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7 **IN THE UNITED STATES DISTRICT COURT**
8 **FOR THE DISTRICT OF ARIZONA**

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10 Virginia R Morgan, et al.,

11 Plaintiffs,

12 v.

13 Freightliner of Arizona LLC, et al.,

14 Defendants.

No. CV-16-00498-TUC-CKJ

ORDER

15
16 Plaintiffs' have filed a Second Amended Complaint (Doc. 24). Defendants have
17 filed a partial Motion to Dismiss Second Amended Complaint as to Counts II, IV, and V
18 (Doc. 46). Additionally, Plaintiff filed a Response in Opposition to Motion to Dismiss
19 (Doc. 50) to which Defendants' filed a Reply (Doc. 51). Oral argument has been
20 requested. However, the issues are fully presented in the briefs and the Court finds it
21 would not be assisted by oral argument. The Court declines to schedule this matter for
22 oral argument. LRCiv 7.2(f).

23
24 *I. Factual Allegations and Procedural Background¹*

25 In a transaction that closed in February 2015, Defendant Freightliner of Arizona,
26 LLC ("FA"), was transferred ("the Sale") from Defendants FSWAZ, Ltd. ("FSWAZ")

27 ¹ The facts are taken from the Second Amended Complaint and are accepted as true for
28 the purposes of this Order. *Mann v. City of Tucson*, 782 F.2d 790, 793 (9th Cir. 1986)
("Although we must, in general, accept the facts alleged in the complaint as true, wholly
vague and conclusory allegations are not sufficient to withstand a motion to dismiss.")

1 and Danny R. Cuzick and Jane Doe Cuzick (“the Cuzicks”) (collectively, “Seller
2 Defendants”) to Redgate Arizona, LLC, Redgate Partners, LLC, and Redgate
3 (collectively, “Redgate Partners”).²
4

5 *A. Employment History*

6 Virginia R. Morgan (“Morgan”) began working for Freightliner in February 2013 as a
7 Customer Service Representative (“CSR”). Morgan continues to be an employee of
8 Freightliner. Morgan is a female and, at all relevant times, has been over the age of 40.
9 David A. Vivaldo (“Vivaldo”) began working for Freightliner in January 2014 as a CSR.
10 In May 2015 Freightliner, citing budgetary and over-staffing concerns, terminated
11 Vivaldo’s employment. Vivaldo is a Hispanic male of Mexican ancestry.

12 Plaintiffs, after the sale of the business from Seller Defendants to Redgate
13 Partners, continued working at Freightliner under similar rules and operating practices
14 that were comparable to those in existence when FSWAZ was the employer.

15
16 *B. Allegations Regarding Discrimination and a Hostile Work Environment*

17 Plaintiffs have alleged claims of discrimination; specifically, that “[c]ertain
18 FSWAZ and/or FA employees . . ., with the knowledge and acquiescence of
19 management, acted abusively and in a manner inconsistent with what should be tolerated
20 in a modern workplace.” *Id.* at ¶ 69.

21
22 *C. Allegations Regarding Alter Ego/Instrumentality Breach Between FSWAZ and/or
23 FA and the Sole Shareholders (the Cuzicks)*

24 FSWAZ, the Cuzicks, and Redgate Partners were parties to an Asset Sale and
25 Purchase Agreement dated February 13, 2015 (the “APA”). (Doc. 42), ¶ 11. The APA
26 stated FSWAZ and related entities were to transfer the assets, ownership, and control of
27 the business, FA, to which both Plaintiffs were employed prior, during, and after the APA
28 was executed to Redgate Partners. Additionally, not all liabilities were to be transferred

² Redgate Partners have been dismissed from this action.

1 from FSWAZ, the Cuzicks, and other entities to FA’s new owner and operator Redgate
2 Partners. Indeed, the APA stipulated Redgate Partners/FA were not liable for any
3 violations of Plaintiffs’ rights that occurred prior to the Sale. *Id.* at ¶ 18-22. Further, the
4 APA required FSWAZ and the Cuzicks to personally must indemnify Redgate Partners
5 against all potential claims by employees prior to the Sale.³

6 Prior to the Sale, the Cuzicks were the President/C.E.O., sole Director, and/or the
7 primary and/or sole shareholder of FSWAZ. *Id.* at ¶ 13. Also, the Cuzicks had the power
8 to hire and fire employees, the ability to supervise employee work schedules or
9 conditions of employment, the ability to determine employees’ rates and methods of pay,
10 and the duty to maintain employment records.

11 The Cuzicks – prior to the Sale – directed the operations of FSWAZ and otherwise
12 acted directly or indirectly in the interest of FSWAZ. *Id.* at ¶ 14. After the Sale, FSWAZ
13 became a company without a subsidiary since FA – FSWAZ’s subsidiary – was sold to
14 Redgate Partners and later became FA. After the Sale was completed, the Cuzicks moved
15 all proceeds from FA’s sale from FSWAZ’s accounts to their own personal accounts.

16 Plaintiffs allege the Cuzicks – post-Sale – left FSWAZ unable to satisfy any
17 judgement from this case after leaving it undercapitalized and uninsured while they
18 personally benefitted from the Sale. Additionally, the Cuzicks personally indemnified
19 Redgate Partners from any liability resulting from employee claims. Indeed, Plaintiffs
20 further allege the Cuzicks pierced the veil by treating the corporation as if it was one in
21 the same as themselves by failing to observe corporate formalities such as separate and
22 proper accounting, the failure of corporate formalities between himself and FSWAZ, and
23 FSWAZ being a mere instrumentality of the Cuzicks since there was no actual or
24 cognizable difference between FSWAZ and the Cuzicks.

25
26 ³ Article 8.3(b) of the APA stating that FSWAZ and the Cuzicks must “jointly and
27 severally, indemnify, defend, and hold harmless [Redgate Partners] . . . from and against
28 any and all claims, damages, penalties, losses, liabilities, . . . asserted by any current or
former employee of [FSWAZ and other related entities] in connection with the
employment (including termination of employment) of such employee by [FSWAZ and
other related entities].” *Id.* at ¶ 35.

1 D. *Litigation*

2 Morgan filed a charge of discrimination with the Equal Employment Opportunity
3 Commission (“EEOC”) and received a notice of right to sue on June 27, 2016. *Id.* at ¶
4 158-59. Vivaldo filed a charge of discrimination and received a notice of right to sue on
5 June 24, 2016. *Id.* at ¶ 160-61.

6 On August 14, 2017, Plaintiffs filed a Second Amended Complaint. Plaintiffs
7 allege claims as follows:

- 8 a. Count I – Fair Labor Standards Act
- 9 b. Count II – Title VII / Arizona Civil Rights Act
- 10 c. Count III – Equal Pay Act
- 11 d. Count IV – Age Discrimination in Employment Act / Arizona Civil Rights Act
- 12 e. Count V – Arizona Revised Statutes (“A.R.S.”) § 23-355 / Arizona Minimum
13 Wage Act

14 On September 11, 2017, Seller Defendants filed a Motion to Dismiss (Doc. 46).
15 Seller Defendants seek dismissal with prejudice of the Title VII / Arizona Civil Rights
16 Act (“ACRA”) claim in Count II as to Defendant FSWAZ, the Age Discrimination in
17 Employment Act (“ADEA”) / ACRA claim in Count IV as to Defendant FSWAZ, and
18 A.R.S. § 23-355 / Arizona Minimum Wage Act (“AMWA”) claim in Count V as to
19 Defendant Cuzicks.

20 Plaintiffs filed a Response to the Motions to Dismiss on October 2, 2017 (Doc. 50)
21 and Defendants filed a Reply on October 24, 2017 (Doc. 51).

22 II. *Complaint and Plausibility Pleading Standard*

23 As previously stated by the Court, *see* Doc. 29, a complaint is to contain a "short
24 and plain statement of the claim showing that the pleader is entitled to relief[.]"
25 Fed.R.Civ.P. 8(a). Nonetheless, a complaint must set forth a set of facts that serves to put
26 defendants on notice as to the nature and basis of the claim(s). Indeed, the United States
27 Supreme Court has found that a plaintiff must allege “enough facts to state a claim to
28 relief that is plausible on its facts.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570

1 (2007). While a complaint need not plead “detailed factual allegations,” the factual
2 allegations it does include “must be enough to raise a right to relief above the speculative
3 level.” *Id.* at 555; *see also Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011) (“If there
4 are two alternative explanations, one advanced by defendant and the other advanced by
5 plaintiff, both of which are plausible, plaintiff’s complaint survives a motion to
6 dismiss[.]”).

7 Additionally, when a court is considering a motion to dismiss, allegations that are
8 a mere conclusion are not entitled to the assumption of truth if unsupported by factual
9 allegations that allow the court “to draw the reasonable inference that the defendant is
10 liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 663-64 (2009). This
11 Court must take as true all allegations of material fact and construe them in the light most
12 favorable to Plaintiffs. *See Cervantes v. United States*, 330 F.3d 1186, 1187 (9th Cir.
13 2003). In general, a complaint is construed favorably to the pleader. *See Scheuer v.*
14 *Rhodes*, 416 U.S. 232, 236 (1974), *overruled on other grounds*, 457 U.S. 800; *Erickson v.*
15 *Pardus*, 551 U.S. 89, 94 (2007) (“All pleadings shall be so construed as to do substantial
16 justice”); *Mason v. Unkeless*, 618 F.2d 597 (9th Cir. 1980).

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18 III. *Counts II & IV – Title VII / Arizona Civil Rights Act & Age Discrimination in*
19 *Employment Act Claims as to Morgan*

20 The Court found that Plaintiffs did not allege they were employed by FSWAZ;
21 therefore, the Court determined these entities could not be liable under Counts I through
22 VI. (Doc. 29 at 23). The Court determined dismissal with leave to amend was
23 appropriate. (*Id.* at 23-24). The Court then ordered, however, that the federal and state
24 anti-discrimination claims against FSWAZ were dismissed without leave to amend. (*Id.*
25 at 26). Seller Defendants point to this Order and argue that, because Morgan’s claims as
26 to Count II & IV regarding federal and state anti-discrimination claims were dismissed
27 without leave to amend, Plaintiffs cannot now re-allege those claims.

28 To any extent the previous Order (Doc. 29) was not clear as to these points, the
Court agrees with the analysis of Plaintiffs, especially when considering the policy to

1 liberally construe pleadings in the interests of justice. *Johnson v. Reagan*, 524 F.2d 1123
2 (9th Cir. 1975). Specifically, when the Court was discussing the liability of FSWAZ, the
3 Court pointed out that this entity was not alleged to have taken any action regarding
4 Plaintiffs. This finding leads to a conclusion that the Order that dismissal without leave
5 to amend was made in error. Rather, this finding dictates that Plaintiffs may now include
6 the amended allegations. The Motion to Dismiss as to this issue will be denied.

7
8 *IV. Count V – Plaintiffs’ Alter Ego Claim Against the Cuzicks*

9 Seller Defendants argue Plaintiffs have not alleged sufficient facts to support the
10 claim against the Cuzicks for the state wage claim. Seller Defendants acknowledge that
11 Plaintiffs have referred to the Cuzicks as the employer, but have not provided any
12 supporting allegations/facts. Rather, Seller Defendants assert Plaintiffs have alleged
13 FSWAZ was the employer.

14 The parties dispute whether the corporate veil may be pierced to permit suit
15 against the Cuzicks. “A corporate entity will be disregarded, and the corporate veil
16 pierced, only if there is sufficient evidence that 1) the corporation is the alter ego or
17 business conduit of a person, and 2) disregarding the corporation’s separate legal status is
18 necessary to prevent injustice or fraud.” *Loiselle v. Cosas Mgmt. Grp., LLC*, 224 Ariz.
19 207, 214, 228 P.3d 943, 950 (App. 2010) (internal citations and quotation marks
20 omitted).

21 In utilizing the alter ego test, the law of the forum state is applied. *Towe Antique*
22 *Ford Found. v. I.R.S.*, 999 F.2d 1387, 1391 (9th Cir. 1993). Arizona law recognizes a
23 presumption of corporate separateness under which a parent corporation is not liable for
24 the actions of a subsidiary. *Deutsche Credit Corp. v. Case Power & Equip. Co.*, 876 P.2d
25 1190, 1195 (Ariz. Ct. App. 1994). Additionally, the A.R.S. § 10-908 articles of
26 incorporation provide that the private property of the shareholders is exempt from
27 liability for corporate debts except those set forth in A.R.S. § 10-905. However, the alter
28 ego theory allows a parent corporation to be held liable for the acts of its subsidiary when
the individuality or separateness of the subsidiary corporation has ceased. *Gatecliff v.*

1 *Great Republic Life Ins. Co.*, 821 P.2d 725, 728 (Ariz. 1991). "An alter ego or agency
2 relationship is typified by parental control of the subsidiary's internal affairs or daily
3 operations." *Doe v. Unocal Corp.*, 248 F.3d 915, 926 (9th Cir. 2001) (citing *Kramer*
4 *Motors, Inc. v. British Leyland, Ltd.*, 628 F.2d 1175, 1177 (9th Cir. 1980)).

5 To establish alter ego liability, a plaintiff must prove two prongs (1) unity of
6 control and (2) that observance of the corporate form would sanction a fraud or promote
7 injustice. *Doe v. Unocal Corp.*, 248 F.3d at 926 (citing *Dietel v. Day*, 492 P.2d 455, 457
8 (Ariz. Ct. App. 1972)). The Court considers these prongs in assessing whether Plaintiffs
9 have adequately stated a claim upon which relief may be granted. Unity of control is
10 shown when a parent exercises "substantially total control over the management and
11 activities" of its subsidiary. *Gatecliff*, 821 P.2d at 728 (internal citations and quotations
12 omitted). A plaintiff may establish that a parent has unity of control by showing, among
13 other things: parent stock ownership; common officers or directors; parent financing of
14 the subsidiary; payment of salaries and other expenses of subsidiary by the parent;
15 failure of subsidiary to maintain formalities of separate corporate existence; similarity of
16 logo; plaintiff's lack of knowledge of subsidiary's separate corporate existence;
17 observance of formalities of corporate meetings; Intermixing of shareholders' actions
18 with those of corporation; filing of corporate income tax returns and Arizona Corporation
19 Commission (ACC) annual reports; maintaining of corporate financial records; and
20 adequacy of capital at the time of corporation's formation. *Patterson v. Home Depot,*
21 *USA, Inc.*, 684 F.Supp.2d 1170, 1177-79 (D. Ariz. 2010); *Gatecliff*, 821 P.2d at 728;
22 *Standage v. Standage*, 711 P.2d 612, 614-16 (Ariz. Ct. App. 1985); *Honeywell, Inc. v.*
23 *Arnold Construction Co.*, 654 P.2d 301, 307 (Ariz. Ct. App. 1982); *Norris Chem. Co. v.*
24 *Ingram*, 679 P.2d 567, 570-71 (Ariz. Ct. App. 1984). Isolated occurrences of some of
25 these factors are not enough to establish an alter ego liability. *Patterson v. Home Depot,*
26 *USA, Inc.*, 684 F.Supp.2d at 1177-79.

27 Although "[a]lter ego determinations are highly fact-based," *Legacy Wireless*
28 *Servs., Inc. v. Human Capital, L.L.C.*, 314 F.Supp.2d 1045 (D. Or. 2004), "[c]onclusory
allegations of 'alter ego' status are insufficient to state a claim" because "a plaintiff must

1 allege specifically [the facts and elements of an alter ego claim]." *Neilson v. Union Bank*
2 *of Cal., N.A.*, 290 F.Supp.2d 1101, 1116 (C.D. Cal. 2003). *See also Bell Atlantic Corp. v.*
3 *Twombly*, 550 U.S. at 555 (requiring more than "labels and conclusions" to survive a
4 motion to dismiss).

5
6 A. *Unity of Control Prong*

7 First, the Second Amended Complaint alleges the Cuzicks were the
8 President/C.E.O., sole director, and/or the primary and/or sole shareholder of
9 Freightliner. Indeed, the mere fact that FSWAZ is solely owned by the sole shareholder,
10 director, president, and general manager does not mean a corporation is the owner's alter
11 ego. *Ize Nantan Bagowa, Ltd. v. Scalia*, 577 P.2d 725, 728-29, 728-29 (Ariz. Ct. App.
12 1978); *Deutsche Credit Corp. v. Case Power & Equip. Co.*, 876 P.2d at 1195-96;
13 *Jabczenski v. Southern Pacific Memorial Hospital, Inc.*, 579 P.2d 53, 59 (Ariz. Ct. App.
14 1978). *See also Bass v. Shutan*, 259 F.2d 561, 563 (9th Cir. 1958).

15 Second, Plaintiffs allege the Cuzicks failed to maintain separate corporate
16 formalities such as separate and proper accounting for FSWAZ. (Doc. 42), ¶ 39-41.
17 However, Plaintiffs fail to allege a clear lack and disregard for corporate formalities by
18 the Cuzicks beyond proper accounting. *Chapman v. Field*, 602 P.2d 481, 483-84 (Ariz.
19 1979) (finding the alter ego claim was not met even when the corporation's stockholders
20 lent money to the corporation without taking promissory notes, failed to file annual
21 reports with the ACC, and failed to keep proper books of account).

22 Third, Plaintiffs allege the Cuzicks mixed their personal actions with that of the
23 corporation as to make no cognizable difference between the Cuzicks and FSWAZ. Here,
24 Plaintiffs' allegations are merely conclusory without stating any facts and elements of the
25 alter ego claim. *See Gatecliff*, 821 P.2d 725; *Standage v. Standage*, 711 P.2d 612;
26 *Honeywell, Inc. v. Arnold Construction Co.*, 654 P.2d at 307. *See also Chapman*, 602
27 P.2d at 484.

28 Fourth, Plaintiffs allege the Cuzicks left FSWAZ so undercapitalized as to make
satisfying any judgement against FSWAZ impossible to collect. (Doc. 42), ¶ 37-38. In

1 *Norris*, the court held capitalization was to be only measured as of the time of the
2 formation of the corporation, and any adequately capitalized corporation when formed
3 but suffers financial losses thereafter is not undercapitalized. *Norris Chem. Co.*, 679 P.2d
4 at 570-71. *See Shafford v. Otto Sales Company*, 308 P.2d 428, 431-432 (Cal. Ct. App.
5 1957) (adding insolvency occurring soon after incorporation may be a primary indicator
6 of undercapitalization). Further, undercapitalization cannot be proven by merely showing
7 a corporation was now insolvent. *Ize Nantan Bagowa, Ltd. v. Scalia*, 577 P.2d at 729-30.

8 Finally, as summarized in a treatise:

9 The prevailing rule is that where corporate formalities are substantially observed,
10 [reasonably adequate initial financing], and the corporation not formed to evade
11 an existing obligation or a statute or to cheat or to defraud, even a controlling
shareholder enjoys limited liability.

12 However, where the corporation is *launched with inadequate finances*, . . . there is
13 more justification for holding the latter [controlling shareholder or shareholders]
14 liable. [footnotes omitted]" (Emphasis added)

15 H. Henn, *Law of Corporations*, § 146 at 253-254. Henn also states in § 146, footnote 21:
16 ". . . Financial inadequacy is measured by the nature and magnitude of the corporate
17 undertaking or the reasonableness of the cushion for creditors *at the time of the inception*
18 *of the corporation . . .*" (Emphasis added)

19 Here, Plaintiffs have failed to adequately allege (1) FSWAZ was inadequately
20 capitalized at formation, (2) any claim of insolvency soon after its incorporation, or (3)
21 any claim of inadequate finances at formation when measuring the corporation "by the
22 nature and magnitude of the corporation's undertaking or the reasonableness of the
23 cushion for creditors." *Id.* Indeed, Plaintiffs claim FSWAZ was undercapitalized only
24 after Freightliner was sold to Redgate Partners and *never* alleged any of the three
25 undercapitalization avenues available.

26 B. *Fraud or Promote Injustice Prong*

27 Considering the alter ego test's second prong, Plaintiffs failed to allege non-
28 conclusory facts as to fraud or the promotion of injustice when Freightliner was sold to

1 Redgate Partners. Indeed, Plaintiffs’ allegations orbit around Freightliner’s sale and the
2 resulting transfer of FSWAZ’s assets to the Cuzicks. Per the Court’s ruling in *Dietel*,
3 there are no allegations indicating fraud would be sanctioned if the Cuzicks were
4 removed from the case when transferring assets between FSWAZ and the Cuzicks. *Dietel*
5 *v. Day*, 492 P.2d 455, 457-58 (Ariz. Ct. App. 1972); *see also Ferrarell v. Robinson*, 465
6 P.2d 610, 613 (Ariz. Ct. App. 1970). Additionally, there are no allegations there would be
7 injustice when the Cuzicks agreed to sell Freightliner. Further, Plaintiffs’ failure to
8 receive the benefit of the bargain “does not constitute any evidence of fraudulent conduct
9 and it is not sufficient to justify . . . disregarding of the corporate entity.” *Dietel*, 492 P.2d
10 at 457-458.

11 Therefore, based upon consideration of these prongs, the Court finds Plaintiffs
12 failed to sufficiently allege unity of control or that the sale of the business and transfer of
13 assets constitutes fraud or was to promote injustice. Therefore, the Court finds Plaintiffs
14 have not alleged sufficient facts to support an alter ego claim against the Cuzicks; the
15 Court will dismiss Plaintiffs’ alter ego claims against the Cuzicks.

16 17 *V. Plaintiffs’ Alleged Instrumentality Claim Against the Cuzicks*

18 The instrumentality is described as the “principle that a corporation is treated as a
19 subsidiary if it is controlled to a great extent by another corporation.” *Instrumentality*
20 *Rule*, Black’s Law Dictionary (10th ed. 2014). Further, the instrumentality test is treated
21 as a similar but as a distinct method to the alter ego test. *Gatecliff*, 821 P.2d at 729-30.
22 Under Arizona law, a subsidiary has become a mere instrumentality of the parent
23 corporation when it is so overshadowed by the parent corporation that the subsidiary’s
24 corporate identity should be disregarded to prevent fraud. *Horizon Res. Bethany v. Cutco*
25 *Indus.*, 881 P.2d 1177, 1180 (Ariz. Ct. App. 1994). *See also, Oldenburger v. Del E. Webb*
26 *Dev. Co.*, 765 P.2d 531, 536 (Ariz. Ct. App. 1988) (refusing to disregard corporate form
27 where evidence showed that parent corporation had authority to overrule subsidiary’s
28 decisions but took no such action). However, the courts “will look beyond the legal
fiction of distinct corporate existence, as the interests of justice require” *Walker v.*

1 *Southwest Mines Dev. Co.*, 81 P.2d 90, 95 (1938) (quoting *Platt v. Bradner Co.*, 230 P.
2 633, 635 (Wash. 1924)).

3 Here, Plaintiffs' allegations of the Cuzicks exercising employer-like control over
4 FSWAZ and its employees - including Plaintiffs - fails to provide sufficient allegations to
5 treat FSWAZ and/or FA as mere instrumentalities of the Cuzicks. Instead, Plaintiffs
6 allege Lomeli and Davidson as the responsible supervisors for their retaliatory and
7 discriminatory actions without alleging the Cuzicks' involvement. (Doc. 42), ¶ 72-91.
8 Additionally, Plaintiff Morgan allegedly reached out to Gordon Evans of FSWAZ's
9 human resources department to report Lomeli's and Davidson's actions. *Id.* at ¶ 83.
10 Finally, the Cuzicks were alleged to have exercised their power to hire/fire employees,
11 supervise employee work schedules or conditions of employment, and determine rates
12 and methods of pay for employees without giving any examples directly affecting
13 Plaintiffs. *Id.* at ¶ 13. Given the conclusory nature of Plaintiffs' claims of the Cuzicks
14 exercising control over aspects of employment at FSWAZ while providing insufficient
15 detailed allegations, and the contradictory allegations of Lomeli and Davidson exercising
16 employment control over Plaintiffs without mentioning the Cuzicks, the Court finds
17 Plaintiffs do not have sufficient allegations to support a claim of instrumentality against
18 the Cuzicks. Therefore, the Court will dismiss Plaintiffs' instrumentality claim against
19 the Cuzicks.

20 Accordingly, IT IS ORDERED:

21 1. The Motion to Dismiss Second Amended Complaint as to Counts II, IV,
22 and V (Doc. 46) is GRANTED IN PART AND DENIED IN PART.

23 2. Count V, the state wage claim as to Cuzick, is DISMISSED WITHOUT
24 LEAVE TO AMEND.

25 3. The following claims remain pending in this matter:

26 Count I – Fair Labor Standards Act⁴ against FSWAZ, Ltd., Freightliner of
27 Arizona, LLC, and Cuzick;

28 ⁴ The Court notes the Supreme Court has issued an opinion in *Encino Motorcars, LLC v. Navarro*, 584 U.S. – (2018). However, a motion addressing this claim in light of *Encino*

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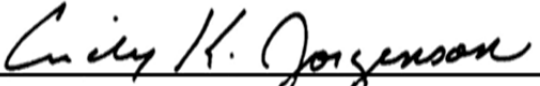
Count II against FSWAZ, Ltd., and Freightliner of Arizona, LLC, as to the sex discrimination claim;

Count III – Equal Pay Act against FSWAZ, Ltd., and Freightliner of Arizona, LLC, and;

Count IV against FSWAZ, Ltd., and Freightliner of Arizona, LLC, as to the age discrimination claim.

Count V – A.R.S. § 23-355, Arizona Minimum Wage Act, against FSWAZ, Ltd., and Freightliner of Arizona, LLC.

Dated this 17th day of August, 2018.



Honorable Cindy K. Jorgenson
United States District Judge

has not been filed.