



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.