

**From:** [ECFnotice@mad.uscourts.gov](mailto:ECFnotice@mad.uscourts.gov)  
**To:** [CourtCopy@mad.uscourts.gov](mailto:CourtCopy@mad.uscourts.gov)  
**Subject:** Activity in Case 1:19-cv-10791-RGS DaRosa v. Speedway LLC Order on Motion to Compel  
**Date:** Friday, February 12, 2021 3:10:10 PM

---

**This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.**

**\*\*\*NOTE TO PUBLIC ACCESS USERS\*\*\*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

United States District Court

District of Massachusetts

### Notice of Electronic Filing

The following transaction was entered on 2/12/2021 at 3:08 PM EST and filed on 2/12/2021

**Case Name:** DaRosa v. Speedway LLC

**Case Number:** [1:19-cv-10791-RGS](#)

**Filer:**

**Document Number:** 113(No document attached)

### Docket Text:

**Judge Richard G. Stearns: ELECTRONIC ORDER** entered granting in part and denying in part [109] Motion to Compel as follows. Plaintiffs by way of their motion to compel seek the production or supplementation of several categories of information and documents. In its opposition and as summarized below, Speedway does not object to the majority of these categories, and represents that it either has or is in the process of producing responsive information/documents.

- Payroll data for the opt-in plaintiffs Speedway asserts that this has been delayed due to its payroll system changeover, and expects to substantially complete production by February 19, 2021.

- Exempt classification decision documents Speedway avers that it has already supplemented its production and that the relevant depositions have been scheduled.

- Willfulness/good faith defense documents Speedway avers it has already supplemented its production in this respect.

- Miscellaneous documents, including to cover statutory period of amended claims. Speedway avers that it has supplemented its production and is in the

process of working with counsel to remedy identified deficiencies.

- Representative opt-in information including supervising DMs Speedway asserts that this has been delayed because of the manual search required to collect the relevant data, and that it expects to substantially complete the production by February 17, 2021.

The parties part ways, however, on the following two issues. To the extent that plaintiffs seek versions of task descriptions, Speedway Standards, and like job-related documents dating back 6 years prior to the suit, the court agrees these are relevant and discoverable. In addition to the FLSA count with a three-year statute of limitation, the Amended Complaint asserts claims under New York and New Jersey wage laws, which have a six-year limitations period.

Plaintiffs also seek individual wage and hours information for non-exempt employees who worked at the plaintiffs' stores on the ground that one factor in the analysis of an employee's primary duty is the "the relationship between the employee's salary and the wages paid to other employees for the kind of nonexempt work performed by the employee." *Marzuq v. Cadete Enter., Inc.*, 807 F.3d 431, 439 (1st Cir. 2015), quoting 29 C.F.R. § 641.700(a). Further, plaintiffs assert that non-exempt employees' work hours is relevant to the analysis of whether each store manager "customarily and regularly direct[ed] the work of two or more other employees." 29 C.F.R. § 541.100(a)(3). Speedway objects to the production of this information as overbroad, unduly invasive of these non-party individuals privacy, and unduly burdensome. Speedway suggests that the relevant information may be obtained by stipulation, affidavit, or overviews of Speedway's wage practice. The court agrees that Speedway's suggestion is reasonable and directs the parties to engage in further good faith discussions concerning a mutually acceptable format. (Plaintiffs' objectives and Speedway's concerns may be satisfied by store- rather than individual-level data.) If the parties cannot reach a compromise, they are directed to submit a joint statement no later than 3/1/2021 stating their respective positions.

The court finally allows Speedway's request for some additional time to complete the discovery process. The scheduling order is extended by one month as follows: class and merits discovery to be completed by 4/1/2021; Plaintiffs' expert report(s) to be served 4/1/2021; defendant's expert report by 5/3/2021; Supplementation (if any) by 5/17/2021; Expert discovery closes 5/17/2021; Plaintiffs' Motion for Rule 23 class certification and Defendant's Motion for De-Certification of the FLSA collective shall be due by 5/3/2021, opposition due 6/1/2021, reply 6/15/2021. Dispositive motions to be filed 30 days after the court's disposition of the certification/decertification motion(s). (Tang, Danni)

1:19-cv-10791-RGS Notice has been electronically mailed to:

Harold L. Lichten hlichten@llrlaw.com, courth@llrlaw.com, osavytska@llrlaw.com,  
tfowler@llrlaw.com

William C. Martucci wmartucci@shb.com, bill-martucci-5364@ecf.pacerpro.com

Peter Winebrake pwinebrake@winebrakelaw.com

Kristen A. Page kpage@shb.com, kristen-page-3611@ecf.pacerpro.com,  
mliggins@shb.com

Stephen I. Hansen sihansen@shb.com, steve-hansen-7810@ecf.pacerpro.com

Alan Y. Wong awong@shb.com

Michelle Cassorla mcassorla@llrlaw.com

Mark Gottesfeld mgottesfeld@winebrakelaw.com

A. Andrew Santillo asantillo@winebrakelaw.com

Anastasia Doherty adoherty@llrlaw.com

**1:19-cv-10791-RGS Notice will not be electronically mailed to:**