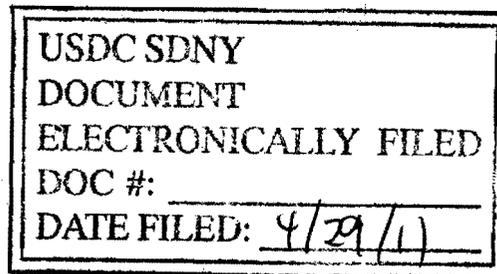


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



----- X
:
ARGENIS CORTES, CARMEL SMITH, and :
CEHAM MOHAMED, on behalf of themselves and :
other employees similarly situated, :
:
Plaintiffs, :
:
-against- :
:
FOOT LOCKER, INC., :
:
Defendant. :
:
----- X
ALVIN K. HELLERSTEIN, U.S.D.J.:

**ORDER REAFFIRMING DENIAL
OF MOTION TO ALTER OR
AMEND JANUARY 20, 2010,
ORDER**

06 Civ. 1046 (AKH)

On January 14, 2011, plaintiffs moved to alter or amend my order of January 20, 2010, which denied their motion for certification of an opt-out class, pursuant to Federal Rule of Civil Procedure 23, as to claims arising under the New York State Labor Law. After plaintiffs filed their motion to alter or amend, the parties agreed that defendant's opposition would be filed no later than March 15, and that plaintiffs' reply would be filed by April 12. However, on April 7, after I had received defendant's opposition papers but before plaintiffs had filed their reply, I denied plaintiffs' motion. Later that same day, plaintiffs advised me, by letter, that their motion would not be fully briefed until April 12. By endorsement on plaintiffs' letter, I directed plaintiffs to submit their reply papers, if they so desired, and stated that I would read and consider those papers if, and when, plaintiffs submitted them.

On April 12, plaintiffs filed their reply, which I have now read and considered. Although plaintiffs' reply thoroughly discusses the requirements for class certification under Rule 23, plaintiffs' reply does not address the specific concerns that caused me to deny their motion to alter or amend in the first place. In particular, I believe that certifying a Rule 23 class

as to plaintiffs' state-law claims would lead to a significant expansion of the scope of fact discovery, which, in turn, would likely substantially delay trial on plaintiffs' claims arising under the Fair Labor Standards Act—which claims, at this point, should be nearly ready for trial. I also believe that, if an opt-out class were certified on the New York State Labor Law claims, the proofs on those claims would potentially overshadow and overwhelm the claims that arise under federal law, as to which I have already certified an opt-in collective action.¹

For these reasons, I reaffirm my denial of plaintiffs' motion to alter or amend my January 20, 2010, order. I therefore decline to certify an opt-out class under Rule 23.

SO ORDERED.

Dated: April 29, 2011
New York, New York


ALVIN K. HELLERSTEIN
United States District Judge

¹ By letter of April 13, 2011, defendant sought leave to file a sur-reply, to respond to what defendant describes as “new factual allegations and arguments, as well as inaccuracies,” in plaintiffs' reply papers. A sur-reply would not be useful, however, as the relevant issues have been explored fully, by both sides, through briefing on this motion and on plaintiffs' original motion for class certification under Rule 23. Accordingly, I deny defendant's request and decline to consider the proposed sur-reply that defendant submitted to my chambers.