

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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EMMANUEL JUSTINIANO, et al.,

Plaintiffs,

-v-

No. 13 Civ. 2332 (LTS)

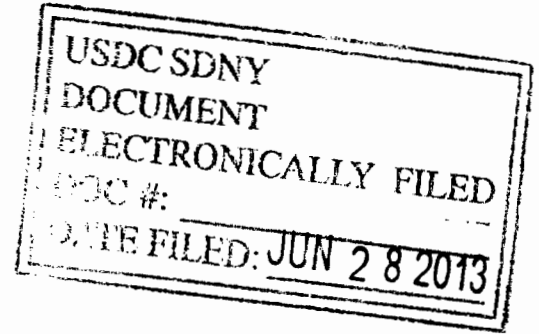
PHOENIX BEVERAGES, INC., et al.,

Defendants.
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ORDER

On June 18, 2013, the Court issued an Order directing Plaintiffs in the above-captioned case to, by June 24, 2013, 1) make a written request for leave to amend their complaint, accompanied by a proposed Second Amended Complaint; 2) state in writing that they did not wish to amend their complaint and would instead file opposition to Defendants' pending Motion to Dismiss by July 1, 2013; or 3) request the dismissal with prejudice of this action in its entirety. Since then, the Court has received the following correspondence from the parties: 1) a letter, dated June 24, 2013, from Plaintiffs, requesting leave to file a Second Amended Complaint, as well as a copy of the proposed Second Amended Complaint; 2) a letter, dated June 26, 2013, from Defendants, opposing Plaintiffs' request; 3) a letter, dated June 24, 2013, from Plaintiffs requesting an in-person conference before the Court; and 4) a letter, dated June 28, 2013, from Defendants, re-stating Defendants' opposition to Plaintiffs' proposed Second Amended Complaint, and also opposing Plaintiffs' request for a conference.

The Court has reviewed the proposed Second Amended Complaint, which differs from the prior complaint in that it withdraws all causes of action under the Fair Labor Standards




Act and seeks to proceed solely on claims under the New York Labor Law. The Plaintiffs' request to file the proposed Second Amended Complaint is denied, as the Court declines to exercise supplemental jurisdiction over a Second Amended Complaint which proposes to withdraw all federal claims. See 28 U.S.C. § 1367 (providing that a district court may decline to exercise supplemental jurisdiction over a state law claim if the court has dismissed all claims over which it has original jurisdiction).

Plaintiffs' request for a conference is denied. Plaintiffs are directed, by July 3, 2013, to either 1) file opposition to Defendants' pending motion to dismiss; or 2) request the dismissal with prejudice of this action in its entirety.

SO ORDERED.

Dated: New York, New York
June 28, 2013



LAURA TAYLOR SWAIN
United States District Judge