

<b>Vasquez v National Sec. Corp.</b>
2016 NY Slip Op 03817
Decided on May 12, 2016
Appellate Division, First Department
Published by <a href="#">New York State Law Reporting Bureau</a> pursuant to Judiciary Law § 431.
This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided on May 12, 2016

Tom, J.P., Friedman, Saxe, Richter, JJ.

585 155613/14

**[\*1] Christopher Vasquez, etc., Plaintiff-Respondent,**

**v**

**National Securities Corporation, Defendant-Appellant, Mark Goldwasser, Defendant.**

Baker & Hostetler LLP, New York (Daniel J. Buzzetta of counsel), for appellant.

Virginia & Ambinder, LLP, New York (James Emmet Murphy of counsel), for respondent.

Order, Supreme Court, New York County (Shirley Werner Kornreich, J.), entered May 4, 2015, which granted plaintiff's motion to give notice of the impending dismissal of the complaint to putative class members pursuant to CPLR 908, unanimously affirmed, without costs.

The motion court correctly required notice of the impending dismissal of the putative class action even though the class had not been certified. The court correctly relied on our decision in *Avena v Ford Motor Co.* (85 AD2d 149 [1st Dept 1982]), the subsequent amendment of Federal Rule of Civil Procedure 23(e) to restrict the notice requirement to dismissals, discontinuances and compromises of "certified class" actions notwithstanding. The legislature, presumably aware of the law as stated in *Avena*, has not amended CPLR 908 to conform to the federal statute. Although defendant-appellant raises policy arguments in support of its position, its remedy lies with the legislature and not with this Court (*see Bright Homes v Wright*, 8 NY2d 157, 162 [1960]).

We have considered defendant-appellant's other contentions and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER

OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MAY 12, 2016

CLERK

[Return to Decision List](#)