By Order of the Court, *Judge KENNETH L. GOVENDO*

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

MOHAMMAD FAYJUL SHEKH,

Plaintiff,

vs.

AMERICAN TRADING SAIPAN CORP., MIN WAN INTERNATIONAL INVESTMENT CORPORATION, and GUO TENG LI,

Defendants.

CIVIL ACTION NO. 21-0272

ORDER DENYING DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT

I. INTRODUCTION

THIS MATTER came before the Court for a hearing on Defendants' Motion to Dismiss Plaintiff's First Amended Complaint on March 28, 2022, at 1:30 p.m. in Courtroom 205A. Plaintiff Mohammad Fayjul Shekh ("Plaintiff") was represented by Mr. Cong Nie, Esq. Defendants American Trading Saipan Corp. ("ATSC"), Min Wan International Investment Corporation ("MWIC"), and Guo Teng Li ("Li") (collectively, "Defendants") were represented by Mr. Robert Torres, Esq. At the conclusion of the hearing, the Court took this matter under advisement.

Based on a careful review of the filings and applicable law, and the arguments of the parties, the Court issues the following Order.

II. BACKGROUND

On October 4, 2021, Plaintiff filed the original Complaint, and, on November 29, 2021, Defendants moved to dismiss the Complaint, pursuant to NMI R. Civ. P. 12(b)(6). Thereafter, Plaintiff amended the original Complaint, pursuant to NMI R. Civ. P. 15(a)(1)(B), and filed the

First Amended Complaint ("FAC") on December 8, 2021. On December 21, 2021, Defendants filed the instant Motion to Dismiss Plaintiff's First Amended Complaint, pursuant to NMI R. Civ. P. 12(b)(6). Plaintiff filed his Opposition on January 17, 2022, and Defendants filed a Reply to the Opposition on January 25, 2022.

For the purposes of this Order, the Court assumes the alleged facts contained in the FAC are true,[1] including, but not limited to, the following:

1. Defendants jointly operated businesses, which were under the common control of Li, and assigned and dispatched Plaintiff at will to work at the businesses operated by them, interchangeably. (*See* FAC ¶¶ 6-7, 34.)
2. "During the entire period of [Plaintiff's] employment with [Defendants], Li had the authority and responsibility of determining how much wages to be paid to [Plaintiff], and was the person who decided how much wages to be paid to [Plaintiff]." (*See* FAC ¶ 27.)
3. "[F]or almost the entire period of his employment … both ATSC and MWIC underpaid [Plaintiff] by paying him a fixed monthly salary at a rate below the applicable federal minimum wage (starting at $750 per month and eventually increasing to about $1,250 per month, and, only for the last few months, about $1,500 per month), and by not paying him 1.5 times the regular rate for his overtime hours." (*See* FAC ¶ 36.)
4. Plaintiff worked approximately sixty-three (63) hours per week for ATSC and MWIC. (*See* FAC ¶ 34.)
5. MD Ashad ("Supervisor"), who was employed by Defendants as a maintenance supervisor, threatened to kill Plaintiff, if he continued to complain about his working conditions. (*See* FAC ¶¶ 13, 57.)

[1] When reviewing a motion to dismiss made pursuant to NMI R. Civ. P. 12(b)(6), "the [C]ourt must construe the complaint in the light most favorable to the plaintiff and take its allegations to be true." *Claassens v. Rota Health Ctr.*, 2021 MP 9 ¶ 16.

6. Defendants "knew that the Supervisor was using threats to prevent [Plaintiff] from complaining and to force [him] to continue to work for them." (*See* FAC ¶ 61.)
7. Defendants "encouraged the Supervisor's practice of threatening underpaid employees, including [Plaintiff], for the purpose of forcing underpaid employees to continue to work for them without complaints." (*See* FAC ¶ 62.)
8. "[B]ecause of the threats made by the Supervisor and because of the harm he believed he would face if he complained, [Plaintiff] felt that he had no choice but to continue to work for Defendants." (*See* FAC ¶ 74.)
9. Defendants "knew that [Plaintiff] would suffer serious harm if he could no longer work in the U.S. and intentionally exploited that to force [Plaintiff] to continue to work for them while being underpaid." (*See* FAC ¶ 63.)
10. "[A]t least during [Plaintiff's] employment, [Defendants] had been operating a scheme where they would sponsor individuals from various countries for CW-1 visa in exchange for an exorbitant recruitment fees and, once those individuals arrived on Saipan, underpay them because [Defendants] knew or expected that those individuals would be forced to work at least to avoid serious financial harm." (*See* FAC ¶ 64.)

III. LEGAL STANDARD

Defendants move to dismiss the instant action for failure to state a claim in the FAC upon which relief can be granted, pursuant to NMI R. Civ. P. 12(b)(6). (*See* Def's Mot. at 1.) "[T]o survive a Rule 12(b)(6) motion to dismiss, a complaint must contain either direct allegations on every material point necessary to sustain a recovery on any legal theory, even though it may not be the theory suggested or intended by the pleader, or contain allegations from which an inference fairly may be drawn that evidence on these material points will be introduced at trial." *Syed v.*

Mobil Oil Mariana Islands, Inc., 2012 MP 20 ¶ 19 (citing *In re Adoption of Magofna*, 1 NMI 449, 454 (1990)); *see, e.g.*, *Bowie v. Commonwealth*, 2021 MP 2 ¶ 8. "Whether [the plaintiff] will actually obtain evidence during discovery supporting their claim is of no moment at this stage in litigation. All that is necessary is that [the plaintiff] provided an allegation from which an inference could be fairly drawn." *Id.* ¶ 34. "This standard is meant to ensure that a plaintiff pleads enough direct and indirect allegations to provide adverse parties fair notice of the nature of the action." *Id.* ¶ 19. Furthermore, when the Court examines the sufficiency of a complaint pursuant to NMI R. Civ. P. 12(b)(6), it must "accept factual allegations in the complaint as true and construe the complaint in the light most favorable to the plaintiff." *Id.* ¶ 22 (internal quotations omitted). However, the Court "has no duty to strain to find inferences favorable to the plaintiff." *Id.*

IV. DISCUSSION

Defendants move to dismiss the first, second, fifth, and sixth causes of action of the FAC with prejudice because Plaintiff has not stated any claims upon which relief may be granted. (*See* Def's Mot. at 1-2.) Defendants further move to dismiss the third and fourth causes of action as to the defendants who were not parties to the contracts with Plaintiff. (*See id.*) However, Defendants do not move to dismiss the seventh cause of action, which claims unjust enrichment against all Defendants. Therefore, the Court shall herein address Defendants' arguments pertaining to each cause of action, except the seventh.

A. FIRST CAUSE OF ACTION: VIOLATION OF THE TRAFFICKING VICTIMS PROTECTION REAUTHORIZATION ACT AGAINST ALL DEFENDANTS

The first cause of action of the FAC claims that Defendants participated in a forced labor venture both as direct perpetrators and as beneficiaries of the venture, in violation of the

Trafficking Victims Protection Act ("TVPA"), and is brought pursuant to 18 U.S.C. § 1595. (*See* FAC ¶ 60.) However, Defendants argue that this cause of action fails to state a claim upon which relief may be granted, as it fails to allege facts that Defendants knowingly benefitted from a venture, in violation of the TVPA, and Plaintiff therefore cannot recover pursuant to 18 U.S.C. § 1595. (*See* Def's Mot. at 11-13.) 18 U.S.C. § 1595(a) states, in pertinent part, that "[a]n individual who is a victim of a violation of [the TVPA] may bring a civil action against the perpetrator (or whoever knowingly benefits, financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in an act in violation of [the TVPA]) . . . ." Forced labor is a violation of the TVPA, and includes acts such as knowingly providing or obtaining the labor or services of a person by threats of serious harm[2] to that person or another person. 18 U.S.C. § 1589(a)(2).

The FAC alleges that the Supervisor repeatedly told Plaintiff that "Li and Wang were powerful business people on Saipan, that they had the power and means to harm [Plaintiff] physically, and that [Plaintiff] should not complain about not being paid the promised wages." (*See* FAC ¶¶ 46-47.) The Supervisor even allegedly threatened to kill Plaintiff, if he continued to complain about his working conditions. (*See* FAC ¶ 57.) Taking these factual allegations as true, the Court need not strain to infer that the Supervisor's actions could qualify as threats of "serious harm" to support a finding of a forced labor venture, in violation of 18 U.S.C. § 1589(a)(2).

However, Plaintiff not only claims that Defendants acted as perpetrators of the forced labor venture by encouraging "the Supervisor's practice of threatening underpaid employees, including [Plaintiff], for the purpose of forcing underpaid employees to continue to work for them without

[2] "The term 'serious harm' means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor or services in order to avoid incurring that harm." 18 U.S.C. § 1589(b)(2).

complaints," (*see* FAC ¶ 62,) and by operating the alleged venture, (*see* FAC ¶ 64,) but also that Defendants acted as knowing beneficiaries of the venture. (*See* FAC ¶¶ 63-64.) Plaintiff alleges that Defendants underpaid him during almost the entire period of his employment, (*see* FAC ¶¶ 33-40,) and "knew that the Supervisor was using threats to prevent [Plaintiff] from complaining and to force [him] to continue to work for them." (*See* FAC ¶ 61.) Defendants argue that Plaintiff's factual allegations regarding their knowledge of the venture are merely "conclusory allegations", as they are solely based "upon information and belief". (*See* Def's Mot. at 14.) However, knowledge and other conditions of a person's mind may be alleged generally in pleadings. NMI R. Civ. P. 9(b). From these allegations, taken as true, an inference may be fairly drawn that evidence on the material points required by 18 U.S.C. § 1595(a) — that Defendants knowingly benefitted from the venture and knew or should have known that the venture had engaged in forced labor — will be introduced at trial. Therefore, Plaintiffs first cause of action is sufficient to survive Defendants' Motion to Dismiss. *See Syed*, 2012 MP 20 ¶ 19.

B. SECOND CAUSE OF ACTION: VIOLATION OF THE ANTI-TRAFFICKING ACT OF 2005 AGAINST ALL DEFENDANTS

The second cause of action is brought pursuant to the CNMI Anti-Trafficking Act of 2005 ("ATA"). (*See* FAC ¶¶ 10-11.) "An individual who is a victim of a violation under [the ATA] may bring a subsequent civil action in the Commonwealth Superior Court." 6 CMC § 1507. In violation of the ATA, "[a] person commits the crime of involuntary servitude if the person recklessly, knowingly, or intentionally subjects, or attempts to subject, another person to forced labor or services[3] without due process of law." 6 CMC § 1502. "A person commits the crime of

[3] "'Forced Labor or Services' means labor or services that are performed or provided by another person and are obtained or maintained through an actor's: (1) Causing, attempting to cause, or threatening to cause injury to any person; (2) Physically restraining, attempting to physically restrain, or threatening to physically restrain, any person; (3) Abusing, attempting to abuse, or threatening to abuse the law or legal process; (4) Engaging in conduct described in the

human trafficking for involuntary servitude if the person . . . [k]nowingly recruits, transports, entices, harbors, provides, or obtains[4] by any means, another person, knowing or with the intent that the person will be subjected to involuntary servitude." 6 CMC § 1503(a). The Court again need not strain to infer that the Supervisor's threats to injure Plaintiff could constitute forced labor and thus qualify his employment as involuntary servitude pursuant to 6 CMC § 1502. Defendants "obtained" Plaintiff by employing him. (*See* FAC ¶ 42.) From the same allegations addressed in Section IV(A), an inference may be fairly drawn that evidence on the material points required by 6 CMC §§ 1503(a), 1502, and 1507 — that Defendants employed Plaintiff knowing or with the intent that he would be subjected to involuntary servitude — will be introduced at trial. Therefore, Plaintiff's second cause of action is sufficient to survive Defendants' Motion to Dismiss. *See Syed*, 2012 MP 20 ¶ 19.

C. THIRD AND FOURTH CAUSES OF ACTION: BREACH OF CONTRACTS AGAINST ALL DEFENDANTS

The third and fourth causes of action claim breach of Plaintiff's employment contracts with ATSC and MWIC, respectively, resulting from his alleged underpayment. (*See* FAC ¶¶ 11-12.) The claims are brought against all Defendants, as Plaintiff claims all are liable as alter egos of the two companies.[5] (*See id.*) Defendants argue that the causes of action should be limited to only those defendants who were parties to the contract, and challenges the sufficiency of Plaintiff's alter ego claims. (*See* Def's Mot. at 15-17.) However, in his Opposition, Plaintiff raised the issue that

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criminal coercion statute, 6 CMC § 1431(a); (5) Knowingly destroying, concealing, removing, confiscating or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person; (6) Causing, attempting to cause, or threatening to cause financial harm to any person; or (7) Subjecting another to debt bondage." 6 CMC § 1501(h).

[4] "'Obtain' means, in relation to labor or services, to secure performance thereof." 6 CMC § 1501(o).

[5] Plaintiff also claims all Defendants are liable for the alleged violations of the MWHA based on this alter ego theory. FAC 112.

NMI R. Civ. P. 12(g)(2) bars Defendants' argument. (*See* Pl's Opp'n at 9-10.) Therefore, before the Court may examine the sufficiency of the third and fourth causes of action, the Court must first address NMI R. Civ. P. 12(g)(2).

1. Application of NMI R. Civ. P. 12(g)(2) would inhibit judicial efficiency and economy.

NMI R. Civ. P. 12(g)(2) prevents a party from raising a defense or objection in a second motion to dismiss that was available to the party but omitted from its earlier motion to dismiss. However, NMI R. Civ. P. 12(g), like the substantially similar Fed. R. Civ. P. 12(g), must be construed to secure judicial efficiency and economy. *See* NMI R. Civ. P. 1(a). For this reason, the Ninth Circuit considers the trial court's application of Fed. R. Civ. P. 12(g)(2) discretionary, when declining to hear Fed. R. Civ. P. 12(b)(6) motions could "produce unnecessary and costly delays, contrary to the direction of Rule 1." *Apple iPhone Antitrust Litig.*, 846 F.3d 313, 319 (9th Cir. 2017).[6]

In the instant case, in both the FAC and the original Complaint, Plaintiff asserted the third and fourth causes of action against all Defendants, including those not parties to the contracts, based on the alter ego theory. (*Compare* Compl. ¶¶ 55, 61 *with* FAC ¶¶ 84, 92.) Therefore, Defendants could have raised their argument against the alter ego theory in their first motion to dismiss. However, if the Court denies to hear Defendants' argument pursuant to NMI R. Civ. P. 12(g)(2), Defendants could raise the same argument through a motion for judgment on the pleadings, pursuant to NMI R. Civ. P. 12(c) — predicated by the same argument that there are no material issues of fact to be resolved and that the parties are entitled to judgment as a matter of law. (*See* Def's Mot. at 17.) "[T]he parties would repeat the briefing they have already undertaken, and

[6] As Fed. R. Civ. P. 1(a) & 12(g)(2) and NMI R. Civ. P. 1(a) & 12(g)(2) are substantially similar, the Court is guided by the Ninth Circuit's interpretation of the federal rules.

the Court would have to address the same questions in several months. That is not the intended effect of Rule 12(g), and the result would be in contradiction of Rule 1's mandate." *Apple iPhone Antitrust Litig.*, 846 F.3d at 318-19. Therefore, the Court shall consider Defendants' argument against Plaintiff's alter ego theory herein, to secure judicial efficiency and economy, pursuant to NMI R. Civ. P. 1(a).

2. Plaintiff has sufficiently pled that all Defendants are liable for breach of contract, as alter egos of ATSC and MWIC.

Plaintiff's third and fourth causes of action are brought against all Defendants, as Plaintiff claims all are liable for breach of contract as alter egos of ATSC and MWIC. (*See* FAC ¶¶ 11-12.) Under the alter ego doctrine, when "shareholders treat the corporation not as a separate entity but instead as an instrument to conduct their own personal business, the corporation and the shareholder are deemed one entity." *United Enters., Inc. v. King*, 4 NMI 304, 307 (1995) (citations omitted). To 'pierce the corporate veil' and find all Defendants liable, the Court must first determine "whether the interests of the dominant stockholders are so intertwined with those of the corporation that separate entities no longer exist, and, second, whether injustice or fraud would result if the fiction of separate entities was upheld." *Id.*

Under the alter ego doctrine, Plaintiff must first show that Defendants acted as one entity. *Id.* To determine whether Defendants acted as one, the Court examines factors such as:

> Undercapitalization, failure to observe corporate formalities, nonpayment of dividends, siphoning of corporate funds by dominant stockholders, nonfunctioning of other officers or directors, absence of corporate records, use of the corporation as a facade for the operations of the dominant stockholders, and use of the corporate entity in promoting injustice or fraud. . . . Other relevant factors considered by courts may include: [w]hether the individual is in a position of control or authority over the entity[,] [w]hether the individual controls the entity's actions without need to consult others[,] [w]hether the individual uses the entity to shield himself from personal liability[,] [w]hether the individual uses the business entity for his or her own financial benefit[,] [w]hether the individual mingles his own affairs in the affairs of the business entity[,] and [w]hether the individual uses the business entity to assume his own debts, or the debts of another, or whether the individual uses his own funds to pay the business entity's debts.
> *Id.* (citations omitted).

Plaintiff's FAC alleges many of these factors. ATSC and MWIC allegedly "shared their management and employees, commingled their funds, and failed to observe corporate formalities[,]" and Li, as a dominant shareholder, allegedly used ATSC and MWIC as a facade for his operations and to promote injustice through forced labor and underpayment of his employees. (*See* FAC ¶¶ 8-10, 61-65.) Taking these allegations as true and in a light most favorable to Plaintiff, an inference may be fairly drawn that evidence on these material factors will be introduced at trial. Therefore, the Court finds that Plaintiff has sufficiently pled that Defendants acted as one entity.

Next, Plaintiff must show that injustice or fraud would result if the fiction of separate entities was upheld. *King*, 4 NMI at 307. Plaintiff alleges that he was assigned by Li to work at whatever businesses Li thought fit, regardless of which company was sponsoring his CW-1 visa or the terms of his individual employment agreements. (*See* FAC ¶¶ 11, 24.) "During the entire period of [Plaintiff's] employment with [Defendants], Li had the authority and responsibility of determining how much wages [were] to be paid to [Plaintiff], and was the person who decided how much wages [were] to be paid to [Plaintiff]." (*See* FAC ¶ 27.) Based on these allegations, Li freely assigned Plaintiff to work for both ATSC and MWIC and caused Plaintiff's underpayment regardless of which of the two companies he was employed with at the time. Taking these allegations as true and in the light most favorable to Plaintiff, injustice may result as "observance of the corporate form could permit the two corporations to confuse [Plaintiff] and frustrate [his] efforts to protect [his] rights before suit, while allowing the party responsible . . . to evade liability after suit[.]" *Gatecliff v. Great Republic Life Ins. Co.*, 821 P.2d 725, 729 (Ariz. 1991). Therefore, the Court finds that Plaintiff has sufficiently pled that injustice would result if the fiction of separate entities was upheld, and the third and fourth causes of action, as brought against all

Defendants under the alter ego doctrine, are sufficient to survive Defendants' Motion to Dismiss. *See Syed*, 2012 MP 20 ¶ 19.

D. FIFTH AND SIXTH CAUSES OF ACTION: VIOLATIONS OF FAIR LABOR STANDARDS ACT OF 1938 AND MINIMUM WAGE AND HOUR ACT

1. It is not apparent from the face of the FAC that the fifth and sixth causes of action against ATSC are barred by the elapse of the relevant statutes of limitations due to the application of equitable tolling.

The fifth cause of action alleges a violation of the Fair Labor Standards Act ("FLSA"), and the sixth cause of action alleges a violation of the Minimum Wage and Hour Act ("MWHA"). (*See* FAC ¶¶ 12-14.) Defendants first move the Court to dismiss the fifth and sixth causes of action against ATSC with prejudice, as the applicable statutes of limitations have elapsed. (*See* Def's Mot. at 17-18.) "The failure to file a complaint within the limitations period is sufficient to support a Rule 12(b)(6) dismissal." *Oden v. N. Marianas College*, 2003 MP 13 ¶ 7. However, the defense "must be apparent from the face of the complaint." *Id.*

Claims brought pursuant to the FLSA must be filed within two (2) years of a violation of the FLSA, or within three (3) years if the violation was "willful." 29 U.S.C. § 255(a). Whereas, claims brought pursuant to the MWHA must be filed within six (6) months of a violation, or one (1) year if the violation was willful. 4 CMC § 9246(a). Plaintiff's employment contract with ATSC allegedly ended in January 2018, and he was thereafter employed by MWIC until approximately September 2021. (*See* FAC ¶¶ 22-26.) On October 4, 2021, Plaintiff filed the instant action. (*See* Compl.) Therefore, the statutes of limitations to bring the claims have seemingly elapsed with respect to Plaintiff's employment by ATSC.

However, Plaintiff argues he is "entitled to equitable tolling of the applicable statute of limitations." (*See* FAC ¶ 100.) Equitable tolling may apply when either: (1) extraordinary

circumstances beyond the plaintiff's control made it impossible to file a claim on time; or (2) the plaintiff is prevented from asserting a claim by wrongful conduct on the part of the defendant. *See Helton v. Factor 5, Inc.*, C 10-04927, 2011 WL 5925078, at *2 (N.D. Cal. Nov. 28, 2011) (citing *Stoll v. Runyon*, 165 F.3d 1238, 1242 (9th Cir. 1999)).[7] Plaintiff alleges that "because of the threats made by the Supervisor and because of the harm he believed he would face if he complained, [Plaintiff] felt that he had no choice but to continue to work for Defendants." (*See* FAC ¶ 74.) Furthermore, he "was afraid to raise issues with his wages for fear of serious harm being inflicted on him and his family." (*See* FAC ¶¶ 98, 108.) Plaintiff further alleges that Defendants knew of and encouraged the Supervisor's threats. (*See* FAC ¶¶ 18, 53, 54, 61.) Taking these allegations as true, the Court may fairly infer that evidence will be introduced at trial that Plaintiff was prevented from asserting the claims by wrongful conduct on the part of Defendants and that equitable tolling applies. *See Syed*, 2012 MP 20 ¶ 34. Therefore, application of the relevant statutes of limitations is unapparent, solely based on the face of the FAC, and the fifth and sixth causes of action against ATSC are sufficient to survive Defendants' Motion to Dismiss, despite the elapsing of the relevant statutes of limitations. *See Oden, 2003 MP 13 ¶ 7.*

2. The fifth and sixth causes of action contain direct allegations on every material point necessary to sustain recovery under the FLSA and the MWHA.

Defendants also move to dismiss the fifth and sixth causes of action against all Defendants because, "[o]ther than [Plaintiff's] vague and conclusory assertion that the Defendants have violated the FLSA and MWHA, [Plaintiff] makes no attempt to plead which sections of the FLSA or MWHA the Defendants have violated, which of the Defendants he contends was his employer nor what dates he was not properly paid overtime." (*See* Def's Mot. at 17.) However, "[t]o survive

[7] Both parties agree that this is the applicable standard. (*Compare* Def's Mot. at 18 *with* Pl's Opp'n at 18.)

a Rule 12(b)(6) motion to dismiss, a complaint must contain either direct allegations on every material point necessary to sustain a recovery on *any* legal theory, even though it may not be the theory suggested or intended by the pleader . . . ." *See Syed*, 2012 MP 20 ¶ 19 (emphasis added).

The FLSA requires that employers[8] with employees employed in an "enterprise engaged in commerce or in the production of good for commerce" must pay their employees a federally-imposed minimum wage.[9] 29 U.S.C. § 206(a). 29 U.S. Code § 216(b) grants employees a civil cause of action to collect damages from their employers for violations of the FLSA. Plaintiff alleges that "for almost the entire period of his employment … both ATSC and MWIC underpaid [him] by paying him a fixed monthly salary at a rate below the applicable federal minimum wage (starting at $750 per month and eventually increasing to about $1,250 per month, and, only for the last few months, about $1,500 per month), and by not paying him 1.5 times the regular rate for his overtime hours." (*See* FAC ¶ 36.) Plaintiff further alleges that he worked approximately sixty-three (63) hours per week for the companies. (*See* FAC ¶ 34.) This equates to a salary range of approximately $2.75 to $5.49 per hour, which was below the federally-imposed minimum wage throughout his employment. Therefore, Plaintiff's FAC contains direct allegations on every material point necessary to sustain a recovery on his fifth cause of action against Defendants, pursuant to 29 U.S. Code § 216(b). *See Syed*, 2012 MP 20 ¶ 19.

The sixth cause of action of the FAC "is asserted as to the period of [Plaintiff's] employment when he was no longer sponsored by MWIC for a CW-1 visa and had no written contract with MWIC." (*See* FAC ¶ 102.) 4 CMC § 9243 grants employees a civil cause of action to

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[8] An employer means an "enterprise engaged in commerce or in the production of good for commerce" if the employer has employees "handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce" and an "annual gross volume of sales made or business done" not less than $500,000. 29 U.S.C. § 203(s)(1)(A).

[9] The federally-imposed minimum wage was: $6.05 per hour in 2016 until September 29, 2016; then, $6.55 per hour until September 29, 2017; then, $7.05 per hour until September 29, 2018; and finally, $7.25 per hour starting on September 30, 2018. *See* PUB. L. No. 110-28, § 8103(b)(1); PUB. L. No. 111-244, § 2(a); PUB. L. No. 113-34, § 2.

collect damages from their employers for violations of the MWHA. Under the MWHA, employers must pay employees compensation at a rate of one and one-half times the regular rate for hours worked in excess of forty (40) hours a week. 4 CMC § 9222. Plaintiff alleges that he worked approximately sixty-three (63) hours per week for MWIC, but did not receive the required 1.5 times regular rate for overtime. (*See* FAC ¶¶ 34, 36, 105.) Based on these allegations, Plaintiff's complaint contains direct allegations on every material point necessary to sustain a recovery on his sixth cause of action against MWIC, pursuant to 4 CMC § 9243. *See Syed*, 2012 MP 20 ¶ 19.

However, Plaintiff additionally claims that "ATSC and Li are liable as well also because they were joint employers of [Plaintiff]." (*See* FAC ¶ 113.) The MWHA defines "employer" as "any individual, partnership, association, corporation, business trust, legal representative, the government, its agencies and instrumentalities, or any organized group of persons, acting directly or indirectly in the interest of an employer in relation to an employee . . . ." 4 CMC § 9212(f). Any individual who exercises control over the nature and structure of the employment relationship may also qualify as an "employer." *See, e.g.*, *Bucher v. Shaw*, 572 F.3d 1087, 1091 (9th Cir. 2009) (reversing dismissal of FLSA claims against individual managers because they qualified as an "employer" under FLSA).[10]

Plaintiff's FAC contains direct or indirect allegations that Defendants exercised control over the nature and structure of the employment relationship. Defendants allegedly jointly operated businesses, which were under the common control of Li, and assigned and dispatched Plaintiff at will to work at the businesses operated by them, interchangeably. (*See* FAC ¶¶ 6-7, 34.) From these allegations, an inference may be fairly drawn that evidence of whether ATSC and Li were

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[10] The Court is guided by the Ninth Circuit's decision regarding the term 'employer', as used in the FLSA, to interpret the term as used in the MWHA because both the FLSA and the MWHA define employer to include those that are acting directly or indirectly in the interest of an employer in relation to an employee. *Compare* 29 U.S.C. § 203(d) *with* 4 CMC § 9212(f).

joint employers of Plaintiff at the time of the alleged MWHA violations will be introduced at trial. *See Syed*, 2012 MP 20 ¶ 19. Therefore, the Court finds that Plaintiff's fifth and sixth causes of action are sufficient to survive Defendants' Motion to Dismiss.

V. CONCLUSION

For the aforementioned reasons, Defendants' Motion to Dismiss Plaintiff's First Amended Complaint is hereby **DENIED.**

SO ORDERED this **12th** day of January, 2023.

/s/
KENNETH L. GOVENDO,
Associate Judge