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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

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11 VICTOR SANTACRUZ, LUIS
SANTACRUZ, CIRILO MANCINAS
12 LOPEZ, RAYMUNDO MARTINEZ,
LUCIA GARCIA, and WILLIAM
13 ALCANTAR,

14 Plaintiffs,

15 v.

16 SOUTHBANK DAIRIES, LLC, a
Washington Limited Liability Company,
17 and JERRY D. FOSTER, an individual,

18 Defendants.

CASE NO. C16-5200 RJB

ORDER ON DEFENDANTS'
MOTION TO DISMISS
PLAINTIFFS' DELIBERATE
INJURY CLAIM

19 This matter comes before the Court on Defendants' Motion to Dismiss Plaintiffs'
20 Deliberate Injury Claim. Dkt. 27. The Court has considered the pleadings filed regarding the
21 motion and the remainder of the file.

22 Filed March 16, 2016, this case arises from Plaintiffs' employment at Defendants' dairy
23 farm. Dkt. 1. In their First Amended Complaint, Plaintiffs assert that they did not receive all
24 wages due, suffered uncompensated physical injuries, and experienced racial discrimination.

ORDER ON DEFENDANTS' MOTION TO
DISMISS PLAINTIFFS' DELIBERATE INJURY
CLAIM- 1

1 Dkt. 26. Plaintiffs make claims under the Fair Labor Standards Act, 29 U.S.C. 206, *et seq.*, the
2 Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. § 1802 *et seq.*, and make
3 state law claims under Washington’s wage and hours laws, for discrimination in violation of
4 Washington’s Law Against Discrimination, RCW 49.60, *et seq.*, breach of contract, for the
5 “deliberate intent to injure/personal injury,” and for fraudulent concealment. *Id.*

6 Defendants move the Court for a second time for dismissal of Plaintiffs’ “deliberate
7 intent to injure/personal injury” claim. Dkt. 27. For the reasons stated below, the motion to
8 dismiss (Dkt. 27) should be granted.

9 I. FACTS

10 The following facts are taken from Plaintiff’s First Amended Complaint. Plaintiffs, along
11 with around 25 other employees, worked for Defendants Southbank Dairies LLC (“Southbank”)
12 and Southbank’s owner, Defendant Jerry Foster. Dkt. 26, at 3-4. Southbank had anywhere
13 between 600-1,500 head of cattle in the operation during the relevant time. *Id.* Plaintiffs state
14 that they all identify as Latino and/or Mexican and all speak Spanish. *Id.*

15 Plaintiffs allege that they generally worked between six to seven days a week. *Id.*, at 4.
16 They assert that Mr. Foster regularly paid them for fewer hours than they worked. *Id.* Plaintiffs
17 maintain that Mr. Foster did not maintain records of his reduction of their hours. *Id.* Plaintiffs
18 assert that they were not given meal or rest breaks. *Id.*

19 In regard to their claim for deliberate intent to injure, Plaintiffs assert that Defendants failed
20 to provide adequate safety equipment or training, resulting in personal injury to Plaintiffs. *Id.*, at
21 27. Plaintiffs allege that they “were routinely exposed to health hazards such as pesticides, fish
22 waste, manure, extreme cold and heat, and violent animals without mitigating equipment or
23 training.” *Id.* Plaintiffs assert that they were required to purchase all their own “gloves, work
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1 boots, respiratory protection and jackets to avoid injury from workplace hazards such as cow
2 manure, blood, fish waste, pesticides, veterinary medicines, and other fluids that could be
3 harmful to their health.” *Id.*, at 5. They assert that Defendants provided white/non-Latino
4 employees better working conditions than Plaintiffs were given. *Id.*, at 6.

5 They assert that Defendants failed to post the required information informing Plaintiffs of
6 their right to medical care and lost wages under the state Workers’ Compensation statutes until
7 after the fall of 2015. *Id.*, at 4-6 and 27-28. Plaintiffs state that Defendants did not provide a
8 handbook in Spanish, or explain their rights as workers in any format. *Id.* Plaintiffs allege that
9 when asked to assist in redressing workplace injuries, Defendants refused. *Id.*, at 27-28.

10 Plaintiffs maintain that their economic losses were worsened by Defendants’ refusal to pay
11 medical care or engage in intervening safety measures. *Id.*, at 28. Plaintiffs assert that
12 Defendants also forced them to pay for “their own workers’ compensation benefits out of
13 pocket.” *Id.*

14 Plaintiffs assert that Defendants’ actions were deliberate because they sought to avoid the
15 costs of both prevention and Plaintiffs actual medical care, causing injuries to Plaintiffs. *Id.*, at
16 28. Further, they allege that Defendants actions were “discriminatory, intentional and did not
17 serve an essential business purpose.” *Id.* Plaintiffs maintain that Defendants intentionally
18 caused them injury by failing to inform them of their rights, taking advantage of their limited
19 understanding of English, and then refusing to pay for injuries. *Id.*

20 In addition to exposure to hazardous substances, Plaintiffs also assert that they sustained
21 other individualized injuries. *Id.* Plaintiff Victor Santacruz states that he began working for
22 Defendants in the spring of 2005. *Id.*, at 6. Mr. Victor Santacruz worked in the fields, did
23 construction and repair work, performed maintenance and cleaning, drove tractors and trucks,
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1 and completed any other assigned tasks. *Id.* He alleges that he worked anywhere from 70-140
2 hours per week. *Id.* He asserts that he did not get paid for all the hours he worked. *Id.* As it
3 relates to the current motion, Mr. Victor Santacruz alleges that he was physically injured on the
4 job and Defendants did not inform him of his rights to Workers Compensation. *Id.*, at 9. He
5 alleges that in 2007, while moving concrete blocks for Defendants, he was struck by a heavy
6 metal chain and had two front teeth knocked out. *Id.*, at 10. He alleges that Defendants made
7 him pay for the dental repair work out of his own pocket. *Id.* In 2008, he stepped on a rusty nail
8 and his foot became infected. *Id.* Mr. Victor Santacruz asserts that Defendant Foster observed
9 him limping. *Id.* He asserts that the Defendants did not offer to help and he worked for eight
10 days with an infected foot. *Id.* In 2013, he was assigned to apply an acid wash to the hooves of
11 the cows. *Id.* He alleges that “the cows often resist the treatment and take off running.” *Id.* Mr.
12 Victor Santacruz states that on one occasion, this acid was kicked back into his face and eyes.
13 *Id.* He suffered from red painful eyes and had difficulty seeing for weeks. *Id.* Mr. Victor
14 Santacruz asserts that “[b]ecause the Defendants deliberately deprived him of information
15 regarding his rights to Worker’s Compensation, [he] was injured . . . Had he known about his
16 rights through postings, trainings, and accident forms, [he] would have sought medical coverage
17 through industrial insurance.” *Id.*, at 11. He alleges that other non-Latino workers were treated
18 differently – they were helped when injured, medical care was provided, and they were paid for
19 time off. *Id.*

20 Plaintiff Luis Santacruz started working for Defendants in 2005, milking cows, harvesting,
21 cleaning, doing construction, and performing other odd jobs. Dkt. 26, at 11-12. He alleges that
22 he usually worked anywhere from 50-70 hours per week; during the harvest seasons he worked
23 more than 110 hours per week. *Id.* He asserts that he did not get paid for all the hours he
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1 worked. *Id.* As it relates to the current motion, Mr. Luis Santacruz alleges that in or around the
2 summer of 2006, while shoeing a cow, the cow kicked, flipping iron toward Mr. Luis Santacruz,
3 striking him in the mouth. *Id.*, at 13. He alleges that his tooth was damaged, and that the
4 Defendants failed to inform him of his rights under Worker’s Compensation. *Id.* Mr. Luis
5 Santacruz asserts that had he known of his rights, he would have gone to the dentist. *Id.*

6 Plaintiff Cirilo Mancinas López was hired in 2008 to feed the pigs, clean the pens, cover
7 shifts in the milking parlor, and for other tasks. *Id.*, at 15. He also alleges that he worked 10-15
8 hours a day and was not properly compensated. *Id.* As it relates to the current motion, Mr.
9 Mancinas was kicked in the left shoulder by a cow in 2014 while at work. *Id.*, at 18. Defendant
10 Foster witnessed the accident and laughed, and warned Mr. Mancinas to be careful about the new
11 cows. *Id.* Mr. Mancinas states that the next day, his heart was “hurting badly,” and so went to
12 the hospital. *Id.* The doctor told him that he “had an inflamed nerve near his heart and was
13 causing the pain.” *Id.* He alleges that the hospital sent the bill to his home for this workplace
14 injury. *Id.* He states he cannot pay it and his account has been sent to collections. *Id.* He
15 asserts that Defendants did not inform him of his rights to worker’s compensation. *Id.* Mr.
16 Mancinas maintains that, in or around March or April of 2015, while applying veterinary acid to
17 the cows’ hooves, he fell and acid got all over his face and chest. *Id.*, at 19. He alleges that
18 Defendants did not offer assistance. *Id.* Mr. Mancinas maintains that Defendants charged him
19 for protective gear like protective pants and boots. *Id.*

20 Plaintiff Raymundo Martínez was hired around April 26, 2008 to perform a variety of
21 functions on Defendants’ property, including driving trucks transporting fish waste and other
22 materials. Dkt. 26, at 19-20. Mr. Martínez asserts that he was offered \$9.50, regularly worked in
23 excess of 100 hours a week, and Defendants failed to properly compensate him. *Id.*, at 20. As is
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1 relevant to the current motion, Mr. Martínez alleges that in the summer of 2015, he injured his
2 ankle. *Id.*, at 21. He asserts that Defendant Foster insisted that he come into work even though
3 the ankle was not functional. *Id.* Mr. Martínez maintains that Defendant Foster did not offer
4 him light duty, or inform him of his rights under state law for workers' compensation insurance
5 even though Defendants deducted his pay for "insurance." *Id.* He alleges that he asked
6 Defendants for safety gear to protect him from the fumes emanating from the fish acid, cow
7 manure and other protective gear. *Id.*, at 22. Defendants refused. *Id.*

8 Plaintiff Lucia García was hired in January of 2012. Dkt. 26, at 23. She worked 12 hour
9 shifts caring for the cows and giving the cows medicine. *Id.* She also asserts that Defendants did
10 not properly compensate her, and that she rarely, if ever, got meal and rest breaks. *Id.*, at 19-20.
11 On July 24, 2015, Ms. García was assaulted by a coworker, who struck her numerous times and
12 choked her, leaving bruises and marks on her skin. *Id.*, at 20. She reported the assault to
13 Defendant Foster, who "laughed it off" and did not reprimand the other employee. *Id.*, at 24.
14 Defendant Foster did not offer any medical or other assistance to her. *Id.* She asserts that he
15 "ratified" her attacker's physical abuses, "dismissing it as matters between women." *Id.*

16 **II. DISCUSSION**

17 **A. STANDARD ON MOTION TO DISMISS**

18 Fed. R. Civ. P. 12(b)(6) motions to dismiss may be based on either the lack of a
19 cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory.
20 *Balistreri v. Pacifica Police Department*, 901 F.2d 696, 699 (9th Cir. 1990). Material allegations
21 are taken as admitted and the complaint is construed in the plaintiff's favor. *Keniston v. Roberts*,
22 717 F.2d 1295 (9th Cir. 1983). "While a complaint attacked by a Rule 12(b)(6) motion to dismiss
23 does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his
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1 entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the
2 elements of a cause of action will not do.” *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955,
3 1964-65 (2007)(*internal citations omitted*). “Factual allegations must be enough to raise a right
4 to relief above the speculative level, on the assumption that all the allegations in the complaint
5 are true (even if doubtful in fact).” *Id.* at 1965. Plaintiffs must allege “enough facts to state a
6 claim to relief that is plausible on its face.” *Id.* at 1974.

7 If a claim is based on a proper legal theory but fails to allege sufficient facts, the plaintiff
8 should be afforded the opportunity to amend the complaint before dismissal. *Keniston v. Roberts*,
9 717 F.2d 1295, 1300 (9th Cir. 1983). If the claim is not based on a proper legal theory, the claim
10 should be dismissed. *Id.* “Dismissal without leave to amend is improper unless it is clear, upon
11 de novo review, that the complaint could not be saved by any amendment.” *Moss v. U.S. Secret*
12 *Service*, 572 F.3d 962, 972 (9th Cir. 2009).

13 **B. CLAIM FOR DELIBERATE INJURY UNDER WASHINGTON’S RCW 51.24.020**

14 Under Washington’s Industrial Insurance Act, “all civil actions and civil causes of action for
15 [workplace] personal injuries and all jurisdiction of the courts of the state over such causes of
16 action are hereby abolished.” RCW 51.04.010. Employers are not immune from suit, however,
17 “[i]f injury results to a worker from the deliberate intention of his or her employer to produce
18 such injury” RCW 51.24.020. “Washington courts have consistently interpreted RCW
19 51.24.020 narrowly, holding that mere negligence, even gross negligence, does not rise to the
20 level of deliberate intention.” *Vallandigham v. Clover Park Sch. Dist. No. 400*, 154 Wn.2d 16,
21 27 (2005).

22 “The phrase ‘deliberate intention’ in RCW 51.24.020 means (1) the employer had actual
23 knowledge that an injury was certain to occur and (2) the employer willfully disregarded that
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1 knowledge.” *Vallandigham*, at 27–28 (*internal citations and quotations omitted*). “Disregard of
2 a risk of injury is not sufficient to meet the [first] prong; certainty of actual harm must be known
3 and ignored.” *Id.*, at 28. As to the second prong, negligence or gross negligence is insufficient.
4 *Id.*

5 In their second motion to dismiss Plaintiffs’ deliberate injury claim (after it was re-pled in the
6 First Amended Complaint), Defendants argue that Plaintiffs have again failed to plead sufficient
7 facts to establish a plausible deliberate injury claim. Dkt. 27. Defendants again argue that:
8 Plaintiffs did not plead facts sufficient to show the Defendants had actual knowledge that injury
9 was certain and willfully disregarded that knowledge. *Id.* Defendants argue that the Court
10 should enter judgment against Plaintiffs on this claim because they failed to state facts sufficient
11 to confer subject matter jurisdiction on this Court for this claim. *Id.*

12 Plaintiffs respond and argue that Defendants had actual knowledge that injury to
13 Plaintiffs was certain to occur when Defendants “willfully deprived them [of] required health
14 and safety protections, including information about their rights, then ignored Plaintiffs’ injuries
15 when Defendants had actual firsthand knowledge that injury had occurred.” Dkt. 28. Plaintiffs
16 acknowledge that their claim presents a “novel question of law: whether intentionally concealing
17 workers’ compensation information and not reporting workplace accidents . . . may make out a
18 claim for a separate and compensable personal injury subject to the deliberate harm exemption in
19 the Industrial Welfare Act.” *Id.*, at 2-3. They argue that they were first injured when Defendants
20 ignored state and federal safety regulations and Plaintiffs were injured as a result. *Id.* Plaintiffs
21 assert that they were injured a second time when Defendants “knowing of their injuries,
22 exploited Plaintiffs’ inexperience and language barriers to keep them from filing claims for
23 Workers’ Compensation.” *Id.*, at 3.

1 Defendants' motion to dismiss (Dkt. 27) Plaintiffs' claims for deliberate intent to
2 injure/personal injury claim should be granted. Plaintiffs fail to show that Defendants (1) had
3 actual knowledge that an injury was certain to occur and (2) the employer willfully disregarded
4 that knowledge." *Vallandigham*, at 27–28 (*internal citations and quotations omitted*). In the
5 prior order dismissing this claim, the Court held:

6 Plaintiffs allege that they speak only Spanish and that Defendants failed to
7 inform them of their rights generally under the various employment statutes.
8 Plaintiffs contend that Defendants were collecting "L & I insurance" premiums
9 from them, but refused to explain it. Plaintiffs assert that when they were injured,
10 Defendants failed to assist them, and failed to inform them of their rights under
11 the workers' compensation statutes. Those allegations do not seem to fit the
12 intent of RCW 51.24.020. An "injury," "interpreted narrowly" under that statute
13 does not include a failure to know of and understand the state workers'
14 compensation scheme, although arguably such lack of information and
15 understanding will lead to a loss of benefits. While the undersigned takes a dim
16 view of a defendant's use of the workers' compensation statutes as a shield when,
17 if Plaintiffs allegations are correct, the defendant failed to inform Plaintiffs of
18 their benefits under those very statutes, it is not clear that this is a valid claim
19 under the law as pled. Nor does the statute grant this Court jurisdiction and allow
20 them to seek relief for the physical and emotional injuries that Plaintiffs' suffered,
21 because although Plaintiffs allege such injuries were likely, they do not allege that
22 the Defendants had "actual knowledge that those injuries were certain to occur"
23 and "willfully disregarded that knowledge." *Vallandigham*, at 27–28.

16 Dkt. 25, at 9. The analysis has not changed. Plaintiffs' claim for deliberate intent to injure
17 should be dismissed.

18 Moreover, it appears from Washington's workers' compensation statute that at least some
19 of the Plaintiffs may still be entitled to relief under that statute. *See* RCW 51.28.025 generally
20 and RCW 51.28.025(5) (providing that if it is determined that an employer has engaged in claim
21 suppression, "and as a result, a worker has not filed a claim for industrial insurance benefits. . .
22 then the director . . . may waive the time limits for filing a claim . . . if the complaint or
23 allegation of claim suppression is received within two years of the worker's accident or
24 exposure).

