2013 WL 4118482
Only the Westlaw citation is currently available.
United States District Court,
E.D. New York.

Deborah LITRAS, Plaintiff,
v.
PVM INTERNATIONAL CORP. et al., Defendants.

No. 11–cv–5695 (JFB)(AKT). | Aug. 15, 2013.

**Attorneys and Law Firms**

David Gevanter, Lindenhurst, N.Y., for Plaintiff.

Sam P. Israel, New York, N.Y., for Defendants.

**Opinion**

**MEMORANDUM AND ORDER**

JOSEPH F. BIANCO, District Judge.

***1** Plaintiff Deborah Litras ("plaintiff" or "Litras") brought the instant action against PVM International Corporation ("PVM"), Eternal Love Parfums Corp. ("Eternal Love"), Mahender Murlidhar Sabhnani ("M.Sabhnani"), Varsha Mahender Sabhnani ("V.Sabhnani"), and two unnamed individuals (collectively, "defendants"), [1] alleging violations of her rights pursuant to the Fair Labor Standards Act ("FLSA"), 42 U.S.C. § 1985 ("Section 1985"), and Sections 198 [2] and 215 of the New York Labor Law ("NYLL"). [3]

Specifically, plaintiff alleges that her employment was terminated because she testified against M. Sabhnani and V. Sabhnani in a federal criminal case. Plaintiff claims that she was a diligent employee who was wrongfully terminated as a result of the testimony that she provided against her employers. In addition, plaintiff alleges that defendants failed to pay her overtime in violation of federal law and accrued vacation time in violation of the NYLL.

Presently before the Court is defendants' motion to dismiss the amended complaint in its entirety. In moving to dismiss the amended complaint, defendants argue the following: (1) plaintiff has failed to allege that any failure on the part of defendants to pay her overtime was willful and, accordingly, the shorter two-year statute of limitations should apply to plaintiff's FLSA claim; (2) plaintiff has failed to provide sufficient detail about her alleged overtime work to survive a motion to dismiss her FLSA claim; (3) plaintiff has failed to allege the requisite "meeting of the minds" and any adverse action taken in retaliation against plaintiff with the necessary degree of particularity to support her Section 1985 claim; (4) plaintiff's accrued vacation pay claim must fail because she has not alleged the existence of an agreement between herself and her employers in regards to such compensation; and (5) plaintiff's Section 215 claim cannot survive a motion to dismiss because she fails to point to the specific provision of the NYLL upon which her alleged complaint about her employers is based. The Court rejects each of defendants' arguments on this motion.

On the FLSA claim, plaintiff's pleadings are adequate to invoke the three-year statute of limitations applicable to claims of willful FLSA violation. Moreover, plaintiff has satisfied the recently articulated Second Circuit standard for pleading FLSA overtime claims: she has sufficiently alleged 40 hours of work in a given workweek, as well as some uncompensated time in excess of the 40 hours. As to the Section 1985 claim, plaintiff has sufficiently alleged that the requisite meeting of the minds between M. Sabhnani and V. Sabhnani existed to terminate plaintiff in retaliation for her having testified against them at their criminal trial. In terms of the NYLL claim for accrued vacation pay, the contemporaneous letters appended to plaintiff's amended complaint are sufficient to support a plausible claim for such compensation, as they suggest that an agreement between plaintiff and her employers regarding vacation pay existed. Finally, plaintiff's pleading of the Section 215 claim is adequate because, based on the facts alleged, plaintiff has a plausible claim that she was terminated because her employers believed that she complained about their violation of the indentured servitude provision of the NYLL (and plaintiff's failure to specifically cite to that provision does not defeat her claim). Thus, for all of these reasons, and as described in more detail below, the Court denies defendants' motion to dismiss in its entirety.

***2** Also before the Court is defendants' motion for sanctions. As discussed in detail below, because the Court concludes that plaintiff's amended complaint survives defendants' motion to dismiss (and, therefore, that none of plaintiff's claims are frivolous from a legal standpoint) and because the Court has no basis to believe that any of the allegations contained within plaintiff's amended complaint are false and were known to be false at the time the amended complaint

was filed, defendants' motion for sanctions is denied at this juncture.

## I. BACKGROUND

### A. Factual Background

The following facts are taken from the amended complaint, including documents attached to or incorporated by reference in the complaint. These facts are not findings of fact by the Court. Instead, the Court assumes these facts to be true for purposes of deciding the pending motion to dismiss, and will construe them in a light most favorable to plaintiff, the non-moving party.

In approximately March of 2000, plaintiff was hired by PVM, a manufacturer, producer, seller, and exporter of perfumes (Am.Compl.¶¶ 1–2), as an export manager (*id.* ¶ 21). Beginning in approximately 2007, PVM conducted its business operations at the home of M. Sabhnani and V. Sabhnani. (*Id.* ¶ 4.) Both M. Sabhnani and V. Sabhnani were also employers of plaintiff. (*Id.* ¶ 7.) Plaintiff generally received $1230.75 per week from PVM, but never received any overtime pay above and beyond that amount. [4] (*Id.* ¶ 22.) Plaintiff also alleges that she was employed by Eternal Love at the time. (*Id.* ¶ 6.) [5]

In 2007, plaintiff discovered that M. Sabhnani and V. Sabhnani were "harboring indentured servants or slaves at their residence/business location." (*Id.* ¶ 8.) Both M. Sabhnani and V. Sabhnani were arrested and charged with various crimes. (*Id.* ¶ 23.) Plaintiff was subsequently compelled to testify against M. Sabhnani and V. Sabhnani in a criminal case conducted in the District Court of the Eastern District of New York. (*Id.* ¶ 9.) She testified on behalf of the government on November 28, 2007. (*Id.* ¶ 40.) On December 17, 2007, following a seven-week trial, a jury convicted M. Sabhnani and V. Sabhnani of various criminal offenses, including, *inter alia*, the following: (1) conspiracy to commit forced labor in violation of 18 U.S.C. § 371; (2) two counts of forced labor under 18 U.S.C. § 1589 and § 1594(a); (3) conspiracy to harbor aliens in violation of 8 U.S.C. § 1324(a)(1)(A)(1) and § 1324(a)(1)(B)(iii); (4) two counts of harboring aliens in violation of 8 U.S.C. § 1324(a)(1)(A)(iii), § 1324(a)(1)(A)(v)(11), and § 1324(a)(1)(B)(iii); (5) conspiracy to commit peonage in violation of 18 U.S.C. § 1581(a) and § 371; (6) two counts of peonage in violation of 18 U.S.C. § 1581(a) and 1594(a)(f); and (7) two counts of servitude in violation of 18 U.S.C. § 1592 and § 371. (*Id.* ¶ 10.)

Plaintiff received vacation pay in 2008 to "induce [her] to remain on the job when defendants were having their legal troubles." (*Id.* ¶ 34.) Plaintiff claims that she had an express or implied contract in which defendants were required to pay her such vacation payments, including upon termination. (*Id.* ¶ 35.)

***3** Plaintiff continued to help run defendants' business following the conviction. (*Id.* ¶ 24.) However, her employment with PVM was terminated on April 12, 2010 "without any justifiable reason." (*Id.* ¶ 11; *see also id.* ¶ 5.) She received a letter from defendants' "agent," Sam Israel, indicating that her employment had been terminated. (*Id.* ¶ 26.) Plaintiff alleges that she was terminated because she testified against M. Sabhnani and V. Sabhnani—and that those defendants simply waited to terminate her employment until their appeals of the criminal case had been finalized since terminating her before that point would "taint and prejudice" the appeals and "would further cause bad publicity to accrue to defendants." (*Id.* ¶ 27.)

### B. Procedural History

The complaint in this action was filed on November 21, 2011. On January 19, 2012, defendants filed a motion to dismiss the complaint without first requesting a pre-motion conference in accordance with the Court's Individual Rules. The Court held a telephone pre-motion conference with the parties on February 13, 2012, at which time it set a briefing schedule for the motion to dismiss. When plaintiff failed to respond to the motion in accordance with the briefing schedule, the Court ordered a status report from plaintiff. By letter dated April 27, 2012, counsel for plaintiff requested leave to file an amended complaint. The Court held another telephone conference with the parties on May 14, 2012, at which time it modified the briefing schedule for defendants' motion to dismiss and set a briefing schedule for plaintiff's motion to amend the complaint.

On June 4, 2012, plaintiff filed an opposition to the motion to dismiss, as well as a motion to amend her complaint. On July 6, 2012 defendants filed a reply in further support of their motion to dismiss and in opposition to plaintiff's motion to amend. Oral argument was held on September 19, 2012. Following oral argument, the Court delivered an oral ruling

on the motions: the Court granted in part and denied in part defendants' motion to dismiss [6] and granted plaintiff's motion to amend.

On October 19, 2012, plaintiff filed an amended complaint. On November 12, 2012, defendants filed a motion for an extension of time to file an answer or move with respect to plaintiff's amended complaint. By Order dated November 13, 2012, Magistrate Judge Boyle granted the extension, requiring defendants to answer or move by November 26, 2012. On November 26, 2012, defendants filed a motion to dismiss the amended complaint and a motion for sanctions. On March 28, 2013, plaintiff filed an opposition to both the motion to dismiss and the motion for sanctions. On April 29, 2013, defendants filed a reply in further support of their motions to dismiss and for sanctions. Oral argument was held on May 6, 2013. The Court has fully considered the arguments and submissions of the parties.

## II. STANDARD OF REVIEW

***4** In reviewing a motion to dismiss pursuant to Rule 12(b)(6), the Court must accept the factual allegations set forth in the complaint as true and draw all reasonable inferences in favor of the plaintiff. *See Cleveland v. Caplaw Enters.*, 448 F.3d 518, 521 (2d Cir.2006); *Nechis v. Oxford Health Plans, Inc.*, 421 F.3d 96, 100 (2d Cir.2005). "In order to survive a motion to dismiss under Rule 12(b)(6), a complaint must allege a plausible set of facts sufficient 'to raise a right to relief above the speculative level.' " *Operating Local 649 Annuity Trust Fund v. Smith Barney Fund Mgmt. LLC*, 595 F.3d 86, 91 (2d Cir.2010) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)). This standard does not require "heightened fact pleading of specifics, but only enough facts to state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570.

The Supreme Court clarified the appropriate pleading standard in *Ashcroft v. Iqbal*, setting forth a two-pronged approach for courts deciding a motion to dismiss. 556 U.S. 662, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009). The Court instructed district courts to first "identify[ ] pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth." *Id.* at 679 (explaining that though "legal conclusions can provide the framework of a complaint, they must be supported by factual allegations"). Second, if a complaint contains "well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Id.* 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 plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* at 678 (quoting and citing *Twombly*, 550 U.S. at 556–57 (internal citation omitted)).

The Court notes that in adjudicating this motion, it is entitled to consider: "(1) facts alleged in the complaint and documents attached to it or incorporated in it by reference, (2) documents 'integral' to the complaint and relied upon in it, even if not attached or incorporated by reference, (3) documents or information contained in defendant's motion papers if plaintiff has knowledge or possession of the material and relied on it in framing the complaint, (4) public disclosure documents required by law to be, and that have been, filed with the Securities and Exchange Commission, and (5) facts of which judicial notice may properly be taken under Rule 201 of the Federal Rules of Evidence." *In re Merrill Lynch & Co.*, 273 F.Supp.2d 351, 356–57 (S.D.N.Y.2003) (internal citations omitted), *aff'd in part and rev'd in part on other grounds sub nom.*, *Lentell v. Merrill Lynch Co.*, 396 F.3d 161 (2d Cir.2005).

## III. DISCUSSION

### A. Motion to Dismiss

#### 1. FLSA Claim

***5** Plaintiff alleges that defendants failed to provide her with overtime compensation (at one and one half times the regular rate of pay for each hour worked in excess of forty hours per work week), in violation of the FLSA. Plaintiff claims, therefore, that defendants owe her overtime pay for each hour over 40 worked in a work week during the three-year period prior to her termination. Defendants move to dismiss the FLSA claim, arguing that (1) plaintiff has failed to prove that any alleged violation of the FLSA was willful, and so a two-year, rather than a three-year, statute of limitations applies, and (2) in any event, plaintiff has failed to allege that she worked overtime hours for which she was not compensated with the requisite degree of particularity to state a claim under the FLSA. For the reasons discussed in detail below, the Court

disagrees—plaintiff's pleadings are sufficient to both state a plausible FLSA overtime claim and to invoke a three-year statute of limitations for that claim. Accordingly, defendants' motion to dismiss the FLSA claim is denied.

**a. Legal Standard**

Under the FLSA, employers engaged in interstate commerce must pay overtime pay to an employee working more than forty hours per week "at a rate not less than one and one-half times the regular rate at which he is employed." 29 U.S.C. § 207(a)(1). The regular, minimum rates at which employees must be paid are established by Section 206 of the FLSA. *Id.* § 206(a). In addition, the FLSA sets forth a broad civil enforcement scheme, pursuant to which

> [a]ny employer who violates the provisions of section 206 or section 207 of this title shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages.

*Id.* § 216(b).

In an action to recover unpaid overtime wages under the FLSA, a "plaintiff must show that: (1) he was an employee who was eligible for overtime ( [*i.e.*] not exempt from the Act's overtime pay requirements); and (2) that he actually worked overtime hours for which he was not compensated." *Hosking v. New World Motg., Inc.*, 602 F.Supp.2d 441, 447 (E.D.N.Y.2009).

**b. Analysis**

**i. Statute of Limitations**

An FLSA-related suit must be brought within two years after the cause of action has accrued, unless a plaintiff can show that a defendant's violation of the Act was willful, in which case a three-year statute of limitation applies. 29 U.S.C. § 255. For an employer's actions to be willful, the employer must have "either [known] or showed reckless disregard for the matter of whether its conduct was prohibited by the [FLSA]." *McLaughlin v. Richland Shoe Co.*, 486 U.S. 128, 133, 108 S.Ct. 1677, 100 L.Ed.2d 115 (1988).

Courts in this Circuit have generally left the question of willfulness to the trier of fact. *See, e.g., Rahman v. Shiv Darshan, Inc.*, 12 Civ. 3457(ILG) (CLP), 2013 U.S. Dist. LEXIS 24750, at *9–10, 2013 WL 654189 (S.D.N.Y. Feb. 22, 2013) (concluding that plaintiff adequately pled willfulness—for "it is hornbook learning that the state of one's mind, intent, can almost never be proved directly and invariably is proved circumstantially"—and, accordingly, denying motion to dismiss the FLSA claim as time barred based on a two-year statute of limitations (alteration, citation, and quotation marks omitted)); *Goodman v. Port Auth. of N.Y. & N.J.*, 850 F.Supp.2d 363, 381 (S.D.N.Y.2012) ("Whether or not a violation of the FLSA is 'willful' is a fact-intensive inquiry not appropriately resolved on a motion to dismiss."); *Kaur v. Royal Arcadia Palace, Inc.*, 643 F.Supp.2d 276, 297 (E.D.N.Y.2007) (denying summary judgment as to willfulness where plaintiffs had complained to defendants about their pay); *Moran v. GTL Constr., LLC*, 06 Civ. 168(SCR), 2007 U.S. Dist. LEXIS 55098, at *10–11, 2007 WL 2142343 (S.D.N.Y. July 24, 2007) ("Although plaintiff has the burden of proving willfulness at trial, for the purposes of pleading, willfulness qualifies as a factual state of mind falling under Fed.R.Civ.P. 9(b) which states that the 'condition of mind of a person may be averred generally.' Moreover, whether a defendant's actions were willful is a factual question that cannot be decided on a motion to dismiss." (citations omitted)); *Damassia v. Duane Reade, Inc.*, No. 04 Civ. 8819(GEL), 2005 U.S. Dist. LEXIS 9768, at *6–7, 2005 WL 1214337 (S.D.N.Y. May 20, 2005) (denying motion to dismiss as to willfulness where plaintiffs alleged that defendants knew the contours of the FLSA and deliberately misclassified them as independent contractors in order to avoid the Act's requirements).

***6** Plaintiff has alleged that defendants' failure to pay her overtime wages was willful. (*See* Am. Compl. ¶ 29 (stating that defendants' failure to pay was "willful ... since [defendants] had no regard whatsoever for legal requirements in connection with their wage policies").) At this stage of litigation, plaintiff's general averment of willfulness satisfies the requirements of pleading a willful violation of the FLSA, so as to invoke the three-year statute of limitations. *See, e.g., Moran*, 2007 U.S. Dist. LEXIS 55098, at *11, 2007 WL 2142343 . Accordingly, defendants' motion to dismiss the portion of plaintiff's FLSA claim that relates to pay allegedly owed outside of the two-year limitations period is

denied. However, because plaintiff's complaint was filed on November 21, 2011, she cannot claim overtime wages for work done prior to November 21, 2008 (more than three years before her complaint was filed). Plaintiff's claim is, therefore, limited to overtime pay allegedly owed after November 21, 2008.

**ii. Adequacy of the Pleadings**

The Court dismissed plaintiff's FLSA claim as alleged in her original complaint on September 19, 2012 because plaintiff failed to plead the cause of action with the requisite degree of specificity. However, the Court granted plaintiff leave to re-plead her FLSA overtime claim, emphasizing that, in order to state an adequate claim for relief, she would need to provide additional details regarding when and how many overtime hours were worked. Attached to plaintiff's amended complaint is a chart of the days and hours that plaintiff worked, including a calculation of her overtime hours for which she allegedly was not compensated. Defendants argue, once again, that plaintiff has failed to state a plausible FLSA overtime claim. The Court disagrees.

Over the past year, the Second Circuit has issued a series of decisions addressing the adequacy of pleadings in the FLSA overtime compensation context. In the first of those decisions, *Lundy v. Catholic Health System of Long Island*, the court emphasized that "[d]etermining whether a plausible claim has been pled is 'a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.' " 711 F.3d 106, 114 (2d Cir.2013) (quoting *Iqbal*, 555 U.S. at 679). The court then held that, "in order to state a plausible FLSA overtime claim, a plaintiff must sufficiently allege 40 hours of work in a given workweek as well as some uncompensated time in excess of the 40 hours." *Id.* at 114. Following that standard, the Second Circuit, in subsequent cases, proceeded to find the pleading of an FLSA overtime claim to be inadequate in a case where the complaint merely alleged that overtime hours were worked without "provid[ing] sufficient detail about the length and frequency of [the] unpaid work to support a reasonable inference that ... more than forty hours in a given week" were worked, *Nakahata v. N.Y.-Presbyterian Healthcare Sys.*, Nos. 11–0734, 11–0710, 11–0713, 11–0728, 2013 U.S.App. LEXIS 14128, at *20, 2013 WL 3743152 (2d Cir. July 11, 2013), and in a case where the complaint merely "tracked the statutory language of the FLSA, lifting its numbers and rehashing its formulation, but alleging no particular facts sufficient to raise a plausible inference of an FLSA overtime violation," *Dejesus v. HF Mgmt. Servs.*, No. 12–4565, 2013 U.S.App. LEXIS 16105, at *13, 2013 WL 3970049 (2d Cir. Aug. 5, 2013).

***7** As noted earlier, attached to the amended complaint is a chart that alleges the number of hours plaintiff worked each workday. (*See* Am. Compl. Ex. A.) Plaintiff's chart is replete with specific dates and an estimation of the number of hours that she worked on each specific date (along with the start and end time of her work for each date listed). Plaintiff has clearly done more than simply repeat the language of the FLSA statute under which she brings her overtime claim. *See Dejesus*, 2013 U.S.App. LEXIS 16105, at *1 1, 2013 WL 3970049 (finding pleadings inadequate where plaintiff "did not estimate her hours in any or all weeks or provide any other factual context or content," and merely "rephrase[ed] the FLSA's formulation specifically set forth in section 207(a)(1)"). Moreover, plaintiff included a separate column in her chart that indicates, more specifically, the number of *overtime hours* that she worked in each work week. *See Lundy*, 711 F.3d at 114 n. 7 (noting that "[u]nder a case-specific approach, some courts may find that an approximation of overtime hours worked may help draw a plaintiff's claim closer to plausibility"). The Court finds, therefore, that plaintiff has provided an amount of factual specificity that is sufficient to survive a motion to dismiss.

In moving to dismiss the FLSA overtime claim, defendants contest the veracity of plaintiff's chart. (*See* Defs.' Mem. of Law in Supp. of Mot. to Dismiss ("Defs.' Mot. to Dismiss") at 14–15 ("To allow the Plaintiff to proceed with a claim premised upon Litras' newly inspired accounting —when there is no record, no allegation, nor suggestion that Litras maintained contemporaneous notes, let alone an averment that she reported the time to her employer at any stage of her employment—would be to disregard plausibility altogether.").) However, the Second Circuit has specifically recognized that, although a plaintiff must plead hours worked in excess of 40 in a given work week, as well as some uncompensated time in excess of the 40 hours, with a certain degree of specificity, a plaintiff is *not* required to keep perfect time records or to plead its hours worked with "mathematical precision":

> While this Court has not required plaintiffs to keep careful records and plead their hours with mathematical precision, we have recognized that it is employees' memory and experience

> that lead them to claim in federal court that they have been denied overtime in violation of the FLSA in the first place. Our standard requires that plaintiffs draw on those resources in providing complaints with sufficiently developed factual allegations.

*Dejesus,* 2013 U.S.App. LEXIS 16105, at *13–14, 2013 WL 3970049 . Defendants will have an opportunity to challenge plaintiff's calculations after the parties have engaged in discovery. However, on a motion to dismiss, the Court is not to pass judgment on the accuracy of the pleadings. Indeed, the Court is instructed to accept all the allegations contained within the pleadings as true and draw all reasonable inferences therefrom. Thus, the dates and numbers contained within plaintiff's chart are sufficient to state a plausible FLSA overtime claim.

***8** Moreover, defendants' argument that plaintiff's chart should be discredited because it was provided only after leave to amend the complaint was sought is unavailing. (*See* Defs.' Mot. to Dismiss at 14–15 (arguing that because plaintiff did not supply a dates and hours breakdown in her original complaint, "she obviously generated the list appended to her Second Amended Complaint to satisfy the Court's instruction ... that her pleadings would not pass muster in the absence of identifiable overtime work").) The Court specifically granted plaintiff leave to amend on this cause of action to afford her an opportunity to allege her overtime claim with the requisite specificity. That is precisely what plaintiff did. To say that a plaintiff should be precluded from offering more specific numbers or calculations in an amended complaint because such information was not contained within the initial complaint defeats the entire purpose of a district court's capacity to grant plaintiffs leave to amend. *Cf. Absolute Activist Value Master Fund Ltd. v. Ficeto,* 677 F.3d 60, 71 (2d Cir.2012) (instructing district court to "grant the plaintiffs leave to amend their complaint in order to plead *additional factual allegations* to support their claim" (emphasis added)). The additional facts and figures provided by plaintiff in her amended complaint are sufficient to allow her FLSA overtime claim to proceed at this time, and the fact that those details were provided only once plaintiff received leave to amend the complaint does not, as defendants would suggest, suggest a basis for dismissal.

To the extent defendants argue that the FLSA claim should, nevertheless, be dismissed as against V. Sabhnani and Eternal Love, the Court disagrees. Plaintiff has alleged that both V. Sabhnani and Eternal Love were employers of hers. (*See* Am. Compl. ¶ 7 ("Varsha Mahender Sabhnani ... was an employer of Deborah Litras up to and including April 12, 2010 ..."); *id.* ¶ 19 (stating that plaintiff was an employee of Eternal Love).) [7] Her pleadings are, therefore, sufficient with respect to V. Sabhnani and Eternal Love, and the motion to dismiss the FLSA overtime claims against those defendants is denied.

In sum, plaintiff's pleading of her FLSA claim as against all defendants is sufficient to survive a motion to dismiss. Moreover, plaintiff has adequately pled that defendants' failure to pay her overtime in accordance with the FLSA was willful for statute of limitations purposes. Accordingly, defendants' motion to dismiss the FLSA claim is denied, and plaintiff's claim pertains to overtime pay allegedly owed after November 21, 2008.

### 2. Section 1985 Claim

Defendants also move to dismiss plaintiff's Section 1985 retaliation claim, arguing that plaintiff's pleading of the claim is entirely conclusory. Specifically, defendants contend that plaintiff fails to allege the requisite "meeting of the minds" and any adverse action taken in retaliation against plaintiff with the requisite degree of particularity. For the following reasons, the Court disagrees.

***9** Section 1985 bars conspiracies to violate civil rights. "In order to maintain an action under Section 1985, a plaintiff must provide some factual basis supporting a meeting of the minds, such that defendants entered into an agreement, express or tacit, to achieve the unlawful end." *Webb v. Goord,* 340 F.3d 105, 110 (2d Cir.2003) (citation and internal quotation marks omitted); *see, e.g., Frierson–Harris v. Hough,* 05 Civ. 3077(DLC), 2007 U.S. Dist. LEXIS 63056, at *23, 2007 WL 2428483 (S.D.N.Y. Aug. 24, 2007) (granting summary judgment on Section 1985 claim where evidence "could not reasonably establish any agreement to achieve unlawful ends"). Here, plaintiff brings her claim under the second prong of Section 1985, which states, in relevant part:

> (2) Obstructing justice; intimidating party, witness, or juror. If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United

> States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified ... the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

42 U.S.C. § 1985(2)-(3).

Plaintiff's Section 1985 claim is predicated on the fact that defendants allegedly terminated her employment because she testified in the criminal case against them. (*See* Am. Compl. ¶¶ 39–42 .) As the Court explained during the September 19, 2012 telephone conference, if a plaintiff is punished for having testified in court, a cause of action under Section 1985 exists. In her amended complaint, plaintiff alleges that M. Sabhnani and V. Sabhnani were "conspirators" who "sought to injure [her] for having testified against them," on behalf of the government. (*Id.* ¶ 41; *see also id.* ¶ 40.) Plaintiff has, therefore, explicitly pled that a conspiracy to retaliate against her existed. Viewing these facts alleged in the light most favorable to plaintiff and drawing all reasonable inferences, plaintiff has pled a sufficient factual basis supporting a meeting of the minds (*i.e.* through a tacit agreement) between M. Sabhnani and V. Sabhnani to terminate plaintiff's employment on account of her having testified at their criminal trial. [8] *See, e.g.*, *Hunt v. Weatherbee*, 626 F.Supp. 1097, 1106–07 (D.Mass.1986) (explaining that, to survive a motion to dismiss, a plaintiff must plead "at least minimum factual support of the existence of a conspiracy," but that "the nature of conspiracies often makes it impossible to provide details at the pleading stage and that the pleader should be allowed to resort to the discovery process and not be subjected to a dismissal of his complaint" (quoting 5 C. Wright & A. Miller, Federal Practice & Procedure § 1233 (1969)) (additional citation and internal quotation marks omitted)). Accordingly, defendants' motion to dismiss plaintiff's Section 1985 claim is denied.

### 3. New York Labor Law Claims

#### a. Vacation Pay Claim

***10** Plaintiff claims that defendants failed to pay her accrued vacation time upon termination in violation of Sections 191(3) and 198 of the NYLL. Defendants move to dismiss that claim, arguing that plaintiff has no statutory right to accrued vacation payments and, accordingly, must allege the existence of an agreement to receive that type of pay—something that plaintiff has only done in conclusory terms that are insufficient to survive a motion to dismiss. For the reasons that follow, the Court disagrees with defendants.

"It is axiomatic that an employee has no inherent right to paid vacation and sick days, or payment for unused vacation and sick days, in the absence of an agreement, either express or implied." *Sosnowy v. A. Perri Farms, Inc.*, 764 F.Supp.2d 457, 475 (E.D.N.Y.2011). Section 198–c(1) of the NYLL requires that "any employer who is a party to an agreement to pay or provide benefits or wage supplements to employees" pay the amounts owed within thirty days of the date due. *See* NYLL § 198–c(1). [9] "This section codifies the general understanding that vacation and sick pay are purely matters of contract between an employer and employee." *Sosnowy*, 764 F.Supp.2d at 476. Accordingly, a plaintiff claiming that she is owed accrued vacation pay under the NYLL must plead the existence of an agreement entitling her to vacation pay upon termination. *Id.; see also Gennes v. Yellow Book of N.Y., Inc.*, 23 A.D.3d 520, 522, 806 N.Y.S.2d 646 (2d Dep't 2005) ("The primary and dispositive issue in applying [Section 198–c(1) ] is whether there was any basis for the accrual of vacation benefits."); *Glenville Gage Co. v. Indus. Bd. of Appeals*, 70 A.D.2d 283, 284, 421 N.Y.S.2d 408 (3d Dep't 1979) (stating that "the accrual of vacation[ ][pay] ... [is] a matter of agreement to provide such benefits," and citing both the employer's written notice and the employee's testimony to determine the terms of the agreement as it related to accrued vacation pay).

Viewing the facts alleged in the light most favorable to plaintiff, the Court finds that plaintiff has pled the existence of an agreement to provide accrued vacation pay upon termination. Appended to plaintiff's amended complaint are three letters written by plaintiff during the course of 2008 regarding vacation compensation. (*See* Am. Compl. Exs. B–D.) In plaintiff's first letter, she advises that she only took 3 of the 10 vacation days allotted to her for 2007. She indicates that the "arrangement in the past" has been to reimburse for unused vacation days. (*See* Am. Compl. Ex. B.) Plaintiff's second letter (addressed to "MS," which the Court assumes to be M. Sabhnani) is a follow-up to her initial request for reimbursement for unused vacation days. (*See* Am. Compl.

Ex. C.) Finally, plaintiff's third letter (also addressed to "MS") indicates that her "2007 vacation compensation for 7 vacation days not taken" was not included in the check she received earlier that week. (*See* Am. Compl. Ex. D.) These contemporaneous writings (which, when viewed in the light most favorable to plaintiff, suggest that an agreement between plaintiff and her employers in regards to vacation pay existed) support a plausible claim for accrued vacation pay. At this stage of the litigation, plaintiff has sufficiently pled the existence of an agreement to receive accrued vacation pay upon termination and, accordingly, has a plausible claim under Section 198–c(1) for defendants' alleged failure to make such payments. Defendants' motion to dismiss the vacation pay claim is, therefore, denied.

### b. Section 215 Claim

***11** Defendants also move to dismiss plaintiff's state law retaliation claim, brought under Section 215 of the NYLL. The Court denied defendants' previous request for dismissal of this claim and, for the reasons discussed on the record on September 19, 2012 and below, once again denies defendants' motion to dismiss this cause of action.

Section 215 of the NYLL provides, in relevant part, that:

> (a) No employer or his or her agent ... shall discharge, threaten, penalize, or in any other manner discriminate or retaliate against any employee (i) because such employee has made a complaint to his or her employer, or to the commissioner or his or her authorized representative, or to the attorney general or any other person, that the employer has engaged in conduct that the employee, reasonably and in good faith, believes violates any provision of this chapter, or any order issued by the commissioner (ii) because such employer or person believes that such employee has made a complaint to his or her employer, or to the commissioner or his or her authorized representative, or to the attorney general, or to any other person that the employer has violated any provision of this chapter, or any order issued by the commissioner....

NYLL § 215(1). Thus, under Section 215(1)(a)(ii), an employer is prohibited from retaliating against an employee based on its belief that the employee complained to someone about the employer's violation of a provision of the NYLL. During the September 19, 2012 telephone conference, the Court emphasized that, although complaints must be made to specific persons in order to form the basis for a claim brought under Section 215(1)(a)(i), complaints made to *anyone* (so long as they relate to an employer's alleged violation of a provision of the NYLL) can give rise to a Section 215(1)(a)(ii) claim.

Defendants move to dismiss the Section 215 claim essentially on the basis that plaintiff failed to cite to a specific provision of the NYLL in her complaint. Defendants argue that plaintiff has failed to adequately plead a claim under Section 215(1)(a)(ii) because, although her amended complaint states that she was terminated for testifying at M. Sabhnani's and V. Sabhnani's criminal trial, plaintiff has failed to allege that the testimony she provided against those defendants pertained to a specific provision of the NYLL that they violated. (*See* Defs.' Mot. to Dismiss at 10–11.) The Court belied the merits of a similar argument during the September 19, 2012 telephone conference, explaining that plaintiff's failure to explicitly cite to the indentured servitude provision of the NYLL would not defeat her claim when the complaint clearly indicated that plaintiff's trial testimony pertained to defendants' harboring of indentured servants.

In her amended complaint, plaintiff alleges that, upon discovering that defendants were "harboring indentured servants or slaves at their residence/business location," she was "compelled to testify against [them] in a criminal case in the Federal Court, Eastern District of New York." (Am.Compl.¶¶ 8–9.) Accepting these allegations as true, the reasonable inferences that can be drawn are that plaintiff complained to government officials and/or law enforcement officers about defendants' harboring of indentured servants and testified, at the criminal trial, about defendants' use of indentured servants. Indentured servitude is prohibited under the NYLL. As the Court explained during the September 19, 2012 telephone conference, plaintiff's failure to cite to the specific provision of the NYLL that prohibits indentured servitude is not a legal defect in this particular case; it is clear, even without reference to the particular statutory provision, that the violation of the NYLL that triggers plaintiff's Section 215 claim is indentured

servitude. *Cf. Nicholls v. Brookdale Univ. Hosp. Med. Ctr.*, 03–CV–6233 (JBW), 2004 U.S. Dist. LEXIS 12816, at * 13, 2004 WL 1533831 (E.D.N.Y. July 9, 2004) (dismissing Section 215 claim where the Court could not even determine what alleged violation of the NYLL formed the basis of plaintiff's claim). Accordingly, defendants' motion to dismiss the Section 215 claim is, once again, denied.

* * *

***12** In sum, defendants' motion to dismiss is denied in its entirety. However, the Court reiterates that plaintiff's FLSA claim is limited to overtime pay allegedly owed after November 21, 2008 (any overtime pay allegedly owed prior to that date falls outside of the applicable three-year limitations period).

### B. Motion for Sanctions

Defendants move for sanctions pursuant to Rule 11 of the Federal Rules of Civil Procedure on the following grounds: (1) certain allegations contained within the second amended complaint related to the FLSA overtime claim are contradicted by plaintiff's testimony in a different matter; (2) the facts alleged in the second amended complaint to support the FLSA claim are conclusory and false; and (3) plaintiff's deposition testimony from a different case suggests that there was no agreement between the parties for accrued vacation compensation, thereby discrediting her claim for such pay in this case. (*See* Defs.' Mem. of Law in Supp. of Mot. for Sanctions ("Defs.' Mot. for Sanctions") at 3–6.)

Under Rule 11, to avoid the risk of sanctions, a party's counsel must undertake reasonable inquiry to "ensure that papers filed are well-grounded in fact, legally tenable, and not interposed for any improper purpose." *Gal v. Viacom Int'l, Inc.*, 403 F.Supp.2d 294, 307 (S.D.N.Y.2005) (quoting *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 393, 110 S.Ct. 2447, 110 L.Ed.2d 359 (1990)) (internal quotation marks omitted). In considering a motion for sanctions under Rule 11, this Court applies an "objective standard of reasonableness." *See MacDraw v. CIT Grp. Equip. Fin., Inc.*, 73 F.3d 1253, 1257 (2d Cir.1996) ("In evaluating whether the signer of a filing has violated Rule 11, the district court applies an objective standard of reasonableness, examining whether, under the circumstances of a given case, the signed has conducted a 'reasonable inquiry' into the basis of a filing."). "[R]ule 11 is violated only when it is patently clear that a claim has absolutely no chance of success." *Oliveri v. Thompson*, 803 F.2d 1265, 1275 (2d Cir.1986) (internal quotation marks omitted). Additionally, "[w]hen divining the point at which an argument turns from merely losing to losing *and* sanctionable, ... courts [must] resolve all doubts in favor of the signer" of the pleading. *Rodick v. City of Schenectady*, 1 F.3d 1341, 1350 (2d Cir.1993) (internal quotation marks omitted).

As a threshold matter, there is no basis for defendants to claim that the amended complaint is frivolous from a legal standpoint, for, as discussed *supra*, all of the claims contained within the amended complaint have survived defendants' motion to dismiss. Defendants cannot maintain, therefore, that plaintiff's amended complaint was submitted in bad faith or that her pleading was laden with unreasonable claims. [10] Thus, to the extent that defendants move for sanctions on the basis that plaintiff initiated a frivolous lawsuit or brought claims with absolutely no chance of success, their request for sanctions is denied.

***13** Moreover, defendants' assertion that certain allegations contained within the amended complaint are contradicted by plaintiff's deposition testimony in a different case is unpersuasive. Defendants have submitted an affidavit in support of their motion for sanctions, attached to which is the transcript of plaintiff's deposition in a separate proceeding. (*See* Sam Israel Decl. in Supp. of Defs.' Mot. for Sanctions ("Israel Sanctions Decl.") Ex. A, Litras Dep. in 08–CV–2970.) First, defendants point to a portion of the deposition where plaintiff testified that there were times when she was asked to come in early to work, but that it did not occur more than once in a week, and argue that this testimony contradicts the hours chart appended to her amended complaint filed in this case. (*See* Defs.' Mot. for Sanctions at 4.) However, during that deposition, plaintiff testified that she "traditionally got in at 6:30 in the morning" (*see* Israel Sanctions Decl. Ex. A, at 14), which is entirely consistent with the documentation provided in the chart submitted in this action (*see* Am. Compl. Ex. A (denoting work start time as 6:45 a.m. for almost all of the days listed, with an occasional start time of 6:00 a.m. or 6:30 a.m.)). [11] Thus, the Court does not share defendants' view that plaintiff's deposition testimony in the prior case necessarily contradicts the facts alleged in support of her FLSA overtime claim in this case. Second, defendants point to a portion of the deposition where plaintiff testified that "there was never anything in writing to do with any of the regulations of the office, ever—to do with vacations, to do with holidays, to do

with anything," and argue that the testimony contradicts any allegation that there was an agreement between the parties about accrued vacation compensation to support plaintiff's Section 198–c(1) vacation pay claim in this case. (*See* Defs.' Mot. for Sanctions at 5–6.) The Court does not read plaintiff's prior testimony as inconsistent with her amended complaint in this action. The fact that there was no *written* agreement regarding vacation pay does not mean that there was no agreement for purposes of Section 198–c(1). For example, there may have been an oral agreement between the parties about accrued vacation compensation (that was not memorialized in writing). Thus, the fact that plaintiff testified about the lack of a written agreement between her and her employers in a prior case does not contradict her allegation in this case that some agreement related to vacation pay between her and her employers existed (at least not at this stage of the litigation). If defendants, following discovery, can demonstrate that plaintiff's factual allegations are false, and were known to be false at the time of the filing of the complaint, or that any other grounds for sanctions exist, then they can renew their motion for sanctions at that time. *See, e.g., Baskin v. Lagone*, 90 Civ. 5478(RPP), 1993 U.S. Dist. LEXIS 2505, at *17, 1993 WL 59781 (S.D.N.Y. Mar. 3, 1993) ("Because it is not entirely clear, and it is in any event premature to ascertain, that the Plaintiffs' Amended Complaint is not grounded in fact or warranted by existing law, as Rule 11 requires before sanctions can be imposed, the motion for sanctions is denied."). [12]

***14** In sum, there is no basis to conclude that plaintiff or her counsel filed this action in bad faith or that any other grounds for sanctions are present. Thus, the Court does not believe that attorney's fees are warranted under the circumstances of this case, and the motion for sanctions is denied.

## IV. CONCLUSION

For the foregoing reasons, the Court denies defendants' motions to dismiss the amended complaint and for sanctions in their entirety.

**SO ORDERED.**

Footnotes

1 Pooja Sabhnani was named as a defendant in plaintiff's original complaint, but was not included in the caption of the amended complaint filed on October 19, 2012. The Court dismissed the original complaint as against Pooja Sabhnani on September 19, 2012, but granted plaintiff leave to re-plead any causes of action against her. Plaintiff declined to do so in her amended complaint. Accordingly, Pooja Sabhnani is dismissed from this action.

2 Although plaintiff brings her claim for accrued vacation time under Section 198 or 191(3) of the NYLL, for the reasons discussed *infra*, the Court evaluates the claim under Section 198.

3 As noted *infra*, plaintiff brought additional claims in her original complaint. However, on September 19, 2012, the Court dismissed several of those claims, affording plaintiff leave to re-plead certain causes of action. The claims now before the Court are those alleged by plaintiff in her amended complaint filed on October 19, 2012.

4 Appended to plaintiff's amended complaint is a chart detailing the overtime hours plaintiff claims to have worked from November 2008 to April 2010. (*See* Am. Compl. Ex. A, Overtime Hours Chart .)

5 The Court is unable to determine, from the facts alleged in the amended complaint, whether PVM and Eternal Love are two separate and distinct entities.

6 Specifically, the Court: (1) denied the motion to dismiss the FLSA claim based on the statute of limitations, but granted the motion to dismiss that cause of action for failure to state a claim (as plaintiff merely provided conclusory allegations that were insufficient to survive a motion to dismiss) with leave to re-plead; (2) granted the motion to dismiss with respect to the New York State overtime pay claim without leave to re-plead (except on the issue of vacation pay allegedly owed); (3) denied the motion to dismiss with respect to the Section 1985 retaliation claim; (4) denied the motion to dismiss plaintiff's claim based on Section 215 of the New York Labor Law; (5) granted the motion to dismiss the unjust enrichment claim with leave to re-plead (to the extent that plaintiff can plead a theory of unjust enrichment alternative to overtime (which is preempted)); (6) granted the motion to dismiss the non-payment or conversion of plaintiff's pension claim as entirely speculative (and plaintiff's counsel indicated that he would not re-plead that claim); (7) granted the motion to dismiss the fraudulent inducement claim with leave to re-plead (noting that it is highly unlikely that plaintiff will be able to successfully re-plead this claim given the likely statute of limitations issue); and (8) granted the motion to dismiss the negligent infliction of emotional distress claim. The Court also granted the motion to dismiss the complaint, with leave to re-plead, as against Pooja Sabhnani. (*See* Oral Arg. & Ruling, Sept. 19, 2012.)

7 Moreover, to the extent defendants argue that allowing the FLSA claim to proceed against both PVM and Eternal Love would potentially entitle plaintiff to obtain a double recovery, defendants are mistaken. The fact that the claim against Eternal Love survives the motion to dismiss does not mean that plaintiff will receive a double recovery if she prevails on her FLSA claim. It is simply unclear, at this stage of the litigation, whether PVM and Eternal Love are separate entities and, if so, which employer should be responsible for the overtime pay allegedly owed. Accordingly, the claim must proceed against all individuals and entities alleged to be employers of plaintiff during the relevant time period.

* * *

8 Plaintiff's pleading of this claim is also sufficient as to defendants PVM and Eternal Love.

In *Monell v. Department of Social Services,* the Supreme Court held that "a municipality cannot be held liable under § 1983 on a *respondeat superior* theory," 436 U.S. 658, 691, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978), but may be held liable where a plaintiff demonstrates that the constitutional violation complained of was caused by a municipal "policy or custom." *Id.* at 694. "*Monell'* s prohibition against vicarious liability in the context of Section 1983 claims also has been extended to claims brought against municipal corporations under Section 1985." *Bowen v. Rubin,* 385 F.Supp.2d 168, 176 (E.D.N.Y.2005) (citing cases). Although *Monell'* s standard of liability has never been extended to private businesses sued under Section 1985, the Second Circuit has explicitly extended *Monell'* s rationale to private businesses in the Section 1983 context, *see Rojas v. Alexander's Dep't Store, Inc.,* 924 F.2d 406, 409 (2d Cir.1990), and courts within this Circuit have used the standard to evaluate the sufficiency of a Section 1985 claim brought against a private corporation for purposes of surviving a motion to dismiss, *see, e.g., Bowen,* 385 F.Supp.2d at 176 (explaining that, although the *Monell* standard of liability has never been extended to private businesses in a Section 1985 claim, defendants "offer no persuasive reason why this standard should not apply to private employers as well.... Thus, if plaintiffs can demonstrate that the [private corporation defendant] conspired to deprive them of their rights by virtue of an official policy or custom of the corporation, this would be sufficient to state a claim under Section 1985").

The liability of a municipal corporation (or, in this case, a private corporation) may be established in a number of ways under *Monell.* For example, "where the action of the employee in question is taken by, or is attributable to, one of the entity's authorized policymakers, the action will be considered the act of the entity itself." *Id.* at 177; *see also Amnesty Am. v. Town of W. Hartford,* 361 F.3d 113, 126 (2d Cir.2004) ( "[E]ven a single action by a decisionmaker who possesses final authority to establish municipal policy with respect to the action ordered is sufficient to implicate the municipality in the constitutional deprivation for the purposes of § 1983." (internal citation and quotation marks omitted)). Plaintiff has alleged that PVM was the "alter ego" of M. Sabhnani and V. Sabhnani, and that the business operations of PVM were carried out of the couple's home. (*See* Am. Compl. ¶¶ 4–5.) For purposes of surviving a motion to dismiss, plaintiff has made a sufficient showing that M. Sabhnani and V. Sabhnani were the kind of "higher ranking officials with policymaking authority" whose actions could be attributed to the corporation. *See, e.g., Bowen,* 385 F.Supp.2d at 177 (denying motion to dismiss as to private corporation defendant sued under Section 1985 where plaintiffs alleged facts that, when viewed in the light most favorable to plaintiffs, demonstrated that the employee who took the actions at issue acted as a "policymaker" for the corporation). Moreover, as discussed *supra,* it is unclear, based on the allegations contained within the complaint, whether Eternal Love is an entity separate and distinct from PVM. Accordingly, the claim must proceed against both PVM and Eternal Love at this time.

9 Although plaintiff also cites Section 191(3) of the NYLL, the Court analyzes plaintiff's claim under Section 198–c(1) of the NYLL, as courts in this Circuit have concluded that Section 191(3) does not provide a statutory right to accrued vacation payments upon termination. *See, e.g., Sosnowy,* 764 F.Supp.2d at 476.

10 In addition, the Court notes that plaintiff's amended complaint followed the Court's express instructions provided during the September 19, 2012 telephone conference—plaintiff re-pled only the claims that the Court gave her permission to re-plead and declined to reassert the action against Pooja Sabhnani in the absence of facts tending to implicate Pooja Sabhnani under any of the asserted claims.

11 Based on the information before the Court, it is entirely plausible that plaintiff's prior deposition testimony about being asked to come into work early on occasion referred to the fact that she generally began work around 6:45 a.m., and was sometimes asked to come in earlier (as reflected in the chart attached to her amended complaint).

12 To the extent plaintiff seeks sanctions against defendants and their counsel for making these arguments premised on plaintiff's deposition testimony in the prior case (*see* Gevanter Aff. in Opp'n to Mot. for Sanctions ¶¶ 2, 5), that request is denied because the Court does not find defendants' arguments to warrant an award of attorney's fees. Although the Court concludes that plaintiff's prior deposition testimony does not contradict the allegations contained within her amended complaint, the Court does not view defendants' attempt to point out such factual inconsistencies (in order to discredit certain allegations in the amended complaint upon which particular claims rely) to have been made in bad faith or to otherwise warrant the award of fees.

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