

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

ALICEN ALICEA, ET AL.,

Plaintiffs,

v.

WALSH CONSTRUCTION COMPANY,

Defendant.

No. 3:13-cv-00102 (MPS)

October 15, 2014

RULING ON MOTION TO DISMISS

On September 30, 2014, the Court granted in part and denied in part Plaintiffs' motion for conditional certification, denying that portion that sought recognition of a national collective of Project Administrative Assistant ("PAAs") on both of two theories. The Defendant has moved to dismiss the claim asserted by the proposed first collective—which the Court has found may not be certified—on the ground that the claim itself fails as a matter of law because it asserts a regulatory violation under a provision of the Fair Labor Standards Act, 29 U.S.C. § 201 ("FLSA"), that does not create a private right of action.

Under Federal Rule of Civil Procedure 8(a)(2), a pleading must contain "'a short and plain statement of the claim showing that the pleader is entitled to relief.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting Fed. R. Civ. P. 8). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* In evaluating a motion to dismiss the Court accepts as true all of the complaint's factual, non-conclusory allegations. *Bell Atl. Corp. v. Twombly*, 550 U.S. at 570. Finally, the

Court must “draw all reasonable inferences in favor of the nonmoving party.” *Vietnam Ass’n for Victims of Agent Orange v. Dow Chem. Co.*, 517 F.3d 104, 115 (2d Cir. 2008) (internal quotations and citations omitted).

The Defendant's motion is DENIED because it is based on a misreading of the Amended Complaint, which does not purport, in the allegations concerning the first proposed PAA collective, to plead a distinct cause of action, but, rather, seeks to assert the same cause of action for failure to pay overtime under the FLSA on behalf of a distinct group of PAAs, namely

Project Administrative Assistants employed by Defendant from three years immediately preceding the filing of the motion for conditional certification (i.e. 10-15-10), to the date of final judgment in this matter, who worked overtime, and have not been paid overtime compensation for all overtime work performed because of Defendant’s policy of processing payroll for these individuals and others on its “batch” payroll system, which assumes that each employee worked 40 hours per week and issues paychecks on that basis without actually obtaining and reviewing contemporaneous time records as required by the FLSA.

(Amend. Compl. [Doc. #98] ¶¶ 19-22.)

The fact that the Court has concluded that the group identified does not consist of employees sufficiently “similarly situated” to warrant conditional certification under Section 216(b) says nothing about whether the allegations state a claim. And that they clearly do: the Amended Complaint pleads two causes of action on behalf of all three of the proposed collectives, namely, violations of the FLSA’s overtime provisions and violations of the overtime provisions of the Connecticut Minimum Wage Act (“CMWA”) Conn. Gen. Stat. §§ 31-58 *et. seq.* Both claims are supported by allegations of sufficient factual particularity to make the claims plausible within the meaning of *Twombly*. *Bell Atl. Corp. v. Twombly*, 550 U.S. at 570 (“A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”). The fact that one of the factual allegations within these claims makes reference to a regulatory violation

