

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

MICHAEL GEORGE,	:	
	:	
Plaintiff,	:	
	:	
v.	:	C.A. No. 08-435-GMS-LPS
	:	
TERESA JACKSON (aka Teresa	:	
Nicole Jackson, Teresa Lewis and/or	:	
Teresa Lewis Jackson) and	:	
GEORGE E. MOORE, III,	:	
	:	
Defendants.	:	

**REPORT AND RECOMMENDATION
REGARDING MOTIONS TO DISMISS**

Pending before the Court are Motions to Dismiss (“Motions”) filed by *pro se* defendants Teresa Jackson and George Moore. (D.I. 5, D.I. 6) Both Defendants contend in their Motions that they did “not act[] in an individual capacity” with respect to Plaintiff, who alleges that Defendants violated the Fair Labor Standards Act, 29 U.S.C. § 201 et seq., and the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. § 1801 et seq., in connection with his employment at a Delaware potato farm in 2005.

The purpose of a motion to dismiss is to evaluate the sufficiency of the pleadings, not to assess whether the plaintiff’s allegations are true or false. *See In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1420 (3d Cir. 1997). The Court may grant the Motions only if, after “accepting all well-pleaded allegations in the complaint as true, and viewing them in the light most favorable to plaintiff, plaintiff is not entitled to relief.” *Maio v. Aetna, Inc.*, 221 F.3d 472, 481-82 (3d Cir. 2000) (internal quotation marks omitted). Consequently, a motion to dismiss

that merely denies the allegations of a complaint does not provide a basis for dismissal.

Here, the Motions do nothing but deny the accuracy of the Complaint's allegations. This is unhelpful to Defendants because, in reviewing the Motions, the Court is required to accept the well-pleaded allegations in the Complaint as true. Doing so requires the Court to accept the truth of the numerous allegations in the Complaint that adequately allege that Defendants took individual actions with respect to Plaintiff that could, if ultimately proven, subject Defendants to liability. *See, e.g.*, Cmplt. ¶ 2 (“Defendants recruited Plaintiff . . . to join Defendants’ joint farm labor crew”); *id.* ¶¶ 16, 19 (Defendants “recruited, solicited, hired, furnished or transported Plaintiff, as part of Defendants’ farm labor crew, to perform farm work”); *id.* ¶ 35 (Defendants made promises to Plaintiff regarding payment of wages); *id.* ¶ 47 (“Defendants failed to pay Plaintiff the hourly wage that Defendants promised to him at the time of his recruitment”). Defendants are free to deny these allegations; however, in analyzing a motion to dismiss, the law requires the Court to treat the allegations as true.

For this reason, the purported affidavit of Plaintiff that Defendants attach to their replies in support of their Motions (D.I. 15, D.I. 16) – an affidavit in which Plaintiff appears to state that he is not owed any wages and that he “at no point made any complaints” about Defendants – is also of no avail. The Court cannot assume, at this point in the case, that this affidavit is true. Instead, the Court is required to treat the contrary allegations in the Complaint as true.

Accordingly, I recommend that Defendants’ Motions to Dismiss (D.I. 5, D.I. 6) be DENIED.

This Report and Recommendation is filed pursuant to 28 U.S.C. § 636(b)(1)(B), Fed. R. Civ. P. 72(b)(1), and D. Del. LR 72.1. The parties may serve and file specific written objections **of no longer than ten (10) pages within ten (10) days after being served with a copy of this**

Report and Recommendation. Fed. R. Civ. P. 72(b). The failure of a party to object to legal conclusions may result in the loss of the right to de novo review in the district court. *See Henderson v. Carlson*, 812 F.2d 874, 878-79 (3d Cir. 1987); *Sincavage v. Barnhart*, 171 Fed. Appx. 924, 925 n.1 (3d Cir. 2006). **A party responding to objections may do so within ten (10) days after being served with a copy of objections; such response shall not exceed ten (10) pages. No further briefing shall be permitted with respect to objections without leave of the Court.** The parties are directed to the Court's Standing Order in *Pro Se* Matters For Objections Filed Under Fed. R. Civ. P. 72, dated April 7, 2008, a copy of which is available on the Court's website at www.ded.uscourts.gov/StandingOrdersMain.htm.

* * *

No scheduling order will be entered at this time. Defendants' obligation to file a responsive pleading is stayed until further order of the Court. The Court will enter an Order Regarding Alternative Dispute Resolution this same date.

Dated: August 3, 2009



Honorable Leonard P. Stark
UNITED STATES MAGISTRATE JUDGE

18

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ORDER REGARDING ALTERNATIVE DISPUTE RESOLUTION

The Court having ruled on the motions to dismiss, and no further motions being pending, and the Court having stayed defendants' obligation to file a responsive pleading (D.I. 17),

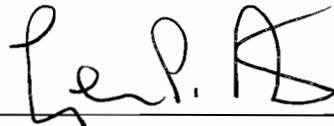
IT IS HEREBY ORDERED THAT:

The Court will conduct an *ex parte* telephonic mediation on October 5, 2009. The mediation will proceed as follows:

- a. plaintiffs' counsel, along with plaintiff, shall call chambers at (302) 573-4573, at 10:00 a.m.
- b. Defendants Jackson and Moore shall each be available by telephone between 10 a.m. and 12:00 noon on October 5, 2009.
- c. No later than September 30, 2009, Defendants Jackson and Moore shall advise the Court of the telephone number(s) at which they will be reachable between 10 a.m. and 12:00 noon on October 5, 2009.

- d. The parties should review the attached Form Order Governing Mediation Conferences and Mediation Statements. Paragraphs 8, 9, and 11 of the Form Order apply to the telephonic mediation scheduled in this matter.

Dated: August 3, 2009

A handwritten signature in black ink, appearing to read "Leonard P. Stark". The signature is written in a cursive style with a horizontal line underneath it.

Honorable Leonard P. Stark
UNITED STATES MAGISTRATE JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

Plaintiff, :
 :
v. :
 :
 :
 :
 :
 :
Defendant. :

Civ. No.

**FORM ORDER GOVERNING MEDIATION
CONFERENCES AND MEDIATION STATEMENTS**

**THIS ORDER CONTAINS IMPORTANT INFORMATION WHICH
SHOULD BE READ BY COUNSEL PRIOR TO PREPARATION OF A
MEDIATION STATEMENT.**

**Any letters regarding mediation must be submitted in hard copy to the Clerk's Office
in an envelope addressed to U. S. Magistrate Judge Leonard P. Stark.**

At Wilmington this ___ day of _____, IT IS ORDERED that:

MEDIATION CONFERENCE

1. A mediation conference is scheduled for _____ beginning at _____.m. All required participants (see ¶ 2) are to report at this time to Courtroom 2A and to remain available until excused by the Court.

REQUIRED PARTICIPANTS

2. Each party must be represented at the mediation conference by the following required participants: (a) trial counsel; (b) counsel who is/are familiar with the case; and (c) the party/parties and/or decisionmaker(s) of the parties, who must have full authority to act on behalf of the parties, including the authority to negotiate a resolution of the matter and to respond to developments during

the mediation process. In-person attendance at the mediation conference by the required participants described above is required unless otherwise authorized by the Court. Any request to modify this requirement shall be made in writing to the Magistrate Judge, with a copy to all counsel or pro se parties, **no later than fourteen (14) days before the mediation conference.**

CONTACT INFORMATION FOR REQUIRED PARTICIPANTS

3. **No later than the date on which mediation statements are due** (see ¶ 4 below), counsel shall submit in writing, for each attorney who will be attending the mediation conference: (i) a direct dial telephone work number, (ii) a cell or home telephone number, and (iii) an electronic mail address where the attorney can be regularly reached. Unrepresented parties shall provide at least one of these three forms of contact information.

CONFIDENTIAL MEDIATION STATEMENTS

4. On or before _____, AN ORIGINAL and ONE COPY of a confidential mediation statement containing all of the information required by ¶ 6 shall be submitted **ONLY** to the Magistrate Judge. The mediation statements **shall not be filed** with the Clerk's Office, but **shall be delivered to the Clerk's Office in an envelope addressed to U. S. Magistrate Judge Leonard P. Stark and marked "CONFIDENTIAL MEDIATION STATEMENT."** The statements shall not be exchanged among the parties or counsel (unless the parties so desire), shall not be provided to the trial judge, and shall not become part of the record in this matter. **Mediation statements shall NOT be electronically filed since they are not part of the Court record.**

5. The mediation statements may be in memorandum or letter form. They must be double-spaced, in no less than a 12-point font, and be no longer than **fifteen (15) pages [twenty (20) pages in a patent case].**

6. The mediation statements **must** contain each of the following headings and **must** contain a discussion of each of the topics described below:

a) **“The Parties”**: provide a description of who the parties are, their relationship, if any, to each other, and by whom each party is represented, including the identity of all individuals who will be participating on behalf of a party during the mediation conference.

b) **“Factual Background”**: provide a brief factual background, clearly indicating which material facts are not in dispute and which material facts remain in dispute.

c) **“Summary of Applicable Law”**: provide a brief summary of the law, including applicable statutes, cases and standards. Copies of any unreported decisions (including decisions from this jurisdiction) that counsel believes are particularly relevant should be included as exhibits (see ¶ 7).

d) **“Honest Discussion of Strengths and Weaknesses”**: provide an **honest** discussion of the strengths and weaknesses of the party's claims and/or defenses.

e) **“Settlement Efforts”**: provide a brief description of prior settlement negotiations and discussions, including the most recent offers or demands exchanged between the parties and the party's assessment as to why settlement has not been reached.

f) **“Settlement Proposal”**: describe the party's proposed term(s) for a resolution. If the party has any suggestions as to how the Court may be helpful in reaching a resolution, such suggestions should also be described.

g) **“Fees and Costs”**: list separately each of the following: (i) attorneys' fees and costs incurred to date; (ii) other fees and costs incurred to date; (iii) good faith estimate of additional attorneys' fees and costs to be incurred if this matter is not settled; and (iv) good faith estimate of additional other fees and costs to be incurred if this matter is not settled.

In addition to the required topics described above, and provided that the mediation statement complies with the page limit stated above, counsel are encouraged to address any other matter they believe may be of assistance to the Court.

7. Crucial or pertinent documents may be submitted as exhibits to the mediation statement. Counsel are cautioned to limit such exhibits.

CONFIDENTIALITY

8. **The contents of the mediation statements and the mediation conference discussions, including any resolution or settlement, shall remain confidential, shall not be used in the present litigation nor any other litigation (whether presently pending or filed in the future), and shall not be construed as nor constitute an admission. Breach of this provision shall subject the violator to sanctions.**

EX PARTE CONTACTS

9. Before, during, and after the scheduled mediation conference, the Court may find it necessary and useful to communicate with one or more parties outside the presence of the other party or parties.

REQUEST TO BRING ELECTRONIC EQUIPMENT

10. Any request to bring electronic equipment (for example, cell phones, blackberries or laptop computers) for use only during the mediation conference shall be made in writing and shall be submitted **no later than the date on which mediation statements are due** (see ¶ 4 above). Any such request shall include the name(s) of the individuals, a list of the equipment requested to be authorized, and a representation that counsel believes the presence of the requested equipment will be of assistance in the mediation process and the request is not being made just for convenience.

OBLIGATION OF GOOD FAITH PARTICIPATION

11. The required participants shall be available and accessible throughout the mediation process. The Court expects the parties' full and good faith cooperation with the mediation process. In particular, the Court expects both the lawyers and the party representatives to be fully prepared to participate. The Court encourages all participants to keep an open mind in order to reassess their previous positions and to find creative means for resolving the dispute.

AVOIDANCE OF SANCTIONS

12. **All counsel are reminded of their obligations to read and comply with this Order.** Delaware counsel are reminded of their obligations to inform out-of-state counsel of this Order. To avoid the imposition of sanctions, counsel shall advise the Court immediately of any problems regarding compliance with this Order.

UNITED STATES MAGISTRATE JUDGE