maximize judicial economy, efficiency, and uniformity of outcomes for similarly situated individuals. The Court does not foresee any substantial difficulties in managing the class action; the class members can be easily identified through discovery, the potential liability can be readily calculated, and there is but one mass layoff to consider and adjudicate. This outcome is also consistent with the statutory language of the WARN Act, which specifically envisions a class action as a vehicle to bring a suit: "[A] representative of employees . . . may sue either for such person or for other persons similarly situated, or both . . . ." 29 U.S.C. § 2104(a)(5).

IV. CONCLUSION

For the foregoing reasons, the plaintiffs' motion for class certification, Doc. No. 29, appointment of class representatives and class counsel is ALLOWED. Accordingly, the class is composed of: workers who were laid off by Fulfillment America between December 31, 2022, and January 8, 2023, who suffered a loss of employment and/or did not receive full wages owed at termination.

SO ORDERED.

/s/ Leo T. Sorokin
United States District Judge