

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

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TANYA YOUNGBLOOD, et al.,	:
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Plaintiffs,	:
	:
- against -	:
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FAMILY DOLLAR STORES, INC., et al.,	:
	:
Defendants.	:
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09 Civ. 3176 (RMB)
10 Civ. 7580 (RMB)

DECISION & ORDER

Having reviewed, among other things, a complaint, filed in this Court on April 2, 2009 by Tanya Youngblood, Jean Samuel, and Bevis Thomas (“Youngblood Complaint”) against Family Dollar Stores, Inc.; Family Dollar, Inc.; Family Dollar Stores of New York, Inc.; and ten “Doe” defendants (collectively, “Family Dollar” or “Defendants”), alleging that Family Dollar “requir[es its store managers in New York State] . . . to work extensive overtime without paying them overtime wages,” in violation of New York Labor Law §§ 650 et seq. (“NYLL”) (Youngblood Compl., dated Apr. 1, 2009, at 1, ¶ 11); a second complaint alleging similar NYLL violations by Family Dollar Stores, Inc., filed in the Supreme Court of the State of New York, Queens County, on or about April 13, 2009 by Anthony Rancharan (“Rancharan Complaint”), and removed to the United States District Court for the Eastern District of New York on May 6, 2009 (see Rancharan Compl., dated Mar. 4, 2009, ¶¶ 2, 8, 11; Not. of Removal, No. 09 Civ. 1911 (E.D.N.Y.), dated May 6, 2009); an order, issued September 30, 2010 by United States District Judge Arthur D. Spatt, transferring the Rancharan action to this Court (see Order, No. 09 Civ. 1911 (E.D.N.Y.), dated Sept. 30, 2010); an order, issued November 15, 2010 by this Court, consolidating the Youngblood and Rancharan actions (see Case Management Plan, dated Nov. 15, 2010); a motion, filed April 27, 2011 by the plaintiffs in the consolidated action (collectively,

“Plaintiffs”), pursuant to Rule 23 of the Federal Rules of Civil Procedure, to “certify this action as a class action, to appoint Plaintiffs as class representatives, and to appoint Plaintiffs’ counsel as class counsel” (Not. of Pls.’ Mot. for Class Cert., dated Apr. 27, 2011; see Pls.’ Mem. of Law in Supp. of Mot., dated Apr. 27, 2011 (“Pls. Mem.”)); Defendants’ opposition, dated May 18, 2011 (see Defs.’ Resp. in Opp’n to Pls.’ Mot., dated May 18, 2011 (“Defs. Mem.”)); Plaintiffs’ reply, dated May 25, 2011 (see Pls.’ Reply Mem. of Law, dated May 25, 2011 (“Pls. Reply”)); Defendants’ surreply, dated June 6, 2011; the parties’ supplemental briefs, dated July 5, 2011, discussing the United States Supreme Court’s June 20, 2011 decision in Wal-Mart Stores, Inc. v. Dukes, 131 S. Ct. 2541 (2011) (see Pls.’ Supp. Mem., dated July 5, 2011; Defs.’ Supp. Mem., dated July 5, 2011 (“Defs. Supp.”)); and applicable law, **the Court hereby grants Plaintiffs’ motion for class certification, appoints Plaintiffs Tanya Youngblood, Jean Samuel, Bevis Thomas, and Anthony Rancharan as Lead Plaintiffs, and appoints the law firm of Klafter Olsen & Lesser LLP as class counsel**, for the following reasons:

(A) Plaintiffs have established that they meet the numerosity, commonality, typicality, and adequacy requirements of Rule 23(a). See Hart v. Rick’s Cabaret Int’l Inc., No. 09 Civ. 3043, 2010 WL 5297221, at *6 (S.D.N.Y. Dec. 20, 2010); In re Nassau Cnty. Strip Search Cases, 461 F.3d 219, 222 (2d Cir. 2006); (see also Pls. Mem. at 17–20.)

(1) It is undisputed that the proposed class of approximately 1,560 store managers, employed by Family Dollar in its approximately 333 retail stores in the State of New York between April 2, 2003 and the entry of final judgment in this case, “is so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1); see Consol. Rail Corp. v. Town of Hyde Park, 47 F.3d 473, 483 (2d Cir. 1995) (“[N]umerosity is presumed at a level of 40 members”); Dorn v. Eddington Sec., Inc., No. 08 Civ. 10271, 2011 WL 382200, at *2

(S.D.N.Y. Jan. 21, 2011) (certifying a class of 1,500 members); (see also Pls. Mem. at 1, 17; Pls. Reply at 2; Decl. of Seth R. Lesser, dated Apr. 27, 2011 (“Lesser Decl.”), ¶¶ 59–60.)

(2) Plaintiffs’ case raises several questions of law or fact common to the class, see Fed. R. Civ. P. 23(a)(2), including, among others, “whether [Family Dollar store managers] are exempt from NYLL overtime requirements because they perform either ‘executive’ or ‘administrative’ duties” (Pls. Mem. at 18 (citing Damassia v. Duane Reade, Inc., 250 F.R.D. 152, 156 (S.D.N.Y. 2008))); see N.Y. Comp. Codes R. & Regs. tit. 12 § 142-2.2; 29 U.S.C. § 213.¹ Defendants’ contentions that Plaintiffs’ “job duties varied from store to store,” that “each store was different,” and that a “fact-intensive, individualized inquiry [is] necessary” to determine whether Plaintiffs are exempt (Defs. Mem. at 14), “do[] not refute the existence of common issues,” Damassia, 250 F.R.D. at 157. And, they are belied by Defendants’ determination to exempt all store managers “after interviewing only thirteen [store managers] (and, as . . . relevant [here], only a single New York [store manager])” out of the approximately 6,800 store managers nationwide, and visiting only six stores. (Pls. Mem. at 14–15.) They are also belied by Family Dollar’s corporate policies delineating store managers’ “consistent,” “standardized,” and “uniform” day-to-day job responsibilities. (Lesser Decl. ¶ 59 & Exs. 4–10, 12–13 (setting forth company-wide protocols on customer service, asset protection, merchandising, career development, and store standards).)

¹ The parties in Damassia – a NYLL overtime pay case in which United States District Judge Gerard E. Lynch certified a Rule 23 class of “at least 270” Duane Reade assistant managers – were represented by the same counsel as the parties here. See Damassia, 250 F.R.D. at 156. Judge Lynch subsequently approved a \$3.5 million settlement between the parties in that case. (Final Order & J. in Nos. 04 Civ. 8819, 06 Civ. 2295, dated July 24, 2009.)

Centralized Family Dollar corporate policies set forth, “often in minute detail” (Lesser Decl. Ex. 1 at 63), the following duties and responsibilities, among others, for all Family Dollar store managers, including those employed in New York State (see Lesser Decl. ¶ 59):²

- “[i]nspecting the checkout area for any merchandise that belongs in other parts of the store,” “[r]otating stock,” “[b]ringing merchandise to the edge of the shelf,” “[b]e[ing] sure that the product and shelf label match,” and “[e]nsur[ing] that the items affected by . . . price changes are accurately priced,” all as part of “a consistent, structured, and detailed process for achieving 100% daily recovery in all Family Dollar stores” (Lesser Decl. Ex. 9 at 12986, 12988, 13048);
- following Family Dollar “Schematics,” which state “what merchandise should be placed in certain areas [of the store] and on what type of display,” in order to “achieve a uniform presentation throughout the company” (Lesser Decl. Ex. 6 at 11830; see Lesser Ex. 12 at 5050);
- “[o]versee[ing] . . . unloading [of] all merchandise from [the] delivery truck, [o]rganiz[ing] the stockroom, . . . transfer[ing] merchandise from stockroom to store,” and “ensuring that th[is] Door to Shelf process is completed in 24 to 48 hours” (Lesser Decl. Ex. 9 at 12938, Ex. 12 at 9385);
- “[a]ssur[ing] that each store’s office is standardized and follows company policy,” including “not allow[ing] the office to be cluttered or used as a meeting place, or a place for store associates to socialize,” or “for lunch breaks”; which items can be placed on office desktops (e.g., stapler, paper clips); and which items can be placed into each drawer of the office filing cabinet (e.g., stamps is “Drawer One” and new hire packages in “Drawer Three”) (Lesser Decl. Ex. 5 at 10271);
- “[m]ak[ing] sure [the store’s] filing system [for forms and documents] matches the [company-wide] Family Dollar Store system” (Lesser Decl. Ex. 4 at 10944);
- complying with a “Task Scheduler program that every store should use on a daily basis to be fully prepared for the daily work activities” (Lesser Decl. Ex. 7 at 10486);
- “[m]anag[ing] store-staffing levels through use of Family Dollar hiring and staffing programs” (Lesser Decl. Ex. 12 at 9385);

² An audit, performed for Family Dollar on December 9, 2010 by the law firm of Morgan, Lewis & Bockius LLP “to determine the appropriate [wage] treatment of [Family Dollar’s] Store Managers,” describes Family Dollar’s corporate policies as “extensive and extremely detailed.” (Lesser Decl. Ex. 1 at 63 (“[Family Dollar’s] operations policies[] provide Store Managers, often in minute detail, guidelines for how to perform almost any task required to operate a Family Dollar store.”); see Reply Decl. of Seth R. Lesser, dated May 25, 2011, Ex. 1 at 1.)

- following detailed protocols regarding how, when, and why to sweep the floors (Lesser Decl. Ex. 5 at 10184);
- following a 12-step process for “deal[ing] with an unhappy customer” (Lesser Decl. Ex. 4 at 10891–92, see Ex. 12 at 9385, 5050);
- complying with Family Dollar’s dress code (Lesser Decl. Ex. 4 at 10886); and
- “[f]ollow[ing] and assur[ing] the implementation of all Company Policies and Procedures” (Lesser Decl. Ex. 11 at 5053).

According to Family Dollar’s Executive Vice President of Store Operations, Procurement, and Store Development, these policies describe store managers’ “essential job functions.” (Decl. of Amy Schaefer Ramsey, dated May 18, 2011 (“Ramsey Decl.”), Ex. 2 at 11:19-21, 177:7.) They are “unquestionably probative of [store managers’] actual duties,” such that “interpreting whether the duties described in th[em] . . . are consistent with either the ‘executive’ or ‘administrative’ exceptions is a relevant question common to all class members.” Damassia, 250 F.R.D. at 156–57; see Torres v. Grinstead’s Operating Corp., No. 04 Civ. 3316, 2006 WL 2819730, at *14 (S.D.N.Y. Sept. 29, 2006); Han v. Sterling Nat’l Mortg. Co., No. 09 Civ. 5589, 2011 WL 4344235, at *4–5 (E.D.N.Y. Sept. 14, 2011). Even assuming that there are some variations among the daily tasks performed by Family Dollar store managers, these detailed corporate policies, which (Defendants concede) store managers are “expected” to read and follow (Defs. Mem. at 7–8; see Lesser Decl. Ex. 11), “create common questions as to whether [store managers] are properly classified as . . . exempt,” Whiteway v. FedEx Kinko’s Office & Print Servs., Inc., No. 05 Civ. 2320, 2006 WL 2642528, at *10 (N.D. Cal. Sept. 14, 2006); see Damassia, 250 F.R.D. at 156–57; Jermyn v. Best Buy Stores, L.P., 256 F.R.D. 418, 430 (S.D.N.Y. 2009).

Unlike the claims in Wal-Mart, Plaintiffs’ NYLL claims “do not require an examination of the subjective intent behind millions of individual employment decisions; rather, the crux of

this case is whether the company-wide policies, as implemented, violated Plaintiffs' statutory rights." Creely v. HCR ManorCare, Inc., No. 09 Civ. 2879, 2011 WL 3794142, at *1 (N.D. Ohio July 1, 2011); see Wal-Mart, 131 S. Ct. at 2554.

(3) Plaintiffs' claims are typical of the claims of the class, see Fed. R. Civ. P. 23(a)(3), because "each class member's claim arises from the same course of events, and each class member makes similar legal arguments to prove [Defendants'] liability," Marisol A. v. Giuliani, 126 F.3d 372, 376 (2d Cir. 1997); Damassia, 250 F.R.D. at 157. Defendants' contention that "[s]tore [m]anagers greatly differed in their own descriptions [at deposition] of their overall job function" (Defs. Mem. at 16) does not defeat typicality because "[f]or all [store] managers, the essential issue is whether their 'executive' or 'administrative' responsibilities, if any, were extensive enough to be considered their 'primary duty,'" and "this disputed issue occupies essentially the same degree of centrality for [Plaintiffs] as for the rest of the class." Damassia, 250 F.R.D. at 158 (rejecting argument that "some [but not all] named plaintiffs testify that they were 'in charge' of the store") (quoting 29 C.F.R. §§ 541.100, 541.200); see Whiteway, 2006 WL 2642528, at *10; Han, 2011 WL 4344235, at *5–6.

(4) Plaintiffs have also shown that they will fairly and adequately protect the interests of the class, see Fed. R. Civ. P. 23(a)(4), a claim Defendants do not contest. Plaintiffs "have an interest in vigorously pursuing the claims of the class, and . . . have no interests antagonistic to the interests of other" Family Dollar store managers. Denney v. Deutsche Bank AG, 443 F.3d 253, 268 (2d Cir. 2006); see Robinson v. Metro-N. Commuter R.R. Co., 267 F.3d 147, 170–71 (2d Cir. 2001); Damassia, 250 F.R.D. at 158 ("The fact that plaintiffs' claims are typical of the class is strong evidence that their interests are not antagonistic to those of the class; the same strategies that will vindicate plaintiffs' claims will vindicate those of the class.").

Plaintiffs' counsel, Klafter Olsen & Lesser LLP, which recently has served as lead counsel in multidistrict overtime pay litigation in the United States District Court for the District of New Jersey, see In re Staples Inc. Wage & Hour Litig., MDL No. 2025; (Lesser Decl. ¶ 53), "are qualified, experienced and able to conduct th[is] litigation," In re Flag Telecom Holdings, Ltd. Sec. Litig., 574 F.3d 29, 35 (2d Cir. 2009) (internal quotation marks omitted); (see also Pls. Mem. at 20; Pls. Reply at 2).

(B) Plaintiffs have also met their burden, under Rule 23(b)(3), of establishing predominance and superiority, see Hart, 2010 WL 5297221, at *7; (Pls. Mem. at 21–25), as follows:

(1) Questions of law or fact common to class members predominate over any questions affecting only individual members. See Fed. R. Civ. P. 23(b)(3). While Defendants point to some differences in the job duties of some Family Dollar store managers, most of these differences are immaterial to the exemption issues raised in this case (e.g., whether "[e]very manager has a different style"; whether one store manager "had more problems with employees" at one store than at another; how frequently each store manager was in contact with his or her district manager; and whether all store managers read the corporate policies or relied upon what the "district manager told [them] they were"). (Ramsey Decl. Ex. 21 at 99:21, Ex. 16 at 191:19–20, Ex. 53 at 101:17–106:14, Ex. 18 at 139:4–15; see Decl. of Store Manager Jeffrey Boskat, dated Jan. 31, 2011, attached as Ex. 26 to Ramsey Decl., ¶ 37 ("I have, on occasion, put things differently than the [Family Dollar schematic] said if it will not work in my store"); see also Defs. Mem. at 6–11.)³ "[T]here is no evidence that [any such differences] are of such a

³ The Court's review of the 14 store manager declarations submitted by Family Dollar (see Ramsey Decl. Exs. 26–29, 32–37, 40, 42, 47–48) do not alter the Court's conclusion that "the responsibilities of [store] managers are largely consistent," Damassia, 250 F.R.D. at 160; (see,

magnitude as to cause individual issues to predominate,” Damassia, 250 F.R.D. at 160, particularly in view of the comprehensive written Family Dollar policy manuals and the testimony of Family Dollar’s designated corporate executive that all store managers “are responsible for getting recovery done” and for “managing . . . the assets that are in the store,” and that their “primary dut[y]” is “[t]o run a profitable store” (Lesser Decl. Ex. 19 at 204:19-20, 213:1-3, 220:19–221:2). “Where, as here, there is evidence that the duties of the job are largely defined by comprehensive corporate procedures and policies, district courts have routinely certified classes of employees challenging their classification as exempt, despite arguments about ‘individualized’ differences in job responsibilities.” Damassia, 250 F.R.D. at 160–61 (collecting cases); see Han, 2011 WL 4344235, at *8–11 (“[S]o long as plaintiff can demonstrate that the duties . . . were largely similar, the predominance inquiry is satisfied in favor of class certification.”); Willix v. Healthfirst, Inc., No. 07 Civ. 1143, 2009 WL 6490087, at *4 (E.D.N.Y. Dec. 3, 2009); Perkins v. S. New Eng. Tel. Co., 669 F. Supp. 2d 212, 224–25 (D. Conn. 2009).

Plaintiffs point out persuasively that “[i]n classifying each [store manager] as exempt, [Family Dollar] takes no account of the size of the store, the sales volume of the store, the location of the store, the shift the [store manager] works, the [store manager’s] tenure with [Family Dollar], the [store manager’s] experience in retail, or the [district manager] that the [store manager] works under.” (Pls. Mem. at 14); Morgan v. Family Dollar Stores, Inc., 551 F.3d 1233, 1264 & n.46 (11th Cir. 2008) (“No matter the size of the store or the district, every detail of how the store is run is fixed and mandated through Family Dollar’s comprehensive manuals.”). That Family Dollar makes such a blanket determination is evidence that differences

e.g., Decl. of Store Manager Marcel S. Calarco, dated Oct. 18, 2010, attached as Ex. 32 to Ramsey Decl., ¶ 13 (“There are schematics that need to be followed for the basic items stocked at all Family Dollar stores. However, for other items, such as seasonal items, I will use the planners, but tweak them.”).)

in the store manager position, to the extent that there are any, are not material to the determination of whether the job is exempt from overtime requirements. See Damassia, 250 F.R.D. at 159; Myers v. Hertz Corp., 624 F.3d 537, 549 (2d Cir. 2010) (“[S]uch a [blanket] policy suggests the employer believes some degree of homogeneity exists among the employees, and is thus in a general way relevant to the [predominance] inquiry” (internal quotation marks omitted)); In re Wells Fargo Home Mortg. Overtime Pay Litig., 571 F.3d 953, 957 (9th Cir. 2009).

(2) A class action is superior to other available methods for fairly and efficiently adjudicating the controversy. See Fed. R. Civ. P. 23(b)(3). Because the cost of individual litigation is prohibitive (as compared to “any gains from overtime wage recovery”), “a class action would eliminate the risk that the question[s] of law common to the class will be decided differently in each lawsuit,” and those class members who are still employed by Family Dollar “may fear reprisal and would not be inclined to pursue individual claims,” Scott v. Aetna Servs., Inc., 210 F.R.D. 261, 268 (D. Conn. 2002); Torres, 2006 WL 2819730, at *16, the Court concludes that a class action is superior to Defendants’ suggestion of “a separate trial for each of the more than 1,500 potential class members” (Defs. Supp. at 3); see Whiteway, 2006 WL 2642528, at *10; Tierno v. Rite Aid Corp., No. 05 Civ. 2520, 2006 WL 2535056, at *11–12 (N.D. Cal. Aug. 31, 2006).

As the United States Court of Appeals for the Eleventh Circuit concluded in a recent FLSA collective action brought against Family Dollar by 1,424 store managers, “[t]here is nothing unfair about litigating a single corporate decision in a single collective action, especially where there is robust evidence that store managers perform uniform, cookie-cutter tasks mandated by a one-size-fits-all corporate manual.” Morgan, 551 F.3d at 1264.

(C) Plaintiffs' counsel, Klafter Olsen & Lesser LLP, are experienced in handling actions of this sort, have worked with Plaintiffs to develop their claims in this action, and have knowledge of the applicable law. See Fed. R. Civ. P. 23(g); (see Lesser Decl. ¶¶ 53, 58); see supra Part (A)(4). There does not, in the Court's view, appear to be any need for more than one lead counsel. See In re Merck & Co., Inc. Sec. Litig., 432 F.3d 261, 267 n.4 (3d Cir. 2005) ("If plaintiffs believe that more than one law firm is necessary, they must demonstrate to the Court's satisfaction the need for multiple lead counsel." (internal quotation marks and alterations omitted)).

Conclusion & Order

Plaintiffs' motion for class certification, for appointment of Plaintiffs Tanya Youngblood, Jean Samuel, Bevis Thomas, and Anthony Rancharan as Lead Plaintiffs, and for appointment of Klafter Olsen & Lesser LLP as class counsel [#71] is granted. The parties are directed to appear before the court for a status and settlement conference on Thursday, November 3, 2011 at 9:00 a.m. in Courtroom 21B of the United States Courthouse, 500 Pearl Street, New York, New York.

The parties are directed to engage in good faith settlement negotiations prior to the conference.

Dated: New York, New York
October 4, 2011



RICHARD M. BERMAN, U.S.D.J.

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