

1 **II. BACKGROUND**

2 Around May 2016, Defendant Edita Capilitan Cruz¹ (“Defendant” or “Cruz”) advertised her
3 business as a manpower agency and a service to process paperwork for foreign workers who sought
4 employment as CW1 workers.²

5 Araneta wanted employment as a foreign worker and to maintain her legal status. Cruz offered
6 to hire Araneta for a housekeeping position at Aqua Resort, a hotel located on Saipan. Cruz offered
7 to prepare the necessary forms to hire Araneta as a CW1 worker and to submit the petition for her
8 employment to the United States Citizenship and Immigration Services (“USCIS”).

9 Cruz asked for Six Hundred Seventy-Five Dollars (\$675) to process the paperwork to hire
10 Araneta as a CW1 worker. Araneta told Cruz she only had Five Hundred dollars (\$500), and Cruz
11 agreed to accept the Five Hundred Dollars instead, for the purpose of processing Araneta’s papers for
12 the housekeeping position at Aqua Resort.

13 However, though Cruz had a license to do business as a manpower agency, the manpower
14 agency was never operational; Cruz had no authority to hire for Aqua Resort; and Cruz did not have
15 any intention of submitting the CW1 petition to USCIS to hire Araneta as a CW1 worker. Cruz never
16 did submit Araneta’s CW1 petition to USCIS.

17 Therefore, in February 2019, Plaintiff brought a civil action case against Defendant Cruz for
18 violating the Alien and Immigrant Consumer Protection Act, 4 CMC § 5184(b)(2).³

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20 ¹ Edita Capilitan Cruz, dba W.E.C. Manpower Services, a/k/a W.E.C. General Enterprise, W.E.C. Enterprise, W.E. Cruz
Catering, Mega Marianas, and Mega Marianas Transport. Edita Capilitan Cruz was the principle owner of the various
companies.

21 ² “The CNMI-Only Transitional Worker (CW-1) visa classification allows employers in the Commonwealth of the
22 Northern Mariana Islands (CNMI) to apply for permission to employ foreign (nonimmigrant) workers who are otherwise
ineligible to work under other nonimmigrant worker categories.” *CW-1: CNMI-Only Transitional Worker*, U.S.
Citizenship and Immigration Services, [https://www.uscis.gov/working-united-states/temporary-workers/cw-1-cnmi-
only-transitional-worker](https://www.uscis.gov/working-united-states/temporary-workers/cw-1-cnmi-only-transitional-worker) (last visited Dec. 1, 2019).

23 ³ Plaintiff filed complaint contained the following causes of actions: Breach of Contract, Conversion, Fraud, Unfair and
24 Deceptive Acts and Practices under the Consumer Protection Act, and violations of the Alien and Immigrant Consumer
Protection Act. The Court found in favor of Plaintiff cause of actions for Fraud and violations of the Alien and Immigrant
Consumer Protection Act.

1 On July 31, 2019, the Court issued a default judgment against Defendant finding by clear and
2 convincing evidence that the conduct of Defendant Cruz violated the Alien and Immigrant Consumer
3 Protection Act.

4 Throughout the proceedings, Plaintiff was represented by an attorney employed by MLSC, a
5 non-profit corporation that provides free legal assistance in civil matters to low income persons in the
6 Commonwealth of the Northern Mariana Islands (“CNMI”).⁴ After the Court issued its default
7 judgment, Plaintiff requested attorney’s fees for the work MLSC performed in this civil action.
8 Plaintiff’s claim for attorney’s fees is based on the section of the Alien and Immigrant Consumer
9 Protection Act that allows a prevailing plaintiff to be awarded attorney’s fees, 4 CMC § 5189(c).

10 However, because MLSC is a non-profit organization, the Court ordered Plaintiff’s Attorney
11 to file a brief whether plaintiffs represented by non-profit organizations can be awarded attorney’s
12 fees for violation of 4 CMC § 5189(c) of the Alien and Immigrant Consumer Protection Act.

13 Based on the filings and arguments, the Court finds, for the reasons stated below, that Plaintiff
14 is entitled to attorney’s fees as a prevailing plaintiff in a case involving a violation of the Alien and
15 Immigrant Consumer Protection Act even though she was represented by MLSC, a non-profit
16 organization.⁵

17 18 III. DISCUSSION

19 Under the so-called “American rule,” parties “pay their own attorneys’ fees, regardless of the
20 outcome of the proceedings.” *Camacho v. Bridgeport Financial Inc.*, 523 F.3d 973, 978 (9th Cir.
21 2008). However, despite this general rule, some legislatures throughout the United States have carved

22 ⁴ MLSC also operates in the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall
23 Islands.

24 ⁵ Though Plaintiff brought multiple causes of action against Defendant, the Court only found in favor of Plaintiff’s cause
of actions for Fraud and violations of the Alien and Immigrant Consumer Protection Act. Of the two cause of actions that
Plaintiff was successful only the claim for a violation of the Alien and Immigrant Consumer Protection Act contains a
provision for awarding of attorney’s fees for a prevailing plaintiff.

1 out specific situations where the “prevailing parties may recover their attorney’s fees from the
2 opposing side....” *Stanton v. Boeing Co.*, 327 F.3d 938, 965 (9th Cir. 2003).

3 In the Commonwealth of the Northern Mariana Islands, the Commonwealth Legislature
4 carved out such an exception to the American rule with regard to various aspects of consumer
5 protection. Specifically, pertinent to this case, 4 CMC § 5189(c) authorizes awarding attorney’s fees:
6 “A prevailing plaintiff may be awarded punitive damages, attorney’s fees, and costs of bringing an
7 action under this Article.”

8 Generally, “nonprofit legal services organizations are entitled to an award of attorney’s fees
9 in appropriate cases.” *Kulkarni v. Nyquist*, 446 F. Supp. 1274, 1280 (N.D.N.Y. 1977); *see also Reyes*
10 *v. Ebetuer*, 2 NMI 418, 434 (1992) (finding that “the trial court appropriately awarded attorney’s
11 fees” to the plaintiff, who was also represented by MLSC under the NMI Consumer Protection Act,
12 4 CMC § 5112(a)). This promotes the goal of allowing certain injured individuals to pursue their
13 legal rights, even if the plaintiff requests such a low monetary value of damages that for-profit
14 attorneys would be reluctant to take on the case. *See Stevens v. Dobs, Inc.*, 373 F. Supp. 618, 620-21
15 (E.D.N.C. 1974) (“This Court is of the opinion that public policy demands that counsel fees be
16 awarded in housing discrimination cases so that prejudiced individuals will not be hesitant in
17 enforcing their rights.”).

18 To determine whether non-profit organizations are eligible to receive attorney’s fees under a
19 particular statute, it is necessarily to examine the language and legislative history of that statute. *See*
20 *Blum v. Stenson*, 465 U.S. 886, 895 (1984) (finding that “[t]he statute and legislative history establish
21 that ‘reasonable fees’ under (42 U. S. C. § 1988 (1976 ed., Supp. V))) are to be calculated according
22 to the prevailing market rates in the relevant community, regardless of whether plaintiff is represented
23 by private or non-profit counsel”).

1 Here, as stated above, 4 CMC § 5189(c), the relevant statute that authorizes awarding
2 attorney’s fees, states that: “A prevailing plaintiff may be awarded punitive damages, attorney’s fees,
3 and costs of bringing an action under this Article.”

4 4 CMC § 5189(c)’s language does not explicitly state that a prevailing plaintiff represented
5 by a non-profit organization is entitled to an award of attorney’s fees. The same is also true for 4
6 CMC § 5189(c)’s legislative history. PL 15-17, § 4 (5178). However, neither 4 CMC § 5189(c)’s
7 language nor legislative history explicitly excludes a prevailing plaintiff represented by a non-profit
8 organization from being awarded attorney’s fees. Because 4 CMC § 5189(c)’s does not exclude non-
9 profit organizations, the phrase, “[a] prevailing plaintiff may be awarded [...] attorney’s fees,” does
10 not limit recovery for attorney’s fees to individuals represented by for-profit attorneys.

11 Therefore, because 4 CMC § 5189(c) does not expressly prohibit prevailing parties
12 represented by non-profit attorneys from obtaining attorney’s fees, the Court finds that attorney’s fees
13 can be awarded to prevailing plaintiffs even if plaintiffs are represented by non-profit organization.
14 *See Kulkarni*, 446 F. Supp. at 1280. Awarding attorney’s fees to prevailing plaintiffs encourages
15 indigent plaintiffs to pursue their legal rights under the Alien and Immigrant Consumer Protection
16 Act, thereby furthering the public policy goals of 4 CMC § 5189(c).⁶

17 Additionally, the Court finds guidance from the Supreme Court of the Commonwealth of the
18 Northern Mariana Islands’ (“Supreme Court”) decision in *Reyes v. Ebetuer*, 2 NMI 418 (1992). In
19 *Reyes*, the Supreme Court found that “the trial court appropriately awarded attorney’s fees” after
20 finding a violation of the NMI Consumer Protection Act, even though the prevailing plaintiff was
21 represented by an attorney employed by MLSC. 2 NMI at 434. Though the *Reyes* Court interpreted
22 the NMI Consumer Protection Act, rather than the Alien and Immigrant Consumer Protection Act,
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24 ⁶ *See also* 4 CMC § 5189(c) (“In order to deter violations of this Article, courts shall not require a showing of the traditional elements for equitable relief.”).

1 which is the statute relevant here, the language used by both statutes to authorize the awarding of
2 attorney’s fees is similar. *Compare* 4 CMC § 5189(c) (“[a] prevailing plaintiff may be awarded [...]”
3 attorney’s fees”), *with* 4 CMC § 5112(a) (stating that the Court “shall award costs and reasonable
4 attorney’s fees if the plaintiff prevails”).⁷ Therefore, the Court finds *Reyes* persuasive on the issue of
5 awarding attorney’s fees to a prevailing plaintiff represented by a non-profit organization.

6 In addition, in *Laparceros v. Cruz*, Civ. No. 19-0090 (NMI Super. Ct. Dec. 11, 2019) (Order
7 Finding That A Prevailing Plaintiff Can Be Awarded Attorney’s Fees In A Case Involving A
8 Violation Of The Alien And Immigrant Consumer Protection Act Pursuant To 4 CMC § 5189(c),
9 Even Though Plaintiff Was Represented By Micronesian Legal Services Corporation, A Non-Profit
10 Organization), where the Superior Court for the Commonwealth of the Northern Mariana Islands
11 (“Superior Court”) awarded attorneys’ fees to a prevailing plaintiff pursuant to the Alien and
12 Immigrant Consumer Protection Act even when the plaintiff is represented a non-profit organization.

13 Therefore, to promote the public policy of allowing indigent individuals to enforcing their
14 rights pursuant to the Alien and Immigrant Consumer Protection Act, and in light of the Supreme
15 Court’s decision in *Reyes*, and the Superior Court’s decision in *Laparceros*, the Court finds that 4
16 CMC § 5189(c) authorizes awarding attorney’s fees to prevailing plaintiffs even if the plaintiff is
17 represented by a non-profit organization. *See Stevens*, 373 F. Supp. at 620-21.

18 19 **IV. CONCLUSION**

20 For the reasons stated above, the Court finds that a prevailing plaintiff can be awarded
21 attorney’s fees in a case involving a violation of the Alien and Immigrant Consumer Protection Act
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24 ⁷ There are differences between 4 CMC § 5189(c) and 4 CMC § 5112(a), such as 4 CMC § 5189(c) uses the word “may”
and 4 CMC § 5112(a) use of the word “shall,” however both statutes refer to prevailing plaintiffs.

1 pursuant to 4 CMC § 5189(c), even though a plaintiff was represented by Micronesia Legal Services
2 Corporation, a non-profit organization.⁸

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IT IS SO ORDERED this 11th day of December, 2019.

/s/
JOSEPH N. CAMACHO, Associate Judge

⁸ The Court will issue a separate order as to the amount of attorney’s fees.