

Not Reported in F.Supp.2d, 2012 WL 315641 (S.D.N.Y.)
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United States District Court,
S.D. New York.

John PADILLA, on behalf of himself and a class of
similarly-situated seamen, Plaintiff,

v.

MAERSK LINE, LTD., Defendant.

No. 07 Civ. 3638(RMB)(THK).
Jan. 30, 2012.

DECISION & ORDER

[RICHARD M. BERMAN](#), District Judge.

*1 Having reviewed the record herein, including (i) John Padilla's ("Padilla") complaint, dated April 27, 2007, on behalf of himself and a class of similarly situated seamen ("Class" or "Class Members") against his former employer, Maersk Line, Ltd. ("Maersk" or "Defendant"), alleging that Plaintiff and the Class Members "suffered illness or injury in the service of Defendant's vessels and were thereafter paid unearned wages *sans* overtime they otherwise would have earned" under general maritime law for "maintenance"; (ii) United States District Judge Peter K. Leisure's Opinion and Order, dated March 12, 2009, granting Plaintiffs motion for summary judgment and finding, among other things, that "an injured seaman is entitled to his average overtime earnings in the unearned wage component of his maintenance and cure remedy" and that "there is no factual dispute as to the computation of damages in this case," [Padilla v. Maersk Line, Ltd.](#), 603 F.Supp.2d 616, 623, 630 (S.D.N.Y.2009); (iii) Judge Leisure's Memorandum Order, dated June 24, 2009, denying Maersk's motion for reconsideration because "Maersk fails to cite any applicable controlling law, key facts, or documents in the summary judgment record that the Court initially overlooked" and "Maersk points to nothing that un-

dermines the [summary judgment] Opinion's conclusion that no genuine issue of fact exists with respect to the measure of Padilla's unearned wages," [Padilla v. Maersk Line, Ltd.](#), 636 F. Supp.2d 256, 259–60 (S.D.N.Y.2009); (iv) this Court's Decision and Order, dated October 26, 2010, certifying a class of "of at least 347 seamen who were paid unearned wages, maintenance and cure until the end of their voyage or the date of maximum medical improvement, but were not paid overtime wages that they would have otherwise earned in their service aboard Maersk vessels" because, among other reasons, "common legal issues related to the members' entitlement to overtime wages and the proper measure of such wages clearly predominate over the[] relatively simple, mechanical calculations" of damages, [Padilla v. Maersk Line, Ltd.](#), 271 F.R.D. 444, 446, 450 (S.D.N.Y. Oct.26, 2010); (v) Plaintiff's motion for summary judgment, dated October 31, 2011, seeking summary judgment on the Class Members' damages "in the total amount of \$837,166.42" (Pl.'s Mem. in Supp. of Mot. for Summ. J., dated Oct. 31, 2011 ("Pl.Mem."), at 2); Defendant's opposition, dated December 6, 2011, (once again) seeking reconsideration of Judge Leisure's summary judgment ruling as to liability and also arguing that "the amount of claimed overtime is speculative and conjectural" (Def.'s Mem. of Law in Opp'n to Mot. for Summ. J., dated Dec. 6, 2011 ("Def.Opp'n"), at 5, 7); Plaintiff's reply, dated December 16, 2011 (*see* Pl.'s Reply to Def.'s Mem. in Opp'n of Summ. J., dated Dec. 16, 2011 ("Pl.Reply")); (vi) Defendant's (partial) cross-motion to dismiss, dated December 6, 2011, seeking dismissal of Renato Miguell, Guerrero Marino Nieves, Isabel R. Sabio, and Hernan Suazo as class members pursuant to [Rule 37\(d\) of the Federal Rules of Civil Procedure](#) for "failing to appear at their deposition" (Def.'s Mem. of Law in Supp. of Cross-Mot., dated Dec. 6, 2011 ("Def.Mem."), at 2); Plaintiffs response, dated December 9, 2011, stating that "Plaintiff does not oppose

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Defendant's Cross Motion to Dismiss because Plaintiff's counsel has been unable to effectuate communication with the referenced individuals” (Pl.'s Response to Def.'s Cross-Mot. to Dismiss, dated Dec. 9, 2011 (“Pl.Response”), at 1); and applicable legal authorities, **the Court hereby grants Plaintiffs motion for summary judgment and grants Defendant's partial cross-motion to dismiss as follows:**

Plaintiffs Motion for Summary Judgment

*2 Preliminarily, Maersk's argument that the Court should reconsider Judge Leisure's March 12, 2009 ruling on liability because “Judge Leisure did not consider a congressional statute [[46 U.S.C. § 8104\(d\)](#)] which outlawed overtime” is (beyond) unpersuasive. (Def. Opp'n at 5.) In his June 24, 2009 Order denying Maersk's motion for reconsideration, Judge Leisure explicitly considered [46 U.S.C. § 8104\(d\)](#);

Maersk claims that [46 U.S.C. § 8104\(d\)](#), which prohibits ship owners from requiring seafarers to work overtime, precludes the Court from including overtime in unearned wage calculations. Notwithstanding that these citations were not included in Maersk's opposition brief and are inapplicable to this case, Maersk simply attempts to recast an argument it presented on summary judgment in a different light.... The Court previously considered and rejected this argument. The issue that Maersk seeks to relitigate may only be properly addressed on appeal.

Padilla, 636 F.Supp.2d at 259. The Court adopts Judge Leisure's prior orders, [Virgin Atlantic Airways, Ltd. v. Nat'l Mediation Bd.](#), 956 F.2d 1245, 1255 (2d Cir.1992), and finds no “intervening change of controlling law,” “new evidence,” or “clear error” that might justify reconsideration. *Id.*; see [Lamont v. United States](#), 613 F.Supp. 588, 592–93 (S.D.N.Y.1985). The Court declines Maersk's invitation to relitigate their arguments on liability for a third time. See [Virgin Atlantic](#), 956 F.2d at 1255.

Damages

Plaintiff argues that the Class Members' damages are \$837,166.42 based upon the calculations of Maersk's own payroll manager, Wendy Isaacs (“Isaacs”). (Pl. Mem. at 12.) Maersk argues (surprisingly) that Isaacs's damages calculations are “speculative and conjectural” and that there are many factors that affect the amount of overtime, “including the ship's needs, the seafarer's desire to work, the type of voyages on which the ship is engaged, the ports at which the ship calls, the budget which the captain receives for overtime, [and] the relationship between the seafarer and his or her supervisor.” (Def. Opp'n at 8.)

The Court grants summary judgment on the Class Members' damages in the amount of \$836,819.40.^{FN1} Judge Leisure used “Padilla's average weekly amount of overtime aboard the Maersk Arkansas prior to his injury [a]s the proper measure of damages,” [Padilla](#), 603 F.Supp., 2d at 629, and found the amount of overtime to be “readily ascertainable and appropriately resolved on summary judgment.” *Id.* at 62930. There was “no genuine issue of fact as to the amount of overtime that Padilla performed prior to the onset of his injury,” “no factual dispute as to the date of Padilla's discharge and the date the Maersk Arkansas's voyage ended,” and “no factual dispute as to the computation of damages in this case.” *Id.* at 62930.

^{FN1} Isaacs's damages figure of \$837,166.42 is reduced by \$347.02 to \$836,819.40 because of the dismissal of Isabel R. Sabio as a class member, as noted *infra*. (See Decl. of Dennis M. O'Bryan, dated Oct. 31, 2011 (“O'Bryan Decl”), Ex. B at 1–A; Ex. C.) Isabel R. Sabio (but not Renato Miguell, Guerrero Marino Nieves, or Hernan Suazo) appears to have been included in Plaintiff's total damages figure, so the Court removes her damages of \$347.02 from the Class's recovery. (See *id.*)

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Isaacs used the same damages methodology as Judge Leisure did. (*See* Def.'s SDNY Rule 56.1 Response to Statement of Material Facts, dated Dec. 6, 2011, ¶¶ 15.) Isaacs calculated each Class Member's average amount of overtime per "weekday, weekend or holiday," multiplied the average "by the applicable overtime rate," and then multiplied "by the number of weekdays, weekends or holidays during the time period in which they earned unearned wages." (Pl. Mem. at 2; *see* Pl.'s Statement of Material Facts, dated Oct. 31, 2011, ¶ 2.) There is no factual dispute as to the computation of damages because, once again, the amount of overtime that the Class Members performed prior to the onset of their injuries, their discharge dates, and their voyage end dates are all undisputed. (*See* Dep. Tr. of Wendy Isaacs, dated Sept. 15, 2011, at 7, 10–13); [Padilla, 603 F.Supp.2d at 629–30](#). Summary judgment is therefore granted on the Class Members' damages in the amount of \$836,819.40.

Defendant's Partial Cross-Motion to Dismiss

*3 Maersk argues that Renato Miguell, Guerrero Marino Nieves, Isabel R. Sabio, and Hernan Suazo should be dismissed as class members for "failing to appear at their deposition." (Def. Mem. at 2.) Plaintiff "does not oppose Defendant's Cross Motion to Dismiss because Plaintiff's counsel has been unable to effectuate communication with the referenced individuals." (Pl. Response at 1.) Renato Miguell, Guerrero Marino Nieves, Isabel R. Sabio, and Hernan Suazo are, accordingly, dismissed from this action without prejudice pursuant to [Rule 37\(b\)\(2\)\(A\)](#) and [Rule 37\(d\)\(1\)\(A\)\(i\) of the Federal Rules of Civil Procedure](#). *See* [Brissett v. Manhattan and Bronx Surface Transit Operating Authority, No. 09 Civ. 874, 2011 WL 1930682, at *2 \(E.D.N.Y. May 19, 2011\)](#).

Conclusion & Order

For the foregoing reasons, Plaintiffs motion for summary judgment [# 78] is granted, and Defendant's partial cross-motion to dismiss Renato Miguell,

Guerrero Marino Nieves, Isabel R. Sabio, and Hernan Suazo as class members [# 81] is granted. The Clerk of the Court is respectfully requested to enter judgment in favor of the Class in the amount of \$836,819.40. The Clerk is further requested to close this case.

S.D.N.Y., 2012.

Padilla v. Maersk Line, Ltd.

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