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IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

FRANCOIS CLAASENS AND JAMES TOSKAS,	)	**CIVIL ACTION NO. 17-0226**
Plaintiffs,	)	**ORDER GRANTING MOTION TO DISMISS AS THE FAIR LABOR STANDARDS ACT AND DEFENDANTS' CONTRACT PROVISIONS EXEMPT DOCTORS FROM COMPENSATION FOR OVERTIME WORK**
v.	)	
ROTA HEALTH CENTER, COMMONWEALTH HEALTH CARE CORPORATION,	)	
Defendants.	)	

I. INTRODUCTION

This matter came before the Court on February 2, 2018 at 10:30 a.m. at the Rota Courthouse on Defendants' Motion to Dismiss Pursuant to Commonwealth Rule of Civil Procedure 12(b)(6) for Failure to State Claim Upon Which Relief Can Be Granted. Plaintiff Francois Claasens appeared and was represented by Attorney Jose Mafnas and Attorney Stephen Nutting. Defendants' were represented by Attorney Christopher Timmons, who appeared on the behalf of the Office of the Attorney General.

Based on a review of the filings, oral arguments, and applicable law, the Court makes the following order.

II. BACKGROUND

Plaintiffs Francois Claasens and James Toskas (collectively "Plaintiffs") filed their Complaint for Breach of Contract and In Quantum Meruit on September 15, 2017 (hereinafter "Complaint"). In their Complaint, Plaintiffs brought two causes of action: (1) breach of contract;

and (2) quantum meruit. Plaintiffs allege that Rota Health Center ("RHC") and Commonwealth Healthcare Corporation ("CHCC") failed to compensate them for thousands of hours of administrative leave: 4,912 hours for Dr. Claasens and 5,264 hours for Dr. Toskas, totaling $308,000 allegedly owed to Dr. Claasens and $327,187.50 allegedly owed to Dr. Toskas. Complaint ¶¶ 24, 25, 32, 33.

Defendants, Rota Health Center and Commonwealth Health Care Corporation, filed their "Motion to Dismiss Pursuant to Commonwealth Rule of Civil Procedure 12(b)(6) For Failure to State Claim Upon Which Relief Can Be Granted" (hereinafter "Motion to Dismiss") on November 15, 2017. Plaintiffs filed their "Reply to Defendants' Motion to Dismiss and Memorandum of Law In Support of Opposition to Defendant's (sic) Motion to Dismiss" (hereinafter "Opposition")[1] on December 26, 2017. Defendants filed their "Reply to Plaintiffs' Opposition to Defendant's (sic) Motion to Dismiss" (hereinafter "Reply") on January 19, 2018. The Court heard arguments on the Motion to Dismiss on February 2, 2018.

III. LEGAL STANDARD

Under Rule 8(a) of the Commonwealth Rules of Civil Procedure, a pleading "shall contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief." To comply with Rule 8(a), the complaint must either "contain . . . direct allegations on every material point or contain allegations from which an inference fairly may be drawn that evidence regarding these necessary points will be introduced at trial." *Atalig v. Mobil Oil Mariana Islands, Inc.*, 2013 MP 11 ¶ 23 (quoting *In re Adoption of Magofna*, 1 NMI 449, 454 (1990)) (internal quotation marks omitted). Under Rule 12(b)(6), if a pleading fails to "state a claim upon which relief can be granted," the Court may dismiss those portions of the claim.

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[1] Although Plaintiffs' filing was captioned as a "reply," the Court will treat this filing as an opposition. *See* NMI R. Civ. P. 6(d)(1) (Outlining deadlines for motions and their responsive pleadings, which are oppositions and replies.).

The plaintiff must plead "enough direct and indirect allegations to provide adverse parties with 'fair notice of the nature of the action.'" *Syed v. Mobil Oil Mariana Islands, Inc.*, 2012 MP 20 ¶ 19. A pleading may not include claims that are purely speculative. *Atalig*, 2013 MP 11 ¶ 23. In examining the sufficiency of the pleading, the Court will construe the factual allegations "in the light most favorable to the [non-moving party]." *Id.* (quoting *Syed*, 2012 MP 20 ¶ 22).[2] The Court will not "strain to find inferences favorable to the non-moving party." *Id*. (quoting *Cepeda v. Hefner*, 3 NMI 121, 127 (1992)).

In a Rule 12(b)(6) motion, if "matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56." NMI R. Civ. P. 12(b). The Court may consider "documents incorporated into the complaint by reference, and matters of which a court may take judicial notice." *Tellabs, Inc., v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007) (comparing sources considered by courts in Federal Rule 12(b)(6) motions to those considered in evaluating securities fraud complaints).[3] The Court "can only take judicial notice of facts that are free of reasonable dispute because the facts are generally known or capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." *Commonwealth v. Taman*, 2014 MP 8 ¶ 35 (citing NMI R. Evid. 201(b); *In re Yana and Atalig*, 2014 MP 1 ¶ 19) (internal quotation marks omitted).

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[2] The Court notes that the Commonwealth Supreme Court has expressly rejected the *Twombly/Iqbal* pleading standard. *Syed v. Mobil Oil Marianas*, 2012 MP 20 ¶ 11 (citing *Ashcroft v. Iqbal*, 556 U.S. 662 (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 554 (2007).

[3] Because the Commonwealth Rules of Civil Procedure are modeled after the Federal Rules of Civil Procedure, federal cases interpreting the counterpart Federal Rules are helpful in interpreting the Commonwealth Rules of Civil Procedure. *Ada v. Sadhwani's Inc.*, 3 NMI 303 (1992).

Although Rule 12(b)(6) motions are ordinarily limited to the complaint, the Court may also look to evidence "on which the complaint necessarily relies." *Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006) (internal quotation marks omitted). The Court may consider this evidence if: "(1) the complaint refers to the document; (2) the document is central to the plaintiff's claim; and (3) no party questions the authenticity of the copy attached to the 12(b)(6) motion." *Id.* (citing *Branch v. Tunnell*, 14 F.3d 449, 453-54 (9th Cir. 1994); *Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136, 1141 n.5 (9th Cir. 2003); *Chambers v. Time Warner, Inc.*, 282 F.3d 147, 153 n.3 (2d Cir. 2002)). "The Court may treat such a document as 'part of the complaint, and thus may assume that its contents are true for the purposes of a motion to dismiss under Rule 12(b)(6).'" *Id.* (quoting *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003)).

IV. DISCUSSION

As a preliminary issue, the Court must first address whether the Court may consider the addenda and other documents attached to the Complaint related to the Plaintiffs' employment at RHC. Then, the Court will turn to Defendants' Motion to Dismiss. In the Motion to Dismiss, Defendants argue that RHC is not an entity that can be a party to a suit. Defendants also argue that the Plaintiffs' claim for breach of contract is improper since the agreements[4] in question are unenforceable, and that Plaintiffs' claim for quantum meruit is improper as quantum meruit is not available where there is a valid contract and because quantum meruit cannot be alleged against the government. The Court will address each of these issues in turn.

[4] Exhibit 1 is a letter from Dr. Toskas regarding addendums to his employment contract. Exhibit 2 is Dr. Claasens' employment contract. Exhibit 3 is a memorandum of understanding regarding locum coverage, signed by Dr. Toskas and Dr. Claasens. Exhibit 4 is an agreement signed by Dr. Claasens and the Resident Director of the Rota Health Center. Exhibit 5 is a memorandum of understanding regarding leave time, signed by Dr. Claasens, Dr. Toskas, and the Resident Director of the Rota Health Center. Exhibit 6 is another leave agreement, signed by Dr. Claasens, Dr. Toskas, the Resident Director of the Rota Health Center, and the Mayor of Rota. Exhibits 7 and 8 calculate the amount of leave allegedly accrued by Dr. Claasens and Dr. Toskas. Exhibit 9 is a memorandum of understanding regarding accrued leave, signed by Dr. Claasens, Dr. Toskas, the Resident Director of the Rota Health Center, and the Mayor of Rota.

A. The Court May Consider Evidence On Which The Complaint Relies

Before turning to the crux of the Defendants' Motion to Dismiss, the Court must address whether the Court may consider the addenda and other documents attached to the Complaint. Generally, looking to documents outside the complaint converts a Rule 12(b)(6) motion to dismiss into a Rule 56 motion for summary judgment. NMI R. Civ. P. 12(b)(6). As stated above, the Court may consider "documents incorporated into the complaint by reference, and matters of which a court may take judicial notice." *Tellabs, Inc.*, 551 U.S. at 322. Further, the Court may consider evidence "on which the complaint necessarily relies." *Marder*, 450 F.3d at 448. In the Ninth Circuit, courts consider three factors in determining whether the Court may consider a document relied upon by the complaint: "(1) the complaint refers to the document; (2) the document is central to the plaintiff's claim; and (3) no party questions the authenticity of the copy attached to the 12(b)(6) motion." *Id*.

Here, Plaintiffs attached a number of employment related documents to the Complaint, for a total of nine exhibits. These exhibits were each referred to in the Complaint. Complaint ¶¶ 12, 17, 19, 20, 22, 23, 24, 25, 31. Exhibits 4, 5, 6, and 9 were specifically cited to as to Count I, Breach of Contract. Complaint ¶¶ 41, 44, 45. The Court finds the exhibits in question are all documents related to Plaintiffs' employment at RHC and alleged agreements related to hours and compensation, which are all central to Plaintiffs' claims of breach of contract and quantum meruit. Finally, neither party disputes the authenticity of the exhibits attached to the complaint.[5] Thus, the Court will consider the exhibits attached to the Complaint in addressing the Motion to Dismiss.

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[5] In fact, Defendants cited to *Marder* in their proposed order, and did not challenge the authenticity of the exhibits. Def. Proposed Decision and Order at 3.

B. CHCC Subsumed RHC Upon CHCC's Creation in 2010

In the Motion to Dismiss, Defendants argue that "Plaintiff have improperly named a building—the Rota Health Center as a defendant in this suit." Mot. to Dismiss at 4. Defendants further argue "the Rota Health Center has at no time relevant to this matter been an entity separate and distinct from either the executive branch of the Commonwealth or the Commonwealth Healthcare Corporation." *Id*. at 5. Plaintiffs argue that RHC was subsumed into CHCC upon its formation. Opp. at 3–4. Plaintiffs also stated that they "are willing to stipulate to withdraw the 'Rota Health Center,' also known as the 'RHC,' as a named party in the matter since CHCC assumed all of RHC's obligations." *Id*.

When CHCC was created pursuant to PL 16-51, CHCC "assume[d] all rights, obligations, and duties of the government or the Department of Public Health under any agreements to which they are the parties that relate to the financing, operation, or delivery of healthcare services in the Commonwealth." 3 CMC § 2833(a). *See also* PL 19-78. RHC is one of the clinics operated by CHCC. 3 CMC § 2822(c). Thus, CHCC assumed all the rights and obligations of RHC and the Department of Public Health upon its creation in 2010.

Plaintiffs also noted their willingness to stipulate to withdraw RHC from the complaint as a named party; however, the Court has not received any motion asking the Court to amend the caption of this case to remove RHC as a named party. Therefore, the caption remains unchanged absent a request from counsels.

C. Breach of Contract

Defendants argue that the breach of contract claim must be dismissed since the addenda provided by the Plaintiffs violate the express terms of their employment contracts, and the benefits sought by the Plaintiffs are barred by excepted service regulations. Pl.'s Proposed Order at 3; Mot. to Dismiss 6–13. Plaintiffs argue that these benefits are permissible as either annual leave,

administrative leave, or compensatory time. Opp. at 4–14. Plaintiffs also argue that these additional benefits were ratified by RHC and CHCC each time they renewed Plaintiffs' contracts with an addendum signed by Plaintiffs' attached. Opp. at 6–7.

As determined above, documents referred to in a Complaint may be considered by the Court. In this case, Plaintiffs attached a specimen employment contract as an exhibit to their complaint. Exh. 2. The exhibited contract form was a standard Excepted Service Employment Contract for Commonwealth of the Northern Mariana Islands Executive Branch departments and agencies. It was identified in a footer as last revised 06/01/03. Exh. 2.

According to Plaintiffs, a previous doctor, Dr. Rod Klaasen, had a provision in his employment contract allowing for two days of administrative leave to be paid to him for every day he worked to cover for another doctor. Complaint ¶ 10. This additional provision is not present in the original contracts agreed to by Plaintiffs. Plaintiff Claasens, for example, signed an employment contract in 2004 with the Department of Public Health to work at RHC, attached to the Complaint as Exhibit 2. This contract, which was routed through the Commonwealth government for approval and ultimately signed by the Director of Personnel, provided for eight hours of leave per pay period and stated that Plaintiff Claasens' position was exempt from Fair Labor Standards Act overtime and compensatory time. Exh. 2. The Director of Personnel's authorization is an essential and necessary part of any executive branch employment contract.

Plaintiffs argue that the administrative leave was added to their contracts through a series of addenda, the first of which was signed by Plaintiff Toskas—and only Plaintiff Toskas—in 1998. Exh. 1. Plaintiffs attached a number of addenda to their complaint, including one from 2005 signed by both Plaintiff Claasen and Plaintiff Toskas, agreeing that they should receive administrative leave for providing locum coverage. Exh. 3. Other addenda attached to the complaint were signed

by the Resident Director of RHC. Exh. 4, Exh. 5, Exh. 6.[6] In other words, the two doctors simply wrote a document giving themselves compensation for working extra hours without the necessary signatures and authorizations.

The standard form Excepted Service Employment Agreement is a two-page document that incorporates a 10-page set of General Terms and Conditions. Plaintiff's Exhibit 2, the contract signed by Plaintiff Claasens in 2004, is no exception. Because Plaintiffs asserted the Excepted Service Employment Agreement as the contract that was breached,[7] they are estopped from arguing its invalidity, and its terms governed Plaintiffs' employment relationship with respect to all physician services performed by Plaintiffs for CHCC. Accordingly, the court finds that the terms and conditions of Plaintiffs' employment with CHCC (and its predecessors) are found within the four corners of an express written contract comprised of the special terms and conditions found on the face of the contract, and the General Terms and Conditions attached thereto. This express contract clearly provided:

> Both the EMPLOYER and the EMPLOYEE agree that the terms and conditions of this contract include all the provisions established in the Conditions of Employment, attached hereto and incorporated herein by reference, as if set forth in its entirety. . . . **No other conditions, promises, or representations have been made**.

(emphasis added). Plaintiffs do not allege to have performed non-physician services to CHCC, and the contract expressly sets forth the special terms and conditions specific to the Plaintiffs' positions as physicians. These special terms and conditions designated the positions as FLSA EXEMPT, and provided that Plaintiffs would accrue 8 hours of annual leave per pay period.

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[6] Exhibit 6 was also signed by the Mayor of Rota.
[7] Plaintiffs argue breach as to non-payment, not breach as to the non-existence of a contract.

The General Terms and Conditions that formed the basis of Plaintiffs' employment relationship with CHCC included provisions further limiting Plaintiffs' claims. Section 5 (B) of the General Terms and Conditions governs eligibility for compensation for overtime.[8]

Here, the General Terms and Conditions of Plaintiffs' contracts expressly provide that "FLSA Covered" positions are entitled to overtime or compensatory time. It does not provide the same for "FLSA Exempt" positions such as physicians. The contracts' omission of FLSA Exempt positions from this entitlement means that FLSA Exempt positions such as Plaintiffs' are not eligible for overtime compensation. This is consistent with the applicable provisions of the Excepted Service Personnel Regulations in effect at the time.

The General Terms and Conditions included within Plaintiffs' Exhibit 2 further undermine Plaintiffs' claims that the benefits they seek should be considered accrued compensatory time off, annual leave, or some other leave for which they are entitled to cash compensation. Specifically, Section 5(A) of the General Terms and Conditions provides that "Annual leave shall accrue to the Employee at the rate specified in the Special Terms and Conditions of the contract" –which rate is 8 hours per pay period– Plaintiffs are therefore entitled to exactly 8 hours per pay period, no more and no less. There is no dispute that Plaintiffs did in fact accrue annual leave at the rate of 8 hours per pay period. Moreover Section 5(A)(3) requires annual leave to be utilized during the contract period and that (except in circumstances inapplicable to this case) no cash payment will be made for unused annual leave. On this basis Plaintiffs have no claim for annual leave outside of the

[8] As noted in the special terms and conditions of the contract, this position is either covered under the Fair Labor Standards Act of 1938 (FLSA) for overtime and compensatory time purposes or is exempt from such coverage. FLSA covered positions are eligible for overtime payment in accordance with the provisions of the Fair Labor Standards Act.

employment contract terms, nor for cash payment in lieu of accrued annual leave outside of the employment contract terms.[9]

Plaintiffs allege that over the course of many years they each worked thousands of hours beyond their contractual obligations. By their own assertions, working overtime was the rule, not the exception. On this basis, Plaintiff's claim for administrative leave is precluded by the express terms of their contracts with the government limiting administrative leave with pay to "exceptional circumstances such as typhoons and state funerals."[10]

Plaintiffs attached to their Complaint various documents in support of their claims of entitlement to compensation for hours worked beyond the standard workweek. Many of these documents were unsigned. Others were signed by one or both Plaintiffs. However, none of these addenda were signed by the individuals who could bind the Defendant. Moreover, Plaintiffs admitted at oral argument that they were not aware of any document waiving or amending Section 13 of the General Terms and Conditions that was signed by the signatories to the excepted service employment agreement. Accordingly, none of the purported addenda could have created any obligation on the part of the government to provide compensation not agreed in the excepted service employment contract itself. For example, the addenda were not signed by the Director of Personnel, whose signature is an essential and necessary part of executive branch employment contracts.

The express terms of excepted service employment contracts limited the parties' ability to amend or supplement them. While Plaintiffs argued that the addenda served to amend their contracts, they conceded that these addenda are not signed by the people required to approve the

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[9] Section 5(D) of the General Terms and Conditions describes the conditions upon which Plaintiffs would be given administrative leave with pay, namely, only in exceptional circumstances such as typhoons and state funerals.

[10] Section 5(G) of the General Terms and Conditions addresses all other types of leave and provides that the employee will be eligible for "other leaves" as provided in the Excepted Service Personnel Regulations. However, as discussed in Section B below, the incorporated Excepted Service Personnel Regulations do not provide Plaintiffs a route to recovery.

written excepted service contract.[11] On this basis Plaintiffs' express amendment argument fails. Because Plaintiffs' excepted service employment contracts governed the relationship between defendant CHCC and Plaintiffs with respect to Plaintiffs' employment as physicians; and because the excepted service employment contracts did not include or provide for the additional compensation Plaintiffs seek as consideration, they have not stated a plausible claim for breach of contract. On this basis, Plaintiffs' allegations fail to state a claim upon which relief can be granted.

In other words, no one with authority signed a contract amendment to authorize the two doctors to receive additional compensation for working extra hours as required by their contracts. Therefore, Defendant is entitled to dismissal as to the breach of contract claim.

D. Quantum Meruit

Count II of the Complaint alleges quantum meruit. Generally, quantum meruit "states a claim in restitution rather than contract." Restatement of Restitution and Unjust Enrichment 3d § 31 cmt. e. "A plaintiff who seeks a recovery in 'quantum meruit' usually asserts that the defendant is obligated to pay a reasonable price for specified services rendered . . . If it is appropriate to conclude that a promise to pay reasonable compensation (usually measured by market price) was part of the parties' agreement—although nowhere expressed in so many words—a recovery called 'quantum meruit' enforces an implied term of an actual contract." *Id*.

Plaintiffs allege that they are entitled to recovery for quantum meruit because "Dr. Toskas and Dr. Claasens performed valuable medical services," and the Plaintiffs "reasonably believed that they would be compensated for those services in accord with the written agreements between the

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[11] Section 13 of the General Terms and Conditions restricts the addition of terms and amendments to the contract. Section 13 provides that upon mutual agreement and approval by the Director of Personnel, special terms and conditions may be placed in the section provided on the contract (the face sheet), but only "to the extent that they are not inconsistent with, and in no way purport to amend, these conditions of employment. No additional amendments will be made or attached to these terms and conditions." Entitlement to payment for additional work performed as a physician is inconsistent with Plaintiffs' FLSA status and the related contractual and regulatory provisions denying overtime payments for overtime exempt personnel, therefore Plaintiffs' argument fails.

Doctors and RHC and the Municipality of Rota upon which they relied to their detriment." Complaint ¶¶ 50–51. Defendants argue that the quantum meruit claim must be dismissed, both because quantum meruit is not an available claim where a valid contract exists, that quantum meruit claims cannot be brought against the government, and that the quantum meruit claim in this action is barred by sovereign immunity. Mot. to Dismiss at 13–22.

a. Quantum Meruit Is Not An Available Remedy Where a Valid Contract Exists Between the Parties

Defendants argue that Quantum Meruit must be dismissed since it is not available when a valid contract exists. Mot. to Dismiss at 13. Plaintiffs, on the other hand, argue that "a tacit understanding that the doctors would work additional hours and the government would compensate them in the future can be easily inferred." Opp. at 17.

Quantum meruit is generally either a claim related to an "implied contract," or a claim to "enforc[e] an implied term of an actual contract." RESTATEMENT (THIRD) OF RESTITUTION AND UNJUST ENRICHMENT § 31 cmt. e (2011). "The existence of a valid and enforceable written contract governing a particular subject matter ordinarily precludes recovery in quasi contract for events arising out of the same subject matter." *Clark-Fitzpatrick, Inc. v. Long Is. R.R. Co.*, 516 N.E.2d 190, 193 (N.Y. 1987). "[R]ecovery in *quantum meruit* is not appropriate where there is a valid contract covering the subject matter of the dispute." *Cent. Arizona Water Conservation Dist. V. United States*, 32 F.Supp.2d 1117, 1140 (D. Ariz. 1998).

Here, there is a valid and enforceable written employment contract between Plaintiffs and Defendants. Since a valid contract exists governing the exact issue of payment owed to Plaintiffs, quantum meruit is inappropriate. Although quantum meruit may be used to "enforc[e] an implied term of an actual contract," there is nothing on the record to indicate that the additional compensation sought by Plaintiffs was actually agreed to by Defendants. RESTATEMENT (THIRD) OF RESTITUTION AND UNJUST ENRICHMENT § 31 cmt. e. Since there is a valid contract governing

Plaintiffs' employment at RHC, and since there is nothing on the record to support the existence of an implied term in the employment contract related to excess hours worked, quantum meruit is inappropriate in this case and must be dismissed.

Thus, the Court need not reach whether quantum meruit claims may be brought against the government, nor whether such claims are barred by sovereign immunity.

V. CONCLUSION

Plaintiffs' claims of breach of contract and quantum meruit are dismissed.

Accordingly, Defendants' motion to dismiss is **GRANTED**.

IT IS SO ORDERED this 24th day of May, 2018.

/s/
JOSEPH N. CAMACHO
Associate Judge