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6 **IN THE SUPERIOR COURT FOR THE**  
7 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

8 **ELIZABETH V. MARQUEZ,**

**Civil Case No. 16-0112-CV**

9 Plaintiff,

10  
11 **vs.**

**ORDER DENYING PLAINTIFF'S  
AND DEFENDANTS' MOTION FOR  
PARTIAL SUMMARY JUDGMENT**

12 **JOHN T. SABLAN, GLORIA DLG.**  
13 **SABLAN, JG SABLAN WATER AND ICE,**  
14 **INC., and JG SABLAN ROCK QUARRY,**  
15 **INC., jointly and severally,**

16 Defendant.

17 **INTRODUCTION**

18 This matter came before the Honorable Alberto C. Lamorena, III on September 27, 2019 for  
19 hearing on Plaintiff Elizabeth V. Marquez's ("Plaintiff") Motion for Partial Summary Judgment and  
20 Defendants John T. Sablan, Gloria DLG. Sablan, JG Sablan Water and Ice, Inc., and JG Sablan  
21 Rock Quarry, Inc.'s (collectively, "Defendants") Motion for Partial Summary Judgment. Attorney  
22 Joe Hill represents Plaintiff, and Myra Cai and Michael W. Dotts represent Defendants. Having  
23 duly considered the parties' briefs, oral arguments, and the applicable law, the Court now issues the  
24 following Order and **DENIES** both Plaintiff's and Defendants' Motions.

25 **BACKGROUND**

26 In December 2008, Elizabeth signed a one-year employment contract with Water & Ice. As  
27 Water & Ice's employee, Elizabeth maintained the company's accounting and personnel matters,  
28 worked on the payables/receivables, prepared and computed payroll, and updated the company's

By order of the Court, Judge **ALBERTO C. LAMORENA III**

1 bank transactions. After her first year, Elizabeth renewed her employment contract with Water &  
2 Ice annually until her last contract ended on October 6, 2015. In each contract but the first,  
3 Elizabeth agreed to work part-time for Water & Ice.

4 Elizabeth alleges that during her employment, she and her co-workers always worked over 8  
5 hours daily and 40 hours weekly. Employees at Water & Ice would log their hours in a notebook,  
6 and Elizabeth would copy those hours into timecards for payroll purposes. Elizabeth claims that  
7 Gloria, the operations manager, would instruct her to prepare timecards that did not include  
8 overtime. Elizabeth asserts that she disagreed with Gloria's instruction but followed it anyway to  
9 avoid any conflicts.

10 Elizabeth claims that every year of her employment except 2011, Water & Ice failed to pay her  
11 in accordance with the number of hours she worked. She argues Water & Ice would routinely pay  
12 its employees partial wages, which Elizabeth claims were categorized as "cash advances." As a  
13 result, Elizabeth did not renew her contract. On October 14, 2015, she terminated her employment  
14 with Water & Ice. Elizabeth subsequently filed this action against Defendants, seeking, among  
15 other things, unpaid wages/overtime for work she allegedly performed between 2009 and 2015.

16 On July 19, 2019, Elizabeth filed a Motion for Partial Summary Judgment. Elizabeth asserts  
17 that she has always worked overtime and that Gloria acknowledged during her deposition that  
18 Water & Ice may owe Elizabeth some amount of wages. Defendants disagree with Elizabeth's work  
19 hour calculation and claim that Elizabeth misrepresents Gloria's statements about monies owed.

20 On August 12, 2019, Defendants filed their Motion for Partial Summary Judgment.  
21 Defendants argue that Elizabeth failed to point to any provision in the contracts that they  
22 supposedly breached. They further contend that the statutes of limitations limit Elizabeth's claims  
23 for unpaid wages/overtime under the Fair Labor Standards Act ("FSLA") and the CNMI's  
24 Minimum Wage and Hour Act ("MWAH"). Elizabeth rejects Defendants' claims, asserting that  
25 Defendants breached the contracts when they failed to pay her for work she performed. She also  
26 argues that the statutes of limitations do not limit her claims for unpaid wages/overtime under the  
27 FSLA/MWAH because the claims are equitably tolled.

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1 **LEGAL STANDARD**

2 “The court must grant summary judgment if the movant shows that there is no genuine  
3 dispute as to any material fact and the movant is entitled to judgment as a matter of law.” NMI R.  
4 Civ. P. 56(a). The “moving party bears the ‘initial and ultimate’ burden of establishing its  
5 entitlement to summary judgment.” *Santos v. Santos*, 4 NMI 206, 210 (1995). To prove its  
6 entitlement, the movant must support the absence of disputed facts by citing parts of the record,  
7 including depositions, documents, electronically stored information, affidavits or declarations,  
8 stipulations, admissions, interrogatory answers, or other materials. NMI R. Civ. P. 56(c)(1); *Celotex*  
9 *Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

10 Once the movant meets that burden, the burden shifts to the non-moving party. *Nissan Fire*  
11 *& Marine Ins. Co. v. Fritz Companies, Inc.*, 210 F.3d 1099, 1103 (9th Cir. 2000). The non-moving  
12 party “may not rest upon the mere allegations or denials of his pleading, but . . . must set forth  
13 specific facts showing that there is a genuine issue for trial.” *Aplus Co., Ltd. v. Niizeki Int’l Saipan*  
14 *Co., Ltd.*, 2006 MP 13 ¶ 13 (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986)).

15 A material fact somehow affects the outcome of the case. *Anderson*, 477 U.S. at 248. To  
16 demonstrate a genuine issue, the non-moving party “must do more than simply show that there is  
17 some metaphysical doubt as to the material facts . . . . Where the record taken as a whole could not  
18 lead a rational trier of fact to find for the non-moving party, there is no ‘genuine issue for trial.’”  
19 *Matushita Elec. Indus. Co. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

20 In judging evidence at the summary judgment stage, the Court does not assess credibility or  
21 weigh conflicting evidence. *T.W. Elec. v. Pac. Elec. Contractors Ass’n*, 809 F.2d 626, 630 (9th Cir.  
22 1987) (citing *Anderson*, 477 U.S. at 255). Instead, the Court determines whether there is a genuine  
23 issue for trial, viewing the evidence in the light most favorable to the non-moving party. *Estate of*  
24 *Mendiola v. Mendiola*, 2 NMI 233, 240 (1991).

25 **DISCUSSION**

26 **I. Elizabeth’s Motion for Partial Summary Judgment**

27 Elizabeth asks the Court to grant her Motion for Partial Summary Judgment on her claims  
28 against Defendants for failure to pay wages and overtime under the FLSA/MWHA. Alternatively,

1 she seeks summary judgment for the unpaid wages and overtime claims under a breach of contract  
2 theory.

3 *a. Motion to Strike Defendants' Declarations*

4 The Court notes that Elizabeth also moves to strike Defendants' declarations in support of  
5 their Opposition. Particularly, Elizabeth moves to strike paragraphs 2-10 of Gloria's declaration,  
6 which Elizabeth claims contain mostly self-serving and conclusory allegations unsupported by any  
7 references to the record. Elizabeth also moves to strike Defendants' counsel's declaration because  
8 counsel attempted to authenticate deposition transcripts without first laying a proper foundation.  
9 For the reasons set forth below, the Court denies Elizabeth's motion to strike.

10 In the summary judgment stage, a declaration used to support or oppose a motion must be  
11 made on personal knowledge, set out facts that would be admissible in evidence, and show that the  
12 declarant is competent to testify on the matters stated. NMI R. Civ. P. 56(c)(4). Personal knowledge  
13 and competence to testify may be inferred from the declarations themselves. *Barthelemy v. Air*  
14 *Lines Pilots Ass'n*, 897 F.2d 999, 1018 (9th Cir. 1990) (citing *Lockwood v. Wolf Corp.*, 629 F.2d  
15 603, 611 (9th Cir. 1980)). "[T]he requirement of personal knowledge imposes only a 'minimal'  
16 burden on a witness; if 'reasonable persons could differ as to whether the witness had an adequate  
17 opportunity to observe, the witness's testimony is admissible.'" *Strong v. Valdez Fine Foods*, 724  
18 F.3d 1042, 1045 (9th Cir. 2013) (quoting 1 *McCormick on Evidence* § 10 (Kenneth S. Broun, ed.,  
19 7th ed. Rev. 2013)). Furthermore, the facts in a declaration need not be in admissible form. *See*  
20 *Humphreys & Partners Architects, L.P. v. Lessard Design, Inc.*, 790 F.3d 532, 538-39 (4th Cir.  
21 2015) (accepting reports considered inadmissible on a motion for summary judgment because the  
22 reports were both sworn to in declarations and the contents of the reports would be admissible  
23 through the expert's testimony at trial).

24 The Court accepts Gloria's declaration because the contents are admissible at trial. *See id.* at  
25 538-39. Elizabeth claims that Gloria's other statements in her declaration are self-serving,  
26 contradictory, and unspecific. A declarant's personal knowledge requirement does not limit parties  
27 from submitting self-serving declarations; instead, it prevents them from asserting or disguising  
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1 legal arguments or conclusions as facts. *See Irobe v. United States Dep't of Agric.*, 890 F.3d 371,  
2 381 (1st Cir. 2018).

3 “[T]here is some room for debate as to how ‘specific’ must be the ‘specific facts’ that Rule  
4 56(e) requires in a particular case.” *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 889 (1990). As the  
5 operations manager, Gloria has personal knowledge of Water & Ice’s financials and whether  
6 overtime was needed. Therefore, Elizabeth’s assertion that Gloria’s declaration fails because it  
7 omits any reference to the record is misplaced. *See Makor Issues & Rights, Ltd. v. Tellabs, Inc.*, 735  
8 F. Supp. 2d 856, 869 (N.D. Ill. 2010) (“Because the progress she describes is directly within her  
9 duties as head of forecasting, Pfefferle has made statements within her knowledge and there is no  
10 requirement that she cite to other portions of the record to support her affidavit.”). As a result, the  
11 Court considers Gloria’s declaration admissible for the purpose of the summary judgment motion.

12 Similarly, the Court considers Defendants’ counsel’s declaration admissible to support the  
13 Opposition. Elizabeth relies on *Orr v. Bank of America* for the proposition that an attorney cannot  
14 authenticate deposition transcripts by declaring that the transcripts are true and correct copies, even  
15 if the attorney was present at the deposition. 285 F.3d 764, 777 (9th Cir. 2002). However, the 2010  
16 amendments to Federal Rule of Civil Procedure 56<sup>1</sup> eliminated *Orr*’s requirement that evidence be  
17 authenticated at the summary judgment stage; instead, the rule requires only that the substance of  
18 the proffered evidence be admissible at trial. *Romero v. Nev. Dep’t of Corr.*, 673 F. App’x 641, 644  
19 (9th Cir. 2016); *see also* Fed R. Civ. P. 56 advisory comm. note to 2010 amendment; *Lee v.*  
20 *Offshore Logistical Transp., LLC*, 859 F.3d 353, 355 (5th Cir. 2017).

21 Here, Defendants’ counsel failed to include the transcriber’s certificate authenticating the  
22 deposition transcripts. Counsel, however, can include the transcriber’s certificate at trial, and the  
23 deposition transcripts would be admissible. As such, the Court declines to strike Defendants’  
24 counsel’s declaration.

25 Elizabeth also asserts in her reply that Ms. Sablan’s declaration in support of Defendants’  
26 opposition contains inadmissible hearsay. Ms. Sablan stated, “[M]s. Marquez was aware of this. In  
27 fact, she told other employees that they could not work overtime without my authorization.” Pl.

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28 <sup>1</sup> The CNMI Rules of Civil Procedure are modeled after the Federal Rules of Civil Procedure. Accordingly, the Court looks to federal case law for guidance. *See In re Woodruff*, 2015 MP 11 ¶ 21.

1 Reply at 8. The Court disagrees that this constitutes inadmissible hearsay. Rule 801(d) lists the  
2 statements which are excluded from the rule against hearsay. Among these exclusions is a statement  
3 by an opposing party. *See* NMI R. Evid. 801(d)(2). Defendants’ are offering the statement of  
4 Elizabeth, their party opponent. As such, the statement does not violate the rule against hearsay.

5 Therefore, the Court denies Elizabeth’s motion to strike.

6 *b. Unpaid Wages and Overtime Under FLSA/MWHA*

7 Next, Elizabeth asks the Court to grant her motion because she “basically” worked seven  
8 days a week, Gloria admitted that Water & Ice may owe her wages, and Defendants failed to  
9 comply with recordkeeping requirements under the FLSA and MWA, allowing the Court to use  
10 an employee’s calculations to estimate hours worked. *See Anderson v. Mt. Clemens Pottery Co.*,  
11 328 U.S. 680, 687 (1946). As a result, Elizabeth claims she is entitled to summary judgment on her  
12 claims for unpaid wages/overtime under the FLSA/MWHA.

13 Defendants disagree with Elizabeth’s account of the facts. They point to Elizabeth’s  
14 deposition to highlight inconsistencies in her statements regarding the number of hours she claims  
15 to have worked between 2009 and 2015. They also argue that Elizabeth misrepresents certain  
16 statements from Gloria’s deposition, particularly that Water & Ice may owe Elizabeth money.

17 Before the Court grants a motion for summary judgment, the moving party must prove she is  
18 entitled to summary judgment. *Santos v. Santos*, 4 NMI 206, 210 (1995). Here, Elizabeth fails to  
19 satisfy her burden because she did not demonstrate she performed the work for which she was  
20 improperly compensated. Elizabeth relies heavily on *Anderson v. Mt. Clemens Pottery Co.* to  
21 encourage the Court to use her records as an accurate account of the work she performed. 328 U.S.  
22 680 (1946). The FLSA and the MWA provide that each pay period, an employer must furnish  
23 each employee with a written statement showing the employee’s wages, hours, and other conditions  
24 and practices of employment. *See* 29 U.S.C. § 211(c); 4 CMC § 9232. In the absence, the United  
25 States Supreme Court has held that courts should use an employee’s records to ascertain the hours  
26 an employee worked. *Anderson*, 328 U.S. at 687. However, the Supreme Court also stated that “an  
27 employee has carried out his burden if he proves that he has performed the work . . . and if he

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1 produces sufficient evidence to show the amount and extent of that work as a matter of just and  
2 reasonable inference.” *Id.*

3 Here, Elizabeth failed to produce sufficient evidence for the Court to reasonably infer that  
4 she performed the work for which she claims she was improperly compensated. Although some  
5 parts of Elizabeth’s deposition support her motion, other parts contradict it, showing a genuine  
6 dispute of material fact. For example, when asked how many hours she worked in 2010, Elizabeth  
7 stated, “[l]ess than 80 hours I would say.” Elizabeth Dep. at 67:10. In a later line of questioning  
8 about her work hours in 2010, Elizabeth stated, “we’re working more than 80 hours but timecard  
9 showing [sic] less than 80 hours.” *Id.* at 70:20-21. Elizabeth also stated that she started working  
10 part-time from 2014 to 2016. *Id.* at 71:1-28. However, she also asserts that “during the years of  
11 employment with Defendants, [she] worked . . . ‘7 days a week basically.’” Pl.’s Mot. for Partial  
12 Summ. J. at 5:10-12.

13 Other parts of Elizabeth’s motion are similarly inconsistent. Elizabeth claims that Gloria  
14 admitted that the company owed her unpaid wages. *Id.* at 5:14-16. However, Gloria’s statement,  
15 when read in context, reveals that she agreed Water & Ice may owe Elizabeth money for work she  
16 completed in 2015. Gloria Dep. at 17:22-28. Additionally, Elizabeth’s counsel repeatedly asked  
17 Gloria whether Water & Ice owed employees money based on various documents. *Id.* at 29:17-19.  
18 Gloria responded, “He’s asking me to, whether this has been paid or not but I don’t remember. I  
19 don’t recall.” *Id.* at 30:1-3. Elizabeth’s counsel received similar responses when he asked Gloria  
20 about other documents, one of which was a document Defendants submitted to the U.S. Department  
21 of Labor in 2010. Gloria stated, “Based on the documents, yes, it’s stated here.” *Id.* at 54:7-8. These  
22 inconsistencies demonstrate that genuine disputes of material fact remain.

23 Therefore, the Court denies Elizabeth’s Motion as it pertains to her claims for unpaid  
24 wages/overtime under the FLSA/MWHA.

25 Elizabeth also argues that because Defendants failed to compensate her, she can recover  
26 liquidated damages. Any employer who violates any provisions of 4 CMC §§ 9221 or 9222 is liable  
27 to employee(s) affected in the amount of their unpaid minimum wages or unpaid overtime  
28 compensation, and in the case of willful violations, an additional equal amount as liquidated

1 damages. 4 CMC § 9243. Elizabeth must first prove her claims for unpaid wages and overtime  
2 before she can recover liquidated damages. *See Barte v. Saipan Ice, Inc.*, 1997 MP 17.  
3 Consequently, the Court refrains from deciding the liquidated damages issue.

4 *c. Unpaid Wages and Overtime Under Breach of Contract*

5 Elizabeth asserts that if the Court disagrees with her FLSA/MWHA claims, it should still  
6 grant her Motion based on Defendants’ breach of the employment contracts.

7 Defendants did not address this issue in their Opposition. As a result, Elizabeth urges the  
8 Court to grant her Motion because she claims Defendants waived the claim. *See Su Yue Min v. Feng*  
9 *Hua Enter.*, 2017 MP 3 ¶ 20 n.9 (“If the opposing part files a responsive memorandum, but fails to  
10 address certain arguments made by the moving party, the court may treat those arguments as  
11 conceded.”) The Court nevertheless addresses Elizabeth’s breach of contract claim because it does  
12 not differ significantly from her claim for unpaid wages/overtime under the FLSA/MWHA. *See*  
13 *Fed. R. Civ. P. 56 advisory comm. note to 2010 amendment* (“[S]ummary judgment cannot be  
14 granted by default even if there is a complete failure to respond to the motion, much less when an  
15 attempted response fails to comply with Rule 56(c) requirements.”).<sup>2</sup>

16 Elizabeth similarly bases her breach of contract claim on Gloria’s statement regarding her  
17 belief that Water & Ice may owe Elizabeth money for work performed in 2015. Elizabeth’s  
18 argument in favor of the breach of contract claim does not differ from her argument in support of  
19 the claims under the FLSA/MWHA. For the same reasons above, the Court finds that Elizabeth  
20 fails to prove that she performed the work alleged and that Water & Ice failed to pay her for it,  
21 leaving a genuine dispute of material fact.

22 Therefore, the Court denies Elizabeth’s Motion as it pertains to her claim for breach of  
23 contract.

24 **II. Defendants’ Motion for Partial Summary Judgment**

25 Defendants ask the Court to grant their Motion for Partial Summary Judgment regarding  
26 Elizabeth’s claims for failure to pay wages and overtime under the FLSA/MWHA and breach of

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28 <sup>2</sup> Although the Advisory Committee Notes to the Federal Rules of Civil Procedure are not binding in the  
Commonwealth, the Court considers them persuasive because our Rules of Civil Procedure are modeled after the  
federal rules. *See Ishimatsu v. Royal Crown Ins. Corp.*, 2012 MP 17 ¶ 29.

1 employment contract. Defendants argue that because Elizabeth failed to specify which provision in  
2 the employment contracts they breached, her claim is essentially the same as her claims under the  
3 FLSA/MWHA. More specifically, Defendants argue that because the contracts provide an hourly  
4 rate, an overtime rate of 1.5 times the hourly rate, and no remedies provision, Elizabeth cannot  
5 recover from a breach of contract claim. Finally, Defendants argue that Elizabeth’s claims under the  
6 FLSA/MWHA are limited by those laws’ statutes of limitations.

7 Defendants failed to cite any part of the record from which the Court can determine whether  
8 any fact is absent to support Elizabeth’s claims. Even when the non-moving party bears the ultimate  
9 burden of proof at trial, the moving party must still point to materials in the record, including  
10 depositions, documents, electronically stored information, affidavits or declarations, stipulations,  
11 admissions, interrogatory answers, or other materials. NMI R. Civ. P. 56(c)(1); *Celotex Corp. v.*  
12 *Catrett*, 477 U.S. 317, 323 (1986). The moving party bears the initial and ultimate burden of  
13 establishing its entitlement to summary judgment. *Santos v. Santos*, 4 NMI 206, 210 (1995). The  
14 burden on the moving party may be discharged by showing that there is an absence of evidence to  
15 support the non-moving party’s case. *Celotex Corp.*, 477 U.S. at 325.

16 Here, Defendants did not establish their entitlement to summary judgment. Defendants failed  
17 to cite to any part of the record to show the absence of facts to support that they did not willfully  
18 violate the FLSA/MWHA. Instead, Defendants attempted to shift the burden to Elizabeth when it is  
19 their burden to establish their entitlement to summary judgment. Moreover, Defendants’ argument  
20 about the breach of contract claim is unconvincing. Even if the contracts do not provide a  
21 remedies provision, Elizabeth may still recover from a breach of those contracts under common  
22 law, provided that she proves she worked the hours for which she was allegedly not paid.

23 Even if Defendants appropriately cited to the record, genuine disputes of material fact  
24 remain. The FLSA provides different limitations for “ordinary violations and willful violations.”  
25 *Galloway v. Chugach Gov’t Servs., Inc.*, 199 F. Supp. 3d 145, 151 (D.D.C. 2016) (citing  
26 *McLanghlin v. Richard Shoe Co.*, 486 U.S. 128, 132 (1988)). An “ordinary” violation of the FLSA  
27 requires that the plaintiff file a claim within two years after the cause of action accrues, whereas a  
28 “willful” violation must be filed within three years. *Id.* A violation of the FLSA is willful only if the

1 employer either knew or showed reckless disregard for the matter of whether its conduct was  
2 prohibited by statute. *Id.* A plaintiff must show that the employer was aware of its obligation under  
3 the FLSA and chose not to comply with the law or recklessly disregarded its statutory duties. *Id.*

4 In contrast, any action commended under the MWHHA after October 3, 1996 for unpaid  
5 wages, unpaid overtime compensation or liquidated damages must be filed within six months after  
6 the cause of action accrues. 4 CMC § 9246. However, a plaintiff may file a cause of action arising  
7 out of a willful violation within one year after the cause of action accrues. *Id.*

8 Here, Defendants were at least aware that they were subject to the FLSA because the U.S.  
9 Department of Labor investigated them in 2010 for irregularities in their recordkeeping. An  
10 employer willfully violates the FLSA when it is on notice of the requirements but takes no  
11 affirmative action to comply. *Alvarez v. IBP, Inc.*, 339 F.3d 894, 909 (9th Cir. 2003); *see also Yu*  
12 *Xuan v. Joo Yeon Corp.*, No. 1:12-CV-00032, 2015 U.S. Dist. LEXIS 165953, at \*16-17 (D. N.  
13 Mar. I. Dec. 9, 2015) (finding that defendant willfully violated the FLSA because he did not  
14 reasonably investigate whether he was paying minimum wage). The Court at this point cannot  
15 determine whether Defendants willfully violated the FLSA or MWHHA because a genuine dispute of  
16 material fact remains as to whether Elizabeth performed overtime work and whether Defendants  
17 failed to pay her.

18 Therefore, the Court denies Defendant's Motion for Partial Summary Judgment.

19 **CONCLUSION**

20 For the reasons stated above, the Court **DENIES** Elizabeth's and Defendants' Motions for  
21 Partial Summary Judgment. Both parties shall submit a proposed trial schedule within 30 days of  
22 issuance of this Order. The Court will not entertain further motions on this matter unless such  
23 motions are dispositive of the action.

24 **IT IS SO ORDERED** this \_\_\_\_\_.

25  
26 \_\_\_\_\_/s/  
27 **HONORABLE ALBERTO C. LAMORENA, III**  
28 **Judge Pro Tempore**