

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

JILANI GHULAM,

Plaintiff,

v.

7-ELEVEN, INC. et al.,

Defendants.

Civil Action No. 14-2540 (SRC)

OPINION & ORDER

CHESLER, U.S.D.J.

This matter comes before the Court on two motions to dismiss the First Amended Complaint (“FAC”) for failure to state a claim upon which relief may be granted, pursuant to FED. R. CIV. P. 12(b)(6), one by Defendant 7-Eleven, Inc. (“7-Eleven”), and one by Defendant Ibrahim A. Issa (“Issa”). The motions are unopposed. For the reasons stated below, both motions to dismiss will be granted.

7-Eleven had previously moved to dismiss three claims in the Complaint for failure to state a valid claim. On July 10, 2014, this Court granted the motion to dismiss and dismissed Counts II, III, and IV with prejudice. Count II of the Complaint asserted a claim against 7-Eleven for breach of contract; Count III, a claim against 7-Eleven for quantum meruit; and Count IV, a claim against 7-Eleven for breach of the implied covenant of good faith and fair dealing. After Plaintiff filed a First Amended Complaint, 7-Eleven and Issa filed the motions to dismiss presently before the Court.

The FAC asserts five claims. Count II asserts a claim for breach of contract against 7-Eleven; Count III asserts a claim against 7-Eleven for quantum meruit; and Count IV asserts a

claim against 7-Eleven for breach of the implied covenant of good faith and fair dealing. 7-Eleven first moves to dismiss Counts II, III, and IV on the ground that they were previously dismissed with prejudice. Because these claims were already dismissed with prejudice, they are a nullity. They cannot be dismissed again.

7-Eleven also argues that the FAC fails to state a claim against it because it fails to plead sufficient facts to raise an inference of an employment relationship between Plaintiff and itself. This is correct. The Complaint alleges that 7-Eleven employed Plaintiff, but it also alleges that Defendant Issa was owner, operator, or franchisee of the 7-Eleven location at issue. (FAC ¶ 21.) The Complaint pleads no specific facts which make plausible the inference that any of the 7-Eleven entity Defendants employed Plaintiff.

Consider, for contrast, the case of Naik v. 7-Eleven, Inc., 2014 U.S. Dist. LEXIS 107139 (D.N.J. Aug. 5, 2014). In Naik, the Court found that the Complaint alleged sufficient facts to support a claim against 7-Eleven as an employer under the FLSA. Id. In that case, however, unlike the instant one, the Court found that the Complaint alleged nine categories of specific facts which supported a claim regarding an employment relationship between the plaintiff and 7-Eleven. Id. at *7. In the instant case, the allegation that 7-Eleven employed Plaintiff is purely conclusory.

The FAC fails to state a claim against 7-Eleven because it fails to plead sufficient facts to raise an inference of an employment relationship between Plaintiff and 7-Eleven. Plaintiff has now amended the Complaint twice and has failed to state any valid claim against 7-Eleven. This Court finds that further amendment is futile, and the Complaint against Defendant 7-Eleven is hereby dismissed with prejudice in its entirety.

Defendant Issa moves to dismiss Counts II through V on the ground that these common

law claims are pre-empted by the FLSA, citing this Court's recent decision in Marroquin v. 7-Eleven, Civil Action No. 2:14-cv-1609 (D.N.J. Nov. 20, 2014). In that decision, this Court examined the relevant case law and held: "These cases, while not controlling authority, persuade this Court that common law claims are covered by the FLSA, are preempted, and are thus barred." Id. at 2. For the same reasons, this Court finds in the present case that the common law claims are pre-empted by the FLSA. Counts II through V in the FAC, against Defendant Issa, will be dismissed with prejudice.

Thus, the only claim that survives these motions to dismiss is the FLSA claim against Defendant Issa.

For these reasons,

IT IS on this 2nd day of June, 2015,

ORDERED that Defendant 7-Eleven's motion to dismiss the First Amended Complaint (Docket Entry No. 32) is **GRANTED**, and, as to Defendant 7-Eleven only, the First Amended Complaint is **DISMISSED** with prejudice in its entirety; and it is further

ORDERED that Defendant Issa's motion to dismiss the First Amended Complaint (Docket Entry No. 33) is **GRANTED**, and, as to Defendant Issa only, Counts II, III, IV, and V of the First Amended Complaint are **DISMISSED** with prejudice.

s/ Stanley R. Chesler
Stanley R. Chesler, U.S.D.J.