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Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com  
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

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# Banana Republic Must Face NY Workers' Biweekly Pay Suit

By **Abby Wargo**

Law360 (September 15, 2023, 7:03 PM EDT) -- A New York federal judge wouldn't dismiss a lawsuit alleging Banana Republic issues biweekly paychecks to manual laborers who are owed weekly pay under a state law, agreeing with a magistrate judge that the allegations are strong enough to continue in court.

U.S. District Judge Kiyo A. Matsumoto in a Thursday **order** adopted a magistrate judge's "thorough and well-reasoned" recommendation to deny Banana Republic's motion to dismiss Nicole Davis' New York Labor Law proposed class action, overruling the company's objections.

Davis first sued in November 2021, alleging in a 2022 amended complaint she and a proposed class of around 50 other New York Banana Republic manual workers were paid on a biweekly basis despite NYLL's requirement that manual laborers receive a weekly paycheck. Banana Republic moved to dismiss the suit in August 2022, arguing that Davis failed to state a claim.

But in a July 31 report, a magistrate judge found, and Judge Matsumoto agreed Thursday, that Davis had plausibly alleged she suffered a concrete harm when Banana Republic underpaid her by paying her biweekly. The magistrate noted that the biweekly payments deprived Davis of the time value of her money, which Judge Matsumoto said courts in the past have found to be sufficient proof of an injury.

Davis had established standing under Article III of the U.S. Constitution, Judge Matsumoto affirmed Thursday, because the biweekly payments deprived Davis of the time value of her money. Biweekly payments deterred Davis from investing, saving, or purchasing using the wages she earned and was owed, she had alleged, which the judge said is enough at the pleading stage to stake a claim.

"This alleges a concrete monetary injury," Judge Matsumoto wrote. "Further, at this stage in the proceedings, plaintiff need not allege more specific facts regarding what she would have done with the money had she been paid weekly, as defendant argues."

The judge also adopted the magistrate's finding that NYLL provides an express private right of action to enforce the late payment of wages. Judge Matsumoto did not find the company's objections to the contrary convincing, saying in the order that no other state courts or district courts in the circuit made decisions holding otherwise.

Additionally, Judge Matsumoto adopted the recommendation to deny Banana Republic's argument that the state labor commissioner authorized the company to pay its manual laborers biweekly and exempt it from NYLL's pay frequency requirement because the argument was newly raised in its reply and was proven inapplicable to the company.

Representatives for the parties did not immediately respond to requests for comment Friday.

The workers are represented by Dana M. Cimera and Brian S. Schaffer of Fitapelli & Schaffer LLP.

Banana Republic is represented by Ira Gregg Rosenstein, Elisa Egonu and Nicole M. Zito of Morgan Lewis & Bockius LLP.

The case is Davis v. Banana Republic LLC, case number 21-CV-6160, in the U.S. District Court for the

Eastern District of New York.

-- Editing by Leah Bennett.

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