

1
2
3
4
5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 REGINALD BLAIR and PETER
8 SHARP,

9 Plaintiffs,

10 v.

11 SOAP LAKE NATURAL SPA &
12 RESORT, LLC and SHERRY XIAO,

13 Defendants.

NO. 2:19-CV-0083-TOR

ORDER GRANTING IN PART AND
DENYING IN PART THE PARTIES'
CROSS MOTIONS FOR PARTIAL
SUMMARY JUDGMENT

14 BEFORE THE COURT are Plaintiffs' Motion for Partial Judgment on the
15 Pleadings (ECF No. 157), Defendants' Motion for Summary Judgment Re
16 Plaintiffs' Anti-SLAPP Affirmative Defense (ECF No. 160), and Plaintiffs'
17 Motion for Partial Summary Judgment (ECF No. 162). These matters were
18 submitted for consideration without oral argument. The Court has reviewed the
19 record and files herein, and is fully informed. For the reasons discussed below,
20 Plaintiffs' Motion for Partial Judgment on the Pleadings (ECF No. 157) is **denied**,
Defendants' Motion for Summary Judgment Re Plaintiffs' Anti-SLAPP

ORDER GRANTING IN PART AND DENYING IN PART THE PARTIES'
CROSS MOTIONS FOR PARTIAL SUMMARY JUDGMENT ~ 1

1 Affirmative Defense (ECF No. 160) is **granted in part and denied in part**, and
2 Plaintiffs’ Motion for Partial Summary Judgment (ECF No. 162) is **granted in**
3 **part and denied in part**.

4 **BACKGROUND**

5 This case arises from employment disputes related to a hotel and restaurant
6 in Soap Lake, Washington. ECF No. 10. On June 3, 2019, Plaintiffs’ First
7 Amended Complaint raises the following causes of action: (1) breach of contract,
8 (2) willful withholding of wages, (3) overtime violations in violation of federal and
9 state law, (4) religious harassment in violation of federal and state law, (5) national
10 origin harassment in violation of federal and state law, (6) retaliation in violation
11 of federal and state law, and (7) wrongful discharge in violation of public policy.
12 *See id.* Defendants answered and raised counterclaims, two of which are
13 remaining: civil conspiracy and conversion. ECF Nos. 55, 92.

14 On August 1, 2022, the Court granted Plaintiffs’ Motion for Leave to
15 Amend Answer to Defendants’ civil conspiracy counterclaim to raise the
16 affirmative defense of immunity from civil liability under Washington’s anti-
17 SLAPP statute, RCW 4.24.510. ECF Nos. 154, 155. In the Order the Court
18 permitted “summary judgment motions on the anti-SLAPP issue **ONLY.**” *Id.* at
19 154.

1 Plaintiffs filed a motion for partial judgment on the pleadings and a motion
2 for partial summary judgment on the same anti-SLAPP issue. ECF Nos. 157, 162.
3 Defendants objected and filed a response to Plaintiffs motion for partial judgment
4 on the pleadings, and filed a cross motion for partial summary judgment. ECF
5 Nos. 160, 164, 167. Plaintiffs filed a response to Defendants' motion. ECF No.
6 168. Except where noted, the following facts are not in dispute.

7 Defendant Soap Lake Natural Spa and Resort LLC is in the business of
8 operating a hotel and restaurant in Soap Lake, Washington. ECF No. 163 at 2, ¶ 1.
9 Kevin Wen and Defendant Sherry Xiao have been the owners of the Resort since
10 2016. *Id.*, ¶ 2.

11 In February 2018, Ms. Xiao offered Plaintiff Reginald Blair a job as the
12 executive chef with an annual salary of \$50,000. *Id.*, ¶ 4. When Mr. Blair did not
13 accept, Ms. Xiao offered Mr. Blair a salary of \$65,000 plus the payment of rent,
14 which Mr. Blair accepted. *Id.* at 3, ¶ 9. Defendants dispute that the rent payment
15 was in addition to the salary and assert that the parties agreed the rent payment
16 would be deducted from his paycheck. ECF No. 169 at 2-3, ¶ 9. Upon starting the
17 job, the Resort paid Mr. Blair's rent but deducted wages from Mr. Blair's
18 paychecks to recoup the rent payments. ECF No. 163 at 3, ¶¶ 12, 13.

19 On March 14, 2018, Plaintiff Peter Sharp started working for Defendants
20 with a salary of \$48,000 plus a housing allowance. *Id.* at 5, ¶ 19. Mr. Sharp

1 regularly worked more than 40 hours per week and Defendants did not pay Mr.
2 Sharp additional compensation for the hours worked in excess of 40 hours per
3 week. *Id.* at 5-6, ¶¶ 21, 22. Defendants dispute that Mr. Sharp regularly worked in
4 excess of 40 hours per week, and assert he hardly worked the minimal 40 hours per
5 week. ECF No. 169 at 5-6, ¶¶ 20-22. Defendants informed Mr. Sharp that he was
6 exempt from overtime but he grew suspicious of that claim. ECF No. 163 at 6, ¶
7 23. Defendants object due to Mr. Sharp’s speculation and lack of personal
8 knowledge. ECF No. 169 at 6, ¶ 23.

9 On June 21, 2018, Mr. Blair filed a wage complaint with the DLI concerning
10 the deductions from his wages. ECF No. 163 at 4-5, ¶¶ 15, 16. The same day, Mr.
11 Sharp filed a wage complaint with the DLI concerning overtime compensation. *Id.*
12 at 6, ¶¶ 24, 25. Defendants dispute that Plaintiffs filed the wage complaints in
13 good faith. ECF No. 169 at 4-6, ¶¶ 15, 24

14 DISCUSSION

15 I. Motion for Judgment on the Pleadings

16 As an initial matter, Plaintiffs move for a partial judgment on the pleadings
17 on the grounds that Defendants’ “response” to Plaintiffs’ amended answer
18 constitutes an admission that the civil conspiracy claims are grounded in Plaintiffs’
19 wage claims. ECF No. 157. As Defendants’ “response” is not a pleading under
20 Federal Rule of Civil Procedure 7(a), the Court denies Plaintiffs’ motion. In any

1 event, as discussed *infra*, the Court rules in favor of Plaintiffs which renders the
2 dispute over whether the response constitutes an admission unnecessary.

3 **II. Summary Judgment Standard**

4 The Court may grant summary judgment in favor of a moving party who
5 demonstrates “that there is no genuine dispute as to any material fact and that the
6 movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). In ruling
7 on a motion for summary judgment, the court must only consider admissible
8 evidence. *Orr v. Bank of America, NT & SA*, 285 F.3d 764 (9th Cir. 2002). The
9 party moving for summary judgment bears the initial burden of showing the
10 absence of any genuine issues of material fact. *Celotex Corp. v. Catrett*, 477 U.S.
11 317, 323 (1986). The burden then shifts to the non-moving party to identify
12 specific facts showing there is a genuine issue of material fact. *See Anderson v.*
13 *Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986). “The mere existence of a scintilla
14 of evidence in support of the plaintiff’s position will be insufficient; there must be
15 evidence on which the jury could reasonably find for the plaintiff.” *Id.* at 252.

16 For purposes of summary judgment, a fact is “material” if it might affect the
17 outcome of the suit under the governing law. *Id.* at 248. Further, a dispute is
18 “genuine” only where the evidence is such that a reasonable jury could find in
19 favor of the non-moving party. *Id.* The Court views the facts, and all rational
20 inferences therefrom, in the light most favorable to the non-moving party. *Scott v.*

1 *Harris*, 550 U.S. 372, 378 (2007). Summary judgment will thus be granted
2 “against a party who fails to make a showing sufficient to establish the existence of
3 an element essential to that party’s case, and on which that party will bear the
4 burden of proof at trial.” *Celotex*, 477 U.S. at 322.

5 **III. Washington’s Anti-SLAPP Statute**

6 As directed by the Court, the parties cross move for partial summary
7 judgment regarding whether the anti-SLAPP (i.e. strategic lawsuits against public
8 participation) applies to Defendants’ civil conspiracy counterclaim. ECF Nos. 160,
9 162.

10 Washington’s anti-SLAPP statute provides in relevant part:

11 A person who communicates a complaint or information to any
12 branch or agency of federal, state, or local government ... is immune
13 from civil liability for claims based upon the communication to the
14 agency or organization regarding any matter reasonably of concern to
15 the agency or organization. A person prevailing upon the defense
16 provided for in this section is entitled to recover expenses and
17 reasonable attorneys’ fees incurred in establishing the defense and in
18 addition shall receive statutory damages of ten thousand dollars.
19 Statutory damages may be denied if the court finds that the complaint
20 or information was communicated in bad faith.

RCW 4.24.510.

The purpose of the statute is “to encourage the reporting of potential
wrongdoing to governmental entities by protecting reporting parties from the threat
of retaliatory lawsuits.” *Aronson v. Dog Eat Dog Films, Inc.*, 738 F. Supp. 2d

1 1104, 1109 (W.D. Wash. 2010) (citing *Gontmakher v. City of Bellevue*, 120 Wash.
2 App. 365, 366 (2004)). “The immunity applies to any person who communicates a
3 complaint or information to the government—not only those good faith speakers
4 genuinely exercising their right to free speech or to petition the government but
5 also those who make their communications in bad faith. Those who make their
6 communications in bad faith may not receive statutory damages, but they will be
7 immune from the suit based on the communication.” *Leishman v. Ogden Murphy*
8 *Wallace, PLLC*, 196 Wash. 2d 898, 908 (2021).

9 The cases Defendants cite to argue that immunity does not apply covers
10 communications made to courts in the course of litigation. ECF No. 160 at 5-6.
11 Defendants appear to misconstrue the relevant communication as the counterclaim,
12 rather than the wage claims reported to DLI. *See Saldivar v. Momah*, 145 Wash.
13 App. 365, 387 (2008) (recognizing statute covers communications made to state
14 agencies but not communications made in litigation); *Ten Bridges, LLC v. Midas*
15 *Mulligan, LLC*, 455 F. Supp. 3d 995, 1003 (W.D. Wash. 2020) (communications
16 made to courts in adjudicative capacity not protected by immunity).

17 Here, the parties do not dispute that Washington Department of Labor and
18 Industries (“DLI”) is a state government agency. *See RCW 43.22 et seq.* It is
19 further undisputed that Plaintiffs made wage complaints and overtime complaints
20 to DLI on June 21, 2018. ECF No. 163 at 4-6, ¶¶ 15-17, 24-26.

1 However, the parties dispute whether the wage complaints regarded a matter
2 of reasonable concern to the DLI. ECF Nos. 160 at 7, 162 at 6-7. It is undisputed
3 Plaintiff Blair’s DLI complaint regarded alleged unlawful wage deductions and
4 Plaintiff Sharp’s DLI complaint regarded alleged failure to pay overtime wages.
5 ECF No. 163 at 4-6, ¶¶ 15-17, 24-26. Defendants’ civil conspiracy counterclaim is
6 based on the allegation that Plaintiffs “combined to accomplish an unlawful
7 purpose to harm [Defendants’] business and entered into an agreement to
8 accomplish the conspiracy.” ECF No. 55 at 28-29, ¶ 33. In response to Plaintiffs’
9 amended answer to the counterclaims, Defendants gave notice to Plaintiffs “that
10 the civil conspiracy counterclaim asserted by [Defendants] is based *in part* on the
11 coordinated filing of Labor & Industries wage claims by [Plaintiffs] against Soap
12 Lake Resort, together with recruitment of former Plaintiff Crystal Bean to join in
13 the coordinated filing of Labor & Industry wage claims by [Plaintiffs].” ECF No.
14 156 at 3, ¶ 6 (emphasis added). The Court finds that the wage and overtime
15 complaints constitute matters of reasonable concern to DLI. *See* RCW
16 49.48.083(1) (requiring DLI to investigate any wage complaint filed by an
17 employee). However, Defendants maintain the civil conspiracy counterclaim is
18 not limited to the “coordinated filing of Labor & Industries wage claims.” ECF
19 Nos. 167 at 6, 169 at 6-7. To the extent the civil conspiracy counterclaims are

1 based on conduct outside of the wage claims filed with DLI, the anti-SLAPP
2 statute does not apply.

3 Plaintiffs are entitled to recover expenses and reasonable attorneys' fees
4 incurred in establishing anti-SLAPP immunity applies. RCW 4.24.510. However,
5 based on the disputed evidence, at this time the Court cannot determine whether
6 the submission of the wage complaints to DLI were made in bad faith. Therefore,
7 the Court reserves ruling on the issue of bad faith until the evidence is heard.

8 **ACCORDINGLY, IT IS HEREBY ORDERED:**

- 9 1. Plaintiffs' Motion for Partial Judgment on the Pleadings (ECF No. 157)
10 is **DENIED**. The Objection, Motion for Extension, and Motion to
11 Expedite, ECF Nos. 164, 165, 166, are denied as **MOOT**.
- 12 2. Defendants' Motion for Summary Judgment Re Plaintiffs' Anti-SLAPP
13 Affirmative Defense (ECF No. 160) is **GRANTED in part** and
14 **DENIED in part**.
- 15 3. Plaintiffs' Motion for Partial Summary Judgment (ECF No. 162) is
16 **GRANTED in part** and **DENIED in part**.
- 17 4. Defendants' civil conspiracy counterclaim based on wage claims
18 submitted to Washington's Department of Labor and Industries is
19 **DISMISSED with prejudice**. The remaining civil conspiracy
20 counterclaim based on other conduct remains pending.

1 5. Plaintiffs are instructed to submit a substantiation of fees within fourteen
2 (14) days from the date of this Order. The timing of a response and reply
3 are governed by LCivR 7.

4 The District Court Executive is directed to enter this Order and furnish
5 copies to counsel.

6 DATED October 7, 2022.



9
10
11
12
13
14
15
16
17
18
19
20

Thomas O. Rice
THOMAS O. RICE
United States District Judge