

FILED  
Clerk  
District Court

APR 28 2005

For The Northern Mariana Islands  
By \_\_\_\_\_  
(Deputy Clerk)

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- For Publication on Court's Web Site -

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN MARIANA ISLANDS

ROMEO P. NACAR, )  
)  
Plaintiff )  
)  
v. )  
)  
JOSE C. AYUYU; MARCIA )  
AYUYU; M&N COMPANY, )  
doing business as Ruris Apartments )  
and Susupe Garden Apartments; )  
and, McDONALD'S RESTAU- )  
RANTS OF SAIPAN, INC., a )  
Commonwealth of the Northern )  
Mariana Islands Corporation, )  
)  
Defendants )  
\_\_\_\_\_ )

Civil Action No. 05-0005  
  
NOTICE OF ORDER  
DENYING DEFENDANTS'  
MOTION TO DISMISS  
and  
STRIKING DOE DEFENDANTS'  
FROM CAPTION OF  
OPPOSITION TO MOTION

1           THIS MATTER came before the court on Thursday, April 28, 2005, for  
2 hearing of defendants' motion to dismiss the complaint for failure to state a  
3 claim against all named defendants. Plaintiff appeared by and through his  
4 attorney, Mark B. Hanson; defendants appeared by and through their attorney,  
5 F. Matthew Smith.  
6

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8           The court announced its tentative ruling to deny the motion. At the  
9 conclusion of the hearing it adopted its tentative ruling, for the following  
10 reasons.  
11

12           Plaintiff's verified complaint contains five claims for relief. The first claim  
13 invokes the provisions of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §  
14 201 *et seq.*, and the remaining four "state law" claims are brought under the  
15 supplemental jurisdiction provisions of 28 U.S.C. § 1367.  
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18           Defendants argue that plaintiff's complaint fails to make out a claim for  
19 relief under the FLSA and that it must be dismissed for lack of subject matter  
20 jurisdiction. Dismissal for lack of subject matter jurisdiction is appropriate if the  
21 court concludes this civil action does not arise under the Constitution, laws, or  
22 treaties of the United States. 28 U.S.C. § 1331.  
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1 A motion to dismiss for failure to state a claim upon which relief can be  
2 granted will succeed only if from the complaint it appears beyond doubt that  
3 plaintiffs can prove no set of facts in support of their claim that would entitle  
4 them to relief. Morley v. Walker, 175 F.3d 756, 759 (9th Cir. 1999). All  
5 allegations of material fact are taken as true and construed in the light most  
6 favorable to the non-moving party. Miranda v. Clark Co., Nevada, 319 F.3d  
7 465, 468 (9th Cir.) (*en banc*), *cert. denied*, 124 S.Ct. 64 (2003).  
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11 At this stage in the proceedings and on this undeveloped record, and  
12 taking as true the allegations of the complaint and viewing them in the light  
13 most favorable to plaintiff, the court cannot say that there is *no* set of facts  
14 which would support plaintiff's FLSA claim. It is simply too early in the lawsuit  
15 to make such a determination. Federal question jurisdiction has been properly  
16 invoked by the allegations of the complaint.  
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20 Title 28, U.S.C. § 1367 provides in relevant part that in any civil action in  
21 which the court has original jurisdiction, it also has supplemental jurisdiction  
22 over all other claims that are so related to claims in the original-jurisdiction  
23 action that they form part of the same case or controversy. As pleaded, the  
24 supplemental Commonwealth law-based claims are incontrovertibly related to  
25  
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1 the FLSA claim and form part of the same case or controversy. None of the  
2 reasons for the court to decline the exercise of supplemental jurisdiction are  
3 present. See 28 U.S.C. § 1367(c) (1) - (4). The general motion to dismiss the  
4 supplemental Commonwealth claims is denied.  
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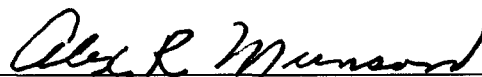
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7 FOR THE FOREGOING REASONS, defendants' motion to dismiss the  
8 complaint is denied on all grounds.  
9

10 Defendants shall file and serve their answer within ten days after notice of  
11 this order. Fed.R.Civ.P. 12(a)(4)(A).  
12

13 At the conclusion of the hearing, plaintiff orally moved to remove the  
14 mention of "Doe" defendants in his April 14, 2005, opposition to the motion to  
15 dismiss. Defendants posed no objection and the court struck the reference.  
16

17 IT IS SO ORDERED.

18 DATED this 28th day of April, 2005.  
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24 ALEX R. MUNSON  
25 Judge  
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