

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

Alejandro Ramirez et al. v. E.N. Home Improvement Inc. et al.

No. 22-CV-1086 (EK)(PCG) (E.D.N.Y. Feb. 16, 2026) · No. 22-CV-1086 (EK)(PCG) · Decided February 16, 2026

SUMMARY

The Eastern District of New York granted a motion to dismiss claims against ASF Construction & Excavation Corp. and Andre Fernandes under the Fair Labor Standards Act and New York Labor Law. The court held that the amended complaint did not plausibly allege that those defendants were the plaintiffs’ employers because the allegations were conclusory and improperly grouped the defendants together. The court granted leave to amend and ordered the plaintiffs to show cause why their wage notice and wage statement claims should not be dismissed for lack of Article III standing.

CASE DETAILS

COURT	United States District Court for the Eastern District of New York
WRITING FOR THE COURT	Eric Komitee
JURISDICTION	United States District Court for the Eastern District of New York
DECIDED	February 16, 2026
DOCKET	22-CV-1086 (EK)(PCG)
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiffs brought claims under the Fair Labor Standards Act and New York Labor Law for unpaid wages, overtime, wage statements, and wage notices. ASF Construction & Excavation Corp. and Andre Fernandes moved to dismiss under Federal Rule of Civil Procedure 12(b)(6), and Fernandes separately challenged service of process. The court granted the motion to dismiss for failure to plausibly allege that ASF and Fernandes were plaintiffs' employers, granted leave to amend, and ordered plaintiffs to show cause regarding Article III standing for their wage-notice and wage-statement claims.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the complaint must plead facts sufficient to state a claim that is plausible on its face. The court accepts factual allegations as true and draws reasonable inferences for the plaintiff, but need not credit conclusory allegations or legal conclusions

	masquerading as facts. Standing is reviewed as a subject-matter-jurisdiction issue, which the court must examine independently.
PRECEDENTIAL VALUE	unpublished district court memorandum and order
PARTIES	Alejandro Ramirez et al. v. E.N. Home Improvement Inc. et al., ASF Construction & Excavation Corp., Andre Fernandes, Carlos Arevalo

TOPICS

flsa

motions to dismiss

subject matter jurisdiction

employment law

construction law

PRACTICE AREAS

Employment law

Fair Labor Standards Act

New York labor law

Federal civil procedure

QUESTIONS PRESENTED

1. Whether the amended complaint plausibly alleged that ASF Construction & Excavation Corp. and Andre Fernandes were plaintiffs' employers or joint employers under the FLSA and NYLL.
2. Whether the complaint plausibly alleged employer status under the formal-control factors of Carter v. Dutchess Community College.
3. Whether the complaint plausibly alleged employer status under the functional-control factors of Zheng v. Liberty Apparel Co.
4. Whether plaintiffs' NYLL wage-notice and wage-statement claims potentially lacked Article III standing because the complaint alleged no concrete injury.

HOLDINGS

1. The amended complaint failed to plausibly allege that ASF or Fernandes was plaintiffs' employer or joint employer under the FLSA and NYLL because its allegations were conclusory, improperly grouped the defendants together, and merely recited the governing economic-reality factors.
2. Plaintiffs cannot establish that particular defendants are employers by lumping all defendants together and reciting economic-reality factors without defendant-specific factual allegations.
3. Plaintiffs were granted leave to amend the complaint to add factual allegations concerning ASF and the relationships among the defendants.
4. The court did not finally resolve standing but ordered plaintiffs to show cause why their NYLL wage-notice and wage-statement claims should not be dismissed for lack of subject-matter jurisdiction.

KEY QUOTATIONS

“Because the complaint’s allegations on this score are conclusory and do not distinguish among the defendants, this motion is granted; plaintiffs are, however, granted leave to amend.” (13)

“Courts “routinely dismiss[] complaints that do nothing but recite the Carter and Zheng factors and claim that an alleged employer satisfies them without offering further detail.””

FACTUAL BACKGROUND

The plaintiffs are construction workers who alleged that they worked for E.N. Home Improvement Inc., ASF Construction & Excavation Corp., Andre Fernandes, and Carlos Arevalo. They alleged that they regularly worked more than forty hours per week without receiving all wages or overtime pay, and that they did not receive required wage statements or written wage notices. The complaint alleged generally that ASF and E.N. Home, and their owners Fernandes and Arevalo, jointly controlled hiring, supervision, schedules, and pay, but did not provide specific facts distinguishing the defendants' roles or describing their relationship, projects, shared worksites, or shared equipment.

PROCEDURAL HISTORY

Plaintiffs filed an amended complaint alleging that four defendants were their joint employers. Fernandes previously challenged service of process; although service was untimely and improper, the court denied that motion and granted plaintiffs an additional sixty days to serve him. After plaintiffs served Fernandes, ASF and Fernandes moved to dismiss. The court granted dismissal of the claims against those defendants with leave to amend and ordered plaintiffs to address whether their NYLL wage-notice and wage-statement claims should be dismissed for lack of subject-matter jurisdiction.

DISPOSITION

other

CASES CITED

- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 558, 570 (2007)
- Lundy v. Cath. Health Sys. of Long Island Inc., 711 F.3d 106, 113 (2d Cir. 2013)
- Smith v. Loc. 819 I.B.T. Pension Plan, 291 F.3d 236, 240 (2d Cir. 2002)
- Sanchez v. Ms. Wine Shop Inc., 643 F. Supp. 3d 355, 366 (E.D.N.Y. 2022)
- Herman v. RSR Sec. Servs. Ltd., 172 F.3d 132, 139 (2d Cir. 1999)
- Barfield v. New York City Health & Hosps. Corp., 537 F.3d 132, 141, 143 (2d Cir. 2008)
- Irizarry v. Catsimatidis, 722 F.3d 99, 104 (2d Cir. 2013)
- Mangahas v. Eight Oranges Inc., 754 F. Supp. 3d 468, 492 (S.D.N.Y. 2024)
- Hart v. Rick’s Cabaret Int’l, Inc., 967 F. Supp. 2d 901, 924 (S.D.N.Y. 2013)
- In re Domino’s Pizza Inc., No. 16-CV-2492, 2018 WL 4757944, at *4 (S.D.N.Y. Sept. 30, 2018)
- Zheng v. Liberty Apparel Co. Inc., 355 F.3d 61, 71-72 (2d Cir. 2003)
- Carter v. Dutchess Community College, 735 F.2d 8, 12 (2d Cir. 1984)
- Perez Perez v. Escobar Constr., Inc., No. 23-1240, 2024 WL 3594325, at *3 (2d Cir. July 31, 2024)
- Collison v. WANDRD, LLC, 737 F. Supp. 3d 231, 243 (S.D.N.Y. 2024)

- Nesbeth v. New York City Mgmt. LLC, No. 17-CV-8650, 2019 WL 110953, at *3 (S.D.N.Y. Jan. 4, 2019)
- Atuahene v. City of Hartford, 10 F. App'x 33, 34 (2d Cir. 2001)
- Ortiz v. Consol. Edison Co. of New York, Inc., No. 22-CV-8957, 2024 WL 3086161, at *9, *14 (S.D.N.Y. June 7, 2024)
- Shi Ming Chen v. Hunan Manor Enter., Inc., No. 17-CV-802, 2018 WL 1166626, at *9 (S.D.N.Y. Feb. 15, 2018)
- Fallon v. 18 Greenwich Ave., LLC, No. 19-CV-9579, 2021 WL 1105066, at *4 (S.D.N.Y. Mar. 23, 2021)
- DPWN Holdings (USA), Inc. v. United Air Lines, Inc., 747 F.3d 145, 151-52 (2d Cir. 2014)
- DaimlerChrysler Corp. v. Cuno, 547 U.S. 332, 340 (2006)
- Choi v. SD Tools, Inc., No. 19-CV-2008, 2024 WL 4989224, at *16 (E.D.N.Y. Dec. 5, 2024)
- Guthrie v. Rainbow Fencing Inc., 113 F.4th 300, 305 (2d Cir. 2024)

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