IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION

NO. 19-2642-KSM

MEMORANDUM MARSTON, J. February 1, 2022

On June 18, 2019, Plaintiffs Jessica Deardorff and David Chapman, on behalf of themselves and all others similarly situated, filed this class action lawsuit against Defendants Cellular Sales of Knoxville, Inc. ( CSOKI ), Cellular Sales of Pennsylvania ( CSPA ), and Cellular Sales of North Carolina, LLC ( CSNC ). Plaintiffs allege that Defendants failed to pay them proper overtime compensation in violation of and equivalent state statutes. (Doc. No. 33.)

In September 2019, CSPA moved - claims. (Doc. Nos. 12, 43.)

Shortly thereafter, in November 2019, CSOKI and CSNC moved to dismiss all claims for lack of personal jurisdiction. (Doc. No. 65.) On August 25, 2020, the Court dismissed CSNC as a Defendant and found that limited jurisdictional discovery was appropriate to determine whether this Court may exercise personal jurisdiction over CSOKI. (Doc. Nos. 133 34.) 1

After the

1 The parties agreed that the Court should decide the motion for personal jurisdiction before the motion to compel arbitration. Although the Court reserves ruling on the motion to compel arbitration, the instant JESSICA DEARDORFF, et al.,

Plaintiffs, v. CELLULAR SALES OF KNOXVILLE, INC., et al.,

Defendants.

parties engaged in limited jurisdictional discovery, on January 12, 2021, Plaintiffs filed a supplemental brief jurisdiction (Doc. No. 142). In their supplemental brief, Plaintiffs now argue that this Court may exercise personal jurisdiction over CSOKI under the alter ego theory i.e., CSPA (an

entity that is undisputedly as alter egos of CSOKI within this forum. (Id.) Defendants disagree. (Doc. No. 147.)

About a month later, Plaintiffs filed a motion for leave to file a second amended complaint, Cel oppose the motion. (Doc. No. 148.)

For the reasons discussed below, the Court grants personal jurisdiction tion to amend. I. Discussion A. Motion to Dismiss for Lack of Personal Jurisdiction

First, the pursuant to Federal Rule of Civil Procedure 12(b)(2). As this Court explained previously, Plaintiffs bear the burden of establishing that personal jurisdiction over CSOKI is proper and must do so with competent evidence. 2

Deardorff v. Cellular Sales of Knoxville, Inc., Civil

briefing revealed proceedings on behalf of four individuals who had previously filed Consent to Sue forms in this action. (See Doc. No. 148-1 at ¶ 6.) Those arbitration proceedings were initiated pursuant to the very same arbitration clause that is at issue in this case i.e., the clause Dealer s that Plaintiffs argue is invalid and unenforceable here. (See generally Doc. No. 52-1.) 2 Metcalfe v. Renaissance Marine, Inc., 566 F.3d 324, 330 (3d Cir. 2009), and the plaintiff must do so with Inc., Civil Action No. 18-0636, 2019 WL 400060, at *3 (E.D. Pa. Jan. 30, 2019) (quoting , 960 F.3d 1217, 1223 (3d Cir.

Action No. 19-2642-KSM, 2020 WL 5017522, at *2 (E.D. Pa. Aug. 25, 2020). 3

This Court found that Plaintiffs failed to meet their burden of establishing a prima facie case of personal jurisdiction as to CSOKI. See generally id. However, given the liberal standard in this Circuit for jurisdictional discovery, the Court permitted Plaintiffs to take limited jurisdictional discovery. Id. at *7 9 (explaining that Plaintiffs could seek limited jurisdictional discovery related to: (1) any records showing that CSOKI or its agents are registered in Pennsylvania and conduct business in that state, either under the name CSOKI, or other names, a corporate structure to discern whether individuals or divisions tasked with creation, implementation and oversight of the challenged policies sit and conduct operations in this forum). Following jurisdictional discovery, Plaintiffs filed a supplemental memorandum Plaintiffs argue that this Court may exercise personal jurisdiction over CSOKI (the parent

holding company) pursuant to the alter ego theory, since it is undisputed that this Court already has personal jurisdiction over CSPA (the subsidiary). (Id.) Plaintiffs assert that CSOKI through two of its other wholly owned subsidiaries, CSSG and CSMG exercises control over

-to-day operations. (Id.) In response, CSOKI maintains that because it is simply a holding company

and does not conduct business operations, does not conduct sales or provide

1992)). Where, as here, a court does not hold an evidentiary hearing, the plaintiff need only state a prima facie case of personal jurisdiction. Metcalfe, 566 F.3d at 330. Lionti v. Dipna, Inc., Civil Action No. 17-01678, 2017 WL 2779576, at *1 (E.D. Pa. June 27, 2017) (cleaned up Metcalfe, 566 F.3d at 330. 3 Because we write for the parties, the Court does not restate the law on general and specific personal jurisdiction, which we outlined in our prior opinion. See id. at *2 3.

any products or other services, and does not have employees, the alter ego doctrine is inapplicable and this Court cannot exercise personal jurisdiction over it. (Doc. No. 147.)

1. Alter Ego Legal Standard

jurisdiction over a subsidiary by way of the alter ego theory Lutz v. Rakuten, Inc., 376 F. Supp. 3d 455, 470 (E.D. Pa. 2019); see also Atl. Pier Assocs., LLC v. Boardakan Rest. Partners L.P., Civil Action No. 08-4564, 2010 WL 3069607, at *3 (E.D. Pa. Aug. 2, 2010) that a court may exercise personal jurisdiction . . . over a corporate entity that is the alter ego of a . then personal jurisdiction exists over the parent whenever personal jurisdiction (whether general

Shuker v. Smith & Nephew, PLC, 885 F.3d 760, 781 (3d s to whether the degree of control exercised by the parent is greater than normally associated with common ownership and directorship and whether the parent controls the day-to-day operations of the subsidiary such that the subsidiary can be said to be a m In re Enterprise Rent-A-Car Wage & Hour Pracs. Litig., 735 F. Supp. 2d 277, 319 (W.D. Pa. 2010), , 683 F.3d 462 (3d Cir. 2012) ( In re Enterprise ); see also Reynolds v. Turning Point Holding Co., Case No. 2:19-cv-01935-JDW,

against . . . deeming companies alter- Reynolds, 2020 WL 953279, at *3 (citations omitted).

Courts in this Circuit consider ten factors to determine whether a subsidiary is the alter ego of its parent:

(1 (2) common officers and directors; (3) a common marketing image; (4) common use of a trademark or logo; (5) common use of employees; (6) integrated sales system; (7) interchange of managerial and supervisory personnel; (8) the subsidiary performs business functions that would ordinarily be handled by a parent corporation; (9) the subsidiary acts as the marketing arm of the parent corporation or as an exclusive distributor; and (10) the parent exercises control or provides

See In re Chocolate Confectionary Antitrust Litig., 674 F. Supp. 2d 580, 598 (M.D. Pa. 2009) In re Chocolate Lutz, 376 F. Supp. 3d at 471; Atl. Pier Assocs., 2010 WL 3069607, at *3.

and the court may consider a In re Chocolate, 674 F. Supp. 3d at 598.

2. Analysis The Court finds that the first four factors point towards a finding that CSPA is an alter ego of CSOKI. However, the remaining six factors cut the other way. Therefore, the Court concludes that Plaintiffs have failed to show that CSPA is an alter ego of CSOKI. We address each factor in turn.

*** Factor 1. Because CSPA is a wholly owned subsidiary of CSOKI (Doc. No. 65-3 at ¶ 6; Doc. No. 142-5 at 124:20 22, 132:18 20), the first factor weighs in favor of a finding of alter ego.

Factor 2. The second factor looks to whether the parent and subsidiary share common officers. Pamela White is an officer of both CSOKI and CSPA. (Doc. No. 65-3 at ¶¶ 2 3.) Specifically, she is the Chief Financial Officer, Vice President, and Secretary of CSOKI and the President, Treasurer, and Secretary of CSPA. (Id.) As other courts in this Circuit have noted, however, this kind of overlap is to be expected in a subsidiary-parent relationship. See, e.g., In

re Latex Gloves Prods. Liab. Litig., No. MDL 1148, 2001 WL 964105, at *4 (E.D. Pa. Aug. 22, 2001) subsidiary, it is to be expected that there will be directors which are common to the boards of

both. Moreover, it is a well established principle of corporate law that directors and officers

In re Enterprise, 735 F. Supp. 2d at 322 e corporations of directors and the ownership by defendant parent of one-hundred percent of ERAC- [sic] that defendant parent controlled the subsidiary to the extent necessary to find that ERAC-Pittsburgh is an alter ego of the parent. A degree of control naturally flows from these aspects of the parent- subsidiary relationship, but this incidental control does not rise to the level required to permit the

Moreover, Plaintiffs do not present any evidence that CSOKI and CSPA have any other officers or directors in common, so the Court concludes that while this factor weighs in favor of finding alter ego, it should be given minimal weight. As illustrated in Tables 1 and 2 below, CSOKI only has two board members, Dane Scism and Margaret Scism, neither of whom serve on the board of CSPA or serve in any officer capacity for CSPA. (Doc. No. 147-2 at ¶¶ 27, 30.) CSPA has a separate Board of Managers, which consists of James Thome and White. (Id. at ¶ Yingling Lucas, IV. (Id. at ¶ 33.) Neither Thomas, Joel Lucas, or Raymond Lucas are officers or directors of CSOKI. (Id. at ¶¶ 28 30, 33.) In sum, Pamela White is the only overlapping officer of CSOKI and CSPA, and there are no overlapping Board members.

Table 1 CSOKI Board CSPA Board CSOKI Officers CSPA Officers Dane Scism James Thome Dane Scism

(Chairman)

Pamela White (President, Secretary, & Treasurer) Margaret Scism Pamela White Margaret Scism

(President)

Reese Thomas (VP)

Pamela White (CFO,

VP, & Secretary)

Joel Thomas Lucas (VP) Raymond Yingling

Lucas, IV (VP)

reliance on In re Latex Gloves Products Liability Litigation is too heavy handed. (See In re Latex Gloves In re Latex Gloves,

Allegiance Corporati of the stock in Allegiance Healthcare No. MDL 1148, 2001 WL 964105, at *1 (E.D. Pa. Aug. 22, 2001). AHC and AHII in turn had their own subsidiaries that manufactured latex gloves and sold them to AHC for marketing and distribution. Id. The plaintiffs (medical and hospital professionals who allegedly developed toxic reactions from latex gloves) sued AC and AHC. 4

Id. AHC did not challenge personal jurisdiction, but its parent company, AC, did, arguing that it did not have sufficient contacts with Pennsylvania to be subject to jurisdiction there. Id.

The court determined that it enjoyed personal jurisdiction over AC under the alter ego theory. Id. at *6. In its analysis of the second factor, the court found that AC and its subsidiaries

4 The plaintiffs in In re Latex Gloves did not name AHII as a defendant.

Id. at *4. There, Lester Knight, Joseph Damico, and William Feather served on

the board of directors of AHC. Id. At the same time, Knight was the CEO of AC and chairman of its board of directors; Damico was the president and COO of AC, as well as a director; and Feather was the senior vice president, general counsel, and secretary of AC, as well as a director. Id. In other words, there was substantial overlap between the parent and subsidiary boards, as Knight, Damico, and Feather were each directors of AC and AHC. That is distinguishable from this case, where no individual serves on both the CSOKI and CSPA boards, and White is the only individual who is an officer of both entities. See Clark v. Matsushita Elec. Indus. Co., Ltd., 811 F. Supp. 1061, 1068 (M.D. Pa. 1993) (finding no alter ego jurisdiction where one officer of the parent also sat on the Board of Directors of the subsidiary).

Plaintiffs also cite to an overlap of officers and directors between Defendants and CSSG and CSMG.

(See Doc. No. 142 at p. 12.) As illustrated in Table 2, CSOKI does not share any board members with its subsidiaries. And, as illustrated in Table 3, White is the only individual who serves as an officer for all four entities (CSOKI, CSPA, CSMG, and CSSG). The Court recognizes that there is some overlap between the CSPA, CSSG, and CSMG Boards and the CSPA, CSSG, and CSMG officers; however, none of these are identical to one another and, (and Dane Scism, who operationally serves as CEO of CSMG). 5

5 In addressing the second factor of the alter ego test whether the parent and subsidiary share common directors or officers Plaintiffs also raise the fact that CSOKI and CSPA share common legal representation in this litigation. (Doc. No. 142 at p. 13.) Although the Court does not necessarily consider it as part of its analysis of the second factor, the Court agrees that shared legal representation is a relevant consideration. See Genesis Bio Pharma., Inc. v. Chiron Corp. evidence that the parent dominated the subsidiary); Gasbarre Prods., Inc. v. Diamond Auto. Grp. Fla., Inc., Civil Action No. 3:16-53, Case 2:19-cv-02642-KSM Document 162 Filed 02/01/22 Page 8 of 40

Table 2 CSOKI Board CSPA Board CSSG Board CSMG Board Dane Scism James Thome Reese Thomas Elizabeth Melloy Margaret Scism Pamela White Pamela White James Thome Pamela White

Table 3 CSOKI Officers CSPA Officers CSSG Officers CSMG Officers Dane Scism (Chairman)

Pamela White (President, Secretary, & Treasurer)

Pamela White (President, Secretary, & Treasurer)

Pamela White (President, Secretary, & Treasurer; and operationally serves as CFO) Margaret Scism (President)

Reese Thomas (VP) Reese Thomas (VP) Elizabeth Melloy

(VP) Pamela White (CFO, VP, & Secretary)

Joel Thomas Lucas (VP)

James Thome (operationally serves as COO, not an elected officer)

Reese Thomas (VP)

Raymond Yingling

Lucas, IV (VP)

James Thome

(operationally serves as COO, not an elected officer) Dane Scism

(operationally serves as CEO, not an elected officer)

However, without more, shared legal representation does not automatically show the requisite level of control needed to establish alter ego jurisdiction over CSOKI. See Planned Parenthood of Kan. v. Andersen, 882 F.3d finances, share executives, and share legal counsel . . . But these factors do nothing to show that PPFA exercises control

Factors 3 and 4. Next, viewing all of the evidence in the light most favorable to Plaintiffs, the Court finds that there is at least some evidence that CSOKI and CSPA have a common marketing image and use a common trademark or logo. corporate designee, testified that CSOKI does not have a logo or trademark. (See Doc. No. 142- 5 at 155:13 14; see also id. at 156:23 157:6 ( Q: Is it your testimony that [CSOKI] does not use -2 at

¶ advertising, or recruitment materials. CSOKI also does not maintain or control the use of any undercuts any assertion that CSOKI is not in any way associated with the Cellular Sales logo or Cellular Sales brand name.

(Doc. No. 142-9 at p. 2; Doc. No. 142-10 at p. 2.) White testified that the Cellular Sales logo appears on each profile because they are both associated with CSOKI: Scism as the Chairman and CEO and White as the CFO, Vice President, and Secretary. 6

(Doc. No. 142-5 at 76:15

Compare Doc. No. 142-14 at p. 2 with Doc. No. 142-9 at p. 2 & Doc. No. 142-10 at p. 2; see also Doc. No. 142-5 at 78:14 16, Doc. No. 147-2 at ¶ 8.) Although Plaintiffs did not present evidence that CSPA uses the same Cellular Sales logo, the Court infers this from the fact that CSPA is only permitted to use Cellular Sales logos that CSMG creates,

6 The Court recognizes that these are Scism particular and viewing the evidence in the light most favorable to Plaintiffs, the Court finds the LinkedIn pages relevant and considers them here accordingly.

including the common logo featured on other exhibits shown to White in the deposition and provided to the Court as exhibits. (See Doc. No. 147-2 at ¶ ; see also Doc. No. 142-5 at 156:3

nd creates all the logos for

use an alternative logo or marketing imag Cellular Sales entity? A: W

different entities withi LinkedIn pages (see Doc. No. 142-5 at 76:15 a sales consultant job position in Pennsylvania (see Doc. No. 142-5 at 82:20 85:6 ( Q: If you

particular document, obviously, is a job posting for a position in Pennsylvania. Q: So who do

towards a sales consultant job in Pennsylvania that Cellular Sales referred to [CSPA]? A: Yeah. Q: Is there any other basis for your understanding for who Cellular Sales is in this instance? A: 7

7 Notably . (Id. at 85:7 Case 2:19-cv-02642-KSM Document 162 Filed 02/01/22 Page 11 of 40 Defe that the onus is on the individual reading the document to infer based on borders on absurd. (See id.)

Id. at 142:5 143:2.) Taken together,

same brand name. 8

Factors 5 and 7. Next, CSOKI and CSPA do not share employees. As a holding company, CSOKI does not have any employees. (Doc. No. 147-2 at ¶ 3; see also id. at ¶ 22; Doc. No. 142-5 at 38:16 22.) See Lapine, No. 5:15-cv-642, 2016 WL 3959081, at *5 (E.D. Pa.

Corporation does no

the Western Pennsylvania Market and the Eastern Pennsylvania Market. (Doc. No. 147-2 at ¶ 35.) The

86:2.) White continued to maintain that Cellular Sales referred to CSPA, despite the fact that CSPA did not exist in 1993, and CSOKI was founded in 1993. 8 In our prior opinion, in which the Court held that Plaintiffs had not established personal jurisdiction over CSOKI, ennsylvania Minimum Wage Act fail[ed] to argue that she applied for her sales position through the website, nor is there any other basis to

Deardorff, 2020 WL 5017522, at *6. In their supplemental memorandum, Plaintiffs assert that Deardorff applied for a sales representative position via the Cellular Sales website. (See Doc. No. 142 at p. 15 n.4.) However, this still does not establish that personal jurisdiction over CSOKI is proper because Plaintiffs have not shown any connection between See Reynolds, 2020 WL -of-state entity to specific or general personal jurisdiction in Pennsylvania . . . . Postings for job openings and Ms. Reynolds [sic] claims both relate to the Turning Point human relations function, but they are not the same conduct, and they are not so related as to give rise to specific personal jurisdiction be website has any connection to its pay practices

regional directors for each market are responsible for overseeing the operations in their respective

markets. (Id.) Joel Thomas Lucas and Raymond Yingling Lucas, IV are the regional directors for the Eastern Market (id.) and George Argeras and Nick Naveroski are the regional directors for the Western Market (id. at ¶ 36). None of these individuals is an employee of CSOKI. (Id. CSSG. (Id. at ¶¶ 35 36.) 9

these regional directors, CSSG see Doc. No. 142 at pp. 17 18; Doc. No. 142-5 at 50:25 51:7); however, nowhere does White testify that those individuals were also employees of CSOKI conjecture to the contrary. (Doc. No. 142- arrangement with CSSG, CSPA employs numerous back office employees and managerial -to- CSSG and CSMG employees to control CSPA. (See Doc. No. 142 at p. 17.) But, critically, the fifth and seventh factors of the alter ego test pertain to whether CSOKI and CSPA share employees and

Factor 6. As Plaintiffs appear to concede (see generally Doc. No. 142 (declining to address the sixth factor)), CSOKI and CSPA do not share an integrated sales system. CSOKI does not market or sell wireless services, cellular phones, or other products or services; it does

9 White also testified that as President of CSP No. 142-5 at 49:25 50:16.) White is not an employee of CSOKI; she is an employee of CSSG. (Id. at 33:2 11, 41:13 16.) However, as noted, she is an officer of CSOKI (CFO, Vice President, and Secretary).

not conduct any sales or distribute any products. (Doc. No. 147 at ¶ 3; Doc. No. 142-5 at 134:5 9.) Therefore, this factor weighs against a finding of alter ego jurisdiction.

Factor 8. Turning to the next factor, the Court finds that because CSOKI is a holding company, CSPA does not perform business functions that CSOKI would ordinarily have to handle itself. See In re Enterprise parent would have to perform the business functions of the operating subsidiaries if not for their existence, the court notes that in the case of holding companies, the subsidiary is not performing a function that the parent would otherwise have had to perform itself (the holding company could Lapine, 2016 WL 3959081, at *5 (same); see also Lutz functions that Rakuten would perform, as a holding company against finding that CSPA is an alter ego of CSOKI. 10

Factors 9 and 10. Next, the Court finds that CSPA does not act as the marketing arm of or an exclusive distributor for CSOKI. Rather, CSMG is responsible for the marketing of all Cellular Sales subsidiaries. (See, e.g., Doc. No. 142-5 at 159:1

CSOKI control testimony with respect to employee handbooks, claiming that it shows CSOKI has directed company-wide policies to be carried out. (See Doc. No. 142 at p. 19.) White testified that CSMG oversees Human Resources function of all of the Cellular Sales subsidiaries (Doc. No.

10 Plaintiffs also appear to concede that this factor does not support alter ego jurisdiction, as they do not address it in their brief. (See Doc. No. 142.)

142-5 at 100:18 21) and that the HR team drafts employment policies and handbooks, which are largely uniform (id. at 104:13 17, 105:2 8). However, Plaintiffs do not point to any and the Court has not found testimony indicating that CSOKI played a role in the implementation of these company-wide policies or directed CSMG to create them. In addition, White testified that regional directors may modify the handbook within their particular market (e.g., dress codes, attendance requirements, scheduling etc.). (Id. at 168:25 170:4.) 11

And even if Plaintiffs did show that CSOKI directed these policies, they do not explain how the employee handbooks transcend the bounds of the level of supervision present in typical parent-subsidiary relationship. See In re Latex Gloves

Reynolds, 2020 WL 953279, at *3 (same); In re Chocolate, 674 F. Supp. 2d at 598 .

*** In sum, though some of the alter ego factors are satisfied CSOKI owns one hundred ommon officer between CSPA and CSOKI, and there is a common trademark or logo and marketing image these factors fail to sufficiently establish that See In re Latex Gloves, e ownership of a subsidiary, even one hundred percent

11 142 at p. 19; see also Doc. No. 142-1 (Brooks Decl.).) the 30(b)(6) deposition topics until just days before the deposition finally occurred to be very troublesome. Nonethele process would have been the time it arose. But Plaintiffs never raised these concerns or any other issues to the Court at that time, or any other time during jurisdictional discovery. Nor do Plaintiffs point to any question that White refused to answer during her deposition.

ownership, is not sufficient to assert that a subsidiary is the alter-ego or agent of its parent Baker v. LivaNova PLC, 210 F. Supp. 3d 642, 650 (M.D. Pa. 2016) (same); see also In re Enterprise, 735 F. Supp. 2d at 322 23 (same); Bell v. Fairmont Raffles , Civil Action No. 12-757, 2013 WL 6175717, at *4, *6 (W.D. Pa. Nov. 25, 2013) (holding that the fact that four officers or directors of the parent, FRHI, held various roles within

-to-day operations of the subsidiary such that the Lapine, 2016 WL 3959081, at *2, *5 (finding that the second factor of the alter ego test was satisfied where the parent and the subsidiary shared five officers and directors in common, but that ultimately the plaintiff did not present evidence that the parent exercised control over the subsidiary and therefore could not be considered an alter ego of the subsidiary); Baker, 210 F. Supp. 3d at 650

controlled the daily affairs of its subsidiaries); Reynolds, 2020 WL 953279, at *3 ( that a company is portrayed as a single brand to the public . . . does not demonstrate the (cleaned up)).

Throughout their memorandum, Plaintiffs baldly state that CSOKI directs CSSG and CSMG and that through CSMG and CSSG, CSOKI controls CSPA. (See, e.g., Doc. No. 142 at

financial and HR functions are not carried out by the regional subsidiaries themselves [like However, Plaintiffs have not shown that CSOKI directs CSSG and CSMG. Plaintiffs attempt to support their argument that CSOKI directs CSSG and CSMG by maintaining that CSSG to centralize and carry out the employment and payroll processes (i.e., hiring, termination,

CSOKI directs CSMG to manage the operations of all subsidiaries, including the Human But citations to the record do not support those propositions. First, White does not state that CSOKI uses CSSG to centralize and carry out employment processes; rather, she simply See Doc. No. 142-5 at 50:25 other employees who assist in managing the operations of [CSPA] who are not located in the

market? A: They are not employees of [CSPA.] Q: Who are they employees of? A: state that CSOKI directs CSMG; rather, they onsibilities are with respect to CSMG, as she is the CFO of that entity as well. (See Doc. No. 142-5 at 42:17 responsibilities associated with your role as chief financial officer for [CSOKI]? A: Again, [CSOKI] is a holding company, so my responsibility for [CSMG] is to over or to perform that -8 at store is owned and operated by an affiliated company of CSMG organized in the state in which the store 12

, averring that CSOKI

12 And even if CSOKI did oversee the human resources, IT, and marketing functions of CSPA, that would not evidence the day-to-day control necessary to establish alter ego jurisdiction. See, e.g., Reynolds, 2020 ter ego

does not direct or control CSSG or CSMG. (See Doc. No. 142-7 at ¶ 14 (

resources functions, for CSPA or any other entity . . . . CSOKI does not provide any directives or

CSSG, CSPA, and CSMG do not have to be approved by require or expect CSPA, CSMG, or CSSG . . . to notify CSOKI prior to using any brand name or

See, e.g., Metcalfe, 566 at 330.

Plaintiffs also attempt to rely on the fact that in capacity as CFO of CSOKI, she

alter ego jurisdiction. (See Doc. No. 142 at pp. 10 11.) White testified that because CSOKI is a holding company, the financial statements of the LLCs, such as CSPA, are consolidated under the holding company for tax return and financial reporting purposes. (Doc. No. 142-5 at 119:21 121:6.) But this does not establish that CSOKI exercised daily control over CSPA either. See,

e.g., Reynolds, 2020 WL 953279, at *1, *4 (noting that the parent, TPHC, files a consolidated income tax return for all of the entities but not considering that fact in its analysis and ultimately holding

that there was no alter ego jurisdiction as the plaintiffs had not presented enough -owned subsidiaries are separate and distinct

omitted)); In re Chocolate, 674 F. Supp. 3d at 599 approve budgets, gather information about corporate performance, and receive distributions of subsidiary

profits. These activities typify standard parent-subsidiary interactions and do not reflect daily, operational control that is sine qua non of an alter ego relationship. Issuance of group-wide accounting, finance, and sales protocols through the Finance and Recurring Reports Manuals likewise does not establish an alter .

see also Clark v. Matsushita Elec. Indus., Ltd., 811 F. Supp. e independence of the separate corporate entities was disregarded. . . . The court finds that the only evidence arguably

subsidiaries in its annual report, has li

In sum, the Court concludes that CSPA is not the alter ego of CSOKI, and that the

[CSPA], other than the kind of control associated with parent-subsidiary relat In re Enterprise, 735 F. Supp. 2d at 324 (holding that the subsidiary was not an alter ego of its parent,

directors, a common marketing image and a joint use of trademarked logos, and the use of an internal workings or day-to- Reynolds, 2020 WL 953279, at

*3 4 (finding that the subsidiary was not the alter ego of its parent where the entities had common ownership, common directors and officers, and common use of a trademark or logo, d

wholly- ). Because smiss for lack of personal jurisdiction.

B. Motion to Amend

CSSG and CSMG as Defendants.

1. Rule 15(c) Plaintiffs argue that they may amend their complaint to add CSMG and CSSG as Defendants under the relation back doctrine and therefore the expired statute of limitations for their FLSA claims does not bar the amendment. (Doc. No. 146-1 at pp. 9 10.) Under Rule of Federal Procedure 15(c), an amendment naming a new party will relate back to the original complaint if the following three conditions are satisfied: (1) the claim in the amending pleading arises out of the same conduct, transaction, or occurrence set forth in the original pleading; (2) within 120 days of the institution of the action, the party to be brought in

party t

party. Fed. R. Civ. P. 15(c)(1)(C); Arthur v. Maersk, Inc., 434 F.3d 196, 207 (3d Cir. 2006); see also Krupski v. Costa Crociere S. p. A. timely filed pleading and is thus timely even though to was filed outside an applicable statute of

Here, the first prerequisite is met because the FLSA claims against the new Defendants, CSMG and CSSG, arise out of the same set of facts or occurrence set forth in the original complaint namely, that Defendants employed Plaintiffs, Plaintiffs worked overtime, and Plaintiffs were not paid for that overtime. See Gonzalez-Marcano v. U.S. Airways Grp., Inc., Civil Action No. 13- requirement is clearly met here. The proposed amended complaint is identical to the Complaint,

except for the named defendants. Indeed, the amendment does not add new facts or causes of action. There can be no serious debate that the amendment arises from the same transaction or

The second prerequisite is also satisfied because notice of the lawsuit may be imputed to

princip[le], notice may be imputed to parties . . . when the original and added parties are so closely related in business or other activities that it is fair to presume the added parties learned of Id. at *5 (cleane identity of interest principle is often applied where the original and added parties are a parent

Id.; see also Johnson v. Geico Cas. Co., 673 F. interest generally exists in a parent-subsidiary

entities share the same registered agent, share corporate officers, and/or share the same corporate address. See, e.g., Gonzalez, 2014 WL 413932, at *5; Dunbar v. Montgomery County, Civil Action No. DKC 20-0738, 2020 WL 7319276, at *4 (D. Md. Dec. 11, 2020); Dunhem v. Suntrust Banks, Inc., Civil Action No. AW-04-1016, 2005 WL 8174721, at *1 (D. Md. Jan. 25, 2005). Here, the Court finds that CSSG and CSMG share an identity of interest with CSOKI, 13

may be imputed to CSSG and CSMG for purposes of Rule 15(c)(2), because CSSG and CSMG are wholly owned subsidiaries of CSOKI (see Doc. No. 65-3 at ¶ 13; Doc. No. 146-5 at 134:1 4, Doc. No. 146-4 at ¶¶ 23, 25); all three entities share the same registered agent (White) (see Doc. No. 146-4 at ¶¶ 19, 22, 24); each entity maintains its principal

13 CSOKI waived service on September 10, 2019. (Doc. No. 48.) Therefore, it had notice of the lawsuit within 120 days of the complaint being filed. (See Doc. No. 1 (complaint filed on June 18, 2019).)

place of business at the same address (9040 Executive Park Drive, Knoxville, TN) (see id.); and each entity shares at least some overlap in corporate officers (see Doc. No. 65-3 at ¶¶ 2 3 (indicating that White is the CFO, Vice President, and Secretary of CSOKI, as well as the President, Treasurer, and Secretary of all of the Cellular Sales subsidiaries, which would include CSSG and CSMG)). See

Gonzalez Airways Group, is the parent corporation of the proposed additional defendant, U.S. Airways,

Inc., the wholly-owned subsidiary. In addition, the Plaintiff claims that the two corporations share the same corporate address in Arizona. On these facts, the identity of interest princip[le] allows us to impute any notice that U.S. Airways Group received regarding this action to U.S. Airways, Inc. because, as parent and subsidiary, they are so closely related in business that we see also Dunbar subsidiary corporations, share multiple corporate officers in common, share a resident agent for service of process, and do not distinguish themselves in their public discourse, the entities appear information shows that an identity of interests exists between KPIC, KFHP, and KFHPMAS.

Dunhem, 2005 WL 8174721, at *1 (finding an identity of interest between Suntrust Bank and Suntrust Bank, Inc. and that relation back was proper under Rule 15(c), where Suntrust Bank was a wholly owned subsidiary of Suntrust Banks, Inc., both entities utilized the same resident agent, and both entities were represented by the same counsel). Contra Markhorst v. Ridgid, Inc., 480 F. Supp. 2d 813, 817 (E.D. Pa. 2007) (holding that the plaintiff failed to show constructive notice through the identity of interest method,

reasoning that the two c

Last, Plaintiffs must show that within 120 days of the filing of the original complaint,

see also Krupski requirement ensures that the proposed additional party knew or should have known all along that Gonzalez-Marcano, 2014 WL 413932, at *6 (quoting Taliferro v. Costello, 467 F. Supp. 33, 36 (E.D. Pa. 1979)). As the Supreme Court has defendant knew or should have known during the Rule 4(m) period, not what the plaintiff knew or should have known at the time of filing her ori Krupski, 560 U.S. at 548; see also id. at 541 (explaining

The Court finds that the third requirement is also satisfied. 14

CSSG and CSMG should

14 Elsewhere in their opposition, Defendants argue that Plaintiffs should not be permitted to add CSSG as a party because Plaintiffs knew at the time of filing the complaint that CSSG existed. (Doc. No. 148 at p. does not affect our Rule 15(c) analysis. See Krupski, 560 U.S. at 548 session is

nce of mistake. . . . may know that a prospective defendant call him party A exists, while erroneously believing him to have the status of party B. Similarly, a plaintiff may know generally what party A does while misunderstanding the roles that party A and party B played in the conduct, transaction, or occurrence giving rise to her claim. If the plaintiff sues party B instead of party A under these circumstances, she has

have known at the time Plaintiffs filed the complaint that Plaintiffs had made a mistake in naming CSOKI instead of them. First, CSOKI does not have any employees and as of January 1, 2018, the Cellular Sales subsidiaries, including CSNC and CSPA, began employing their sales representatives through a leasing arrangement with CSSG. (See Doc. No. 65-3 at ¶¶ 4, 13; Doc. No. 146-5 at 38:16ent agreement explicitly identifies

pay stub from July 2018. (See Doc. No. 65-3, Ex. B- This DEALER COMPENSATION AGREEMENT . . . is made and ente signature date . . . by and between CELLULAR SALES SERVICES GROUP, LLC -

In addition, CSMG manages all of the Cellular Sales entities and conducts Human Resources functions for all the entities, including creating employee policies and creating and amending the DCAs, 15

which include provisions concerning payment and record keeping. (Doc. No. 142-5 at 99:8 20, 100:18 21, 137:21 25; see also Doc. No. 142-18.) And in their original

Defendants have company-wide pay policies and practices and a time recording system that encourages Sales Representatives to work unscheduled hours that go unrecorded. Despite Sales t pay Sales See Gonzalez-Marcano, 2014 WL 15

CSSG is identified in the DCA, as well as on paystubs.

s mistake: the complaint clearly sets out that Plaintiff meant to sue the company that owned, operated, controlled, and maintained the aircraft on which she was allegedly injured, and U.S. Airways, Inc. knew that it, not U.S. Airways Group, was responsible for the aircraft. In fact, U.S. Airways, Inc. should have known that U.S. Airways Group could not have been the proper defendant because it does not even do business in Puerto Rico. Thus, U.S. Airways, Inc. should have known . . . that the sole reason that it was not originally named as a defendant was because Plaintiff misunderstood which U.S.

2. Rule 15(a) Plaintiffs argue that because all three requirements of Rule 15(c) are met in this case, this Court need not conduct a Rule 15(a) analysis. (See

Feder matter of course within 21 days after serving it, or . . . 21 days after service of a responsive

pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), w

The burden is on the party opposing the

Price v. Trans Union, LLC substantial or undue prejudice, denial [of a motion to amend] must be grounded in bad faith or dilatory motives, truly undue or unexplained delay, repeated failure to cure

deficiency by

Rich Hous. of V.I., Inc., 663 F.2d 419, 425 (3d Cir. 1981).

In contending that Rule 15(a) is inapplicable here, Plaintiffs misread the governing law. Nowhere in Krupski v. Costa Crociere S. p. A. does the Supreme Court state that courts should not consider the Rule 15(a) factors in determining whether to grant leave to amend where the court has already determined that the requirements of Rule 15(c) have been satisfied and relation back is proper. Rather, the Supreme Court held that undue delay in filing an amended complaint which is an equitable consideration under Rule 15(a) should not be considered in determining whether an amendment relates back under Rule 15(c). 560 U.S. at 552 53. In other words, the Supreme Court cautioned against conflating Rule 15(a) and Rule 15(c) and clarified the scope of the two rules. In Krupski not relate back under Rule 15(c) because the plaintiff had unduly delayed in seeking leave to file her amended complaint. Id. at 552. The Supreme Court reversed, finding no support for the

Id. at 552 an exclusive list of

leave the decision whether to grant relation back its analysis, the Supreme Court explained the distinction between Rule 15(a) and Rule 15(c):

The mandatory nature of the inquiry for relation back under Rule 15(c) is particularly striking in contrast to the inquiry under Rule 15(a), which sets forth the circumstances in which a party may amend its pleading before trial. By its terms, Rule 15(a) gives discretion to the district court in deciding whether to grant a motion to amend a pleading to add a party or a claim. . . . We have previously in deciding whether to grant leave to amend under Rule 15(a). As the contrast between Rule 15(a) and Rule 15(c) makes clear, however, the speed with which a plaintiff moves to amend her complaint or files an amended complaint after obtaining leave to do so has no bearing on whether the amended complaint relates back. Id. at 553. Because the Court of Appeals impermissibly considered dilatory motive in conducting its Rule 15(c) analysis, the Supreme Court held that the lower courts erred in denying relation back under Rule 15(c). Id. at 554. Arthur v. Maersk, Inc., 434 F.3d 196, 199 (3d Cir. 2006) is no different. In Arthur, even though all three requirements of Rule 15(c) had been met, the Id. at 203. The Third Circuit found that by doing so, the district court had erred and failed to recognize the distinction between Rule 15(a) and Rule 15(c). Id. at 202 see also id. at 203 o amend. Such equitable considerations are relevant to whether leave to amend should be granted under Rule 15(a), but do not relate to any of the enumerated conditions of Rule 15(c). Undue delay is a reason to deny leave to amend but not to deny relation Krupski, Arthur reach is limited; in both cases, the courts denied relation back under Rule 15(c) after taking into account equitable considerations that are irrelevant to the relation back analysis. Krupski and Arthur are inapplicable where, as here, the court finds that the amendments related back under Rule 15(c), before turning to the Rule 15(a) factors. In sum, neither Krupski nor Arthur prevents us from considering equitable factors at this juncture. To the contrary, in Arthur, the Third Circuit implies that it is proper to

consider the Rule 15(a) factors after conducting the relation back inquiry under Rule 15(c). See 434 F.3d at 204 (explaining that it support denial of leave to

undue delay when it denied relation back).

And district courts within this Circuit have explained that it is appropriate to consider the Rule 15(a) factors after determining that the amendments relate back under Rule 15(c). See, e.g., Altenbach v. Link, Civil No. 3:14-cv-2431, 2017 WL 583141, at *2 (M.D. Pa. Feb. 13, 2017) back to the date of the original pleading, leave to amend under Rule 15(a) may be denied if the

Rinaldi v. United States, No. 1:13-cv-450, 2019 WL 6328027, at *3 (M.D. Pa. Nov. 26, 2019) (same); Fennell v. Tacu, Civil Action No. 20-1157, 2021 WL 2338737, at *2 (W.D. Pa. June 8, 2021) claim relates back to an original complaint

grant leave to amend. Therefore, if an amended pleading meets the Rule 15(c) requirements and relates back to the date of the original pleading, a court can still deny leave to amend under Rule Wine v. EMSA Ltd. , 167 r the amendment of pleadings, if a litigant seeks to add a party after the statute of limitations on its claim has run, the essence of Rule 15(a) is not reached, unless the Court finds that the requirements of Federal Rule of Civil Procedure 15(c), which governs the relation back of amendments, have been see also id.

leave to Defendants were unfairly

prejudiced by Plaintiffs undue delay in amending their complaint and that the proposed amendments are futile. (Doc. No. 148 at pp. 13 27.)

Undue Delay. amend. Rather, it is only where delay becomes undue, placing an unwarranted burden on the court, or prejudicial, placing an unfair burden on the opposing party, that denial of a motion to Synthes, Inc. v. Mathes, 281 F.R.D. 217, 225 (E.D. Pa. 2012) (cleaned up); see also Mullin v. Balicki nnot a delay that is protracted and unjustified can place a burden on the court or counterparty, or can indicate a lack of diligence

reasons for not amending sooner while bearing in mind the liberal pleading philosophy of the Mullin, 875 F.3d at 151 (cleaned up). A plaintiff who moves for leave to amend must offer a cogent reason for the delay in seeking amendment. See Id. refused to overturn denials of motions for leave to amend where the moving party offered no cogent reason Atl. Holdings Ltd. v. Apollo Metals, Ltd., No. 5:16- cv-06247, 2018 WL 5816906, at *3 (E.D. Pa. Nov. 7, 201 of the district court is to articulate the imposition or prejudice caused by the delay, and to balance Synthes, 281 F.R.D. at 225 (quoting Coventry v. U.S. Steel Corp., 856 F.2d 514, 520 (3d Cir. 1988)). -

representation is misleading and gives the Court pause, given that CSSG is identified as a party

-3, Ex. B-12), and it is the No. 142-

16

(See Doc. No. 65-3, Ex. B- G as a signatory); Doc. No. 65-3 at

CSPA employed their sales representatives through a leasing arrangement with CSSG).). Likewise, as Defendants observe (Doc. No.

dated December 6, 2019, which identifies CSMG in an exhibit (Doc. No. 77-1). Nonetheless, given the precedent in this Circuit, the Court has difficulty finding that the delay here is undue. Although Plaintiffs filed their complaint in June 2019, this case is still at the very early stages of litigation. Discovery has not yet begun, the Court has not yet issued a scheduling order, and there have been no motions to certify a class or collective. The cases Defendants rely on to support their argument that Plaintiffs unduly delayed involved motions to amend that occurred at much later stages of the litigation than those present here i.e, near the conclusion of discovery or after discovery has been completed. See Heraeus Med. GmbH v.

16 As noted above (supra n.1) of four individuals who had previously filed Consent to Sue forms in this matter. (See Doc. No. 148-1 at ¶ 6.) In three of the four arbitrations all of which were initiated in spring or summer 2020, before this Court granted jurisdictional discovery in this case CSSG was named as a respondent. (See id. at ¶ 8 (explaining that on April 24, 2020, Marcus Hill initiated an arbitration proceeding and specifically named CSSG as a respondent in the proceeding); id. confirmed that the third respondent is CSSG, and Marcus Hill has continued to pursue alleged claims against CSSG in the arbitration proceeding id. at ¶ 10 (explaining that on June 12, 2020, Patrick McConnon initiated an arbitration proceeding with the AAA and named CSSG as a respondent in the proceeding); id. at ¶ 11 (stating that on June 16, 2020, Krystina Amor initiated an arbitration proceeding with the AAA and named CSSG as a respondent in the proceeding).)

Esschem, Inc. two years after filing the complaint, and about a month before the scheduled conclusion of discovery. . . . The Court and the parties have already expended significant time and resources on discovery- Exeter Township v. Franckowiak, No. 5:17-cv-27 the claims alleged in the initial Complaint. As Franckowiak points out, allowing the proposed claims against Gardecki and against her would require the court to reopen discovery, and the

which motions to amend are denied because of undue delay involve similar circumstances. See, e.g., Atl. Holdings Ltd., 2018 WL 5816906, at *2, *4 (denying motion to amend filed one month before the close of fact discovery and finding that the plaintiff unduly delayed in seeking to amend the complaint to add additional defendants); Kiarie v. Dumbstruck, Inc., 473 F. Supp. 3d 350, 352 53, 359 60 (S.D.N.Y. 2020) (denying motion to amend to add two defendants and -ordered deadline for such amendments and nearly four months after the Court ordered the conclusion of

At least one court in this Circuit has held that a motion to amend filed at an early stage of litigation was not unduly delayed, notwithstanding the fact that the lawsuit had been initiated over twelve months ago. 17

See Bamgbose v. Delta-T Grp., Inc., 724 F. Supp. 2d 510, 518 (E.D.

17 In their opposition brief, Defendants state at there are two reasons the Court was delayed in ruling on the motion to compel: first, the parties informed the Court motion to compel arbitration and then, once the Court ruled that jurisdictional discovery was proper (see Doc. Nos. 133 34), the parties requested additional time to complete said discovery, twice (see Doc. Nos. 136, 138). Second, in May 2021, the parties represented to the Court that they were engaging in settlement negotiations in earnest. Unfortunately, in September 2021, the parties informed the Court the

r over one year, it is still in a relatively early stage because the issue of conditional certification has not (collecting cases)); cf. Copantitla v. Fiskardo Estiatorio, Inc., No. 09 Civ. 1608(RJH)(JCF),

2010 WL 1327921, at *1 to add an additional defendant, where the motion was filed eleven months after the complaint had been filed). A cannot find that the prejudice to Defendants outweighs the liberal pleading standard applied in

the undue delay context.

Futility. Defendants argue that the amendments are futile because Plaintiffs do not plausibly allege that CSSG and CSMG were their employers within the meaning of the FLSA. We agree.

Holst v. Oxman cleaned up); see also Anderson v. City of Philadelphia

12( Holst cleaned up); see also Anderson determining whether the proposed amendment states a plausible claim, the court must consider only those facts alleged in the proposed amended complaint, accepting the allegations as true and drawing all logical inferences in favor of the plaintiff. Courts are not, however, bound to accept as true legal conclusions couched as factual allegations and a proposed amended complaint must

negotiations were unsuccessful.

contain enough facts to Harris v. Steadman, 160 F. Supp. 3d 814, 817 (E.D. Pa. 2016) (cleaned up).

Williams v. Bob Evans Rests., LLC, 2:18-cv-01353, 2020 WL 4692504, at *5 (W.D. Pa. Aug. 13,

2020); see also Thompson v. Real Estate Mortg. Network, 748 F.3d 142, 148 (3d Cir. 2014) inquiry in most FLSA cases is whether the plaintiff has alleged an actionable employer- Davis v. Abington Mem

Hosp., 817 F. Supp. 2d 556, 563 ship between the plaintiffs and defendant. Thus, in a FLSA collective action, every defendant must

person acting directly or indirectly in the interest of an employ U.S.C. § 203(d); see also Thompson, 748 F.3d at 148.

Id.; see also In re Enterprise, 683 F.3d at 468; Williams, 2020

Thompson, 748 F.3d at 148 (citations omitted). In determining whether a joint employer relationship exists, courts in this Circuit must consider a non-exhaustive list of factors:

(1) authority to hire and fire the relevant employees; (2) the ent: compensation, benefits, and work

involvement in day-to-day employee supervision, including employee discipline; ecords, such as payroll, insurance, or taxes. Id.

with the enumerate Williams, 2020 WL 4692504, at *4.

In the proposed second amended complaint, Plaintiffs allege that CSSG, CSOKI, and CSMG are joint employers. (Doc. No. 146-4 at ¶ 29 ( operate in concert and together in a common enterprise and through related activities, as here relevant, so that the actions of one may be imputed to the other and/or so that they operate as .) In addition, Plaintiffs plead the following:

CSMG], Defendants [CSOKI, CSSG, and CSMG] employed him and other Sales Representatives within the meaning of 29 U.S.C. §§ 203(d) and 203(g) to sell Verizon cellular service and equipment in their Verizon authorized retail stores. Defendants [CSOKI, CSSG, and CSMG] employed Chapman and other Sales Representatives in interstate commerce and in an enterprise engaged in the production of goods for interstate commerce within the meaning of 29 U.S.C. § -4 at ¶ 16; see also id. [CSOKI, CSSG, and CSMG] employed Chapman as a Sales Representative at a store in Tarboro, NC to sell Verizon cellular service

Plaintiffs and other similarly situated current and former Sales Representatives and, directly or indirectly, jointly or severally, including, without limitation, control and direct the terms of employment and compensation of Plaintiffs and Id. at ¶ 28.) 18 These are conclusory allegations and do not support a FLSA claim against the newly added

18 In their reply brief, Plaintiffs argue that these allegations are sufficiently specific to establish joint employer liability under the FLSA. (Doc. No. 149 at p. 13 (citing Doc. No. 146-3 at ¶¶ 12, 16, 28, 29).). In light of the case law discussed below, we disagree.

Defendants, CSSG and CSMG, as they fail to plausibly show that CSSG and CSMG were

## DEARDORFF et al v. CELLULAR SALES OF KNOXVILLE, INC. et al

2022 | Cited 0 times | E.D. Pennsylvania | February 1, 2022

Williams v. Bob Evans Restaurant endants are/were a single and joint employer with a high degree of interrelated and unified operations, sharing common management between restaurant locations, sharing common employees between locations, as well as sharing human resources and payroll servi

ismiss

nature of the employee Id. The Court also referring to the Defendants collectively and failing to plead individual facts as to each Defendant is fatal to the validity of the claim that BEF Inc. Id. at *5 counsel that the Plaintiffs make some more than de minimis factual allegations with respect to -employee relationship in order to support a . . . joint ; see also Attanasio v. Cmty. Health Sys., Inc., 863 F. Supp. 2d 417, 425 26 (M.D. Pa. 2012) (finding that the plaintiffs had failed to plead that CHS was a joint employer details suggesting exactly how CHS exercised authority over the particular employees, how these

employees were supervised by a Delaware corporation headquartered in Tennessee acting through a holding company, and how they oversaw the administration of the business records. . . . There are no suppo . . . that

Boyce v. SSP Am. MDW, LLC, No. 19 C 2157, tances

that it controlled his working conditions. [The plaintiff] does not allege, for example, which entity hired him, which entity paid him, or which entity directly supervised his work. Most of

MDW and SSP, but such vague and undifferentiated allegations are not sufficient to establish a joint-employer relationship. [The plaintiff] must allege facts showing which particular entity or entities controlled his working conditions in order to proceed under a joint-employer theory, and Ivery v. RMH Franchise Corp., 280 F. Supp. 3d 1121, 1129

issue of joint employment, including conclusory stat

Defendant had the power

In contrast, in Thompson v. Real Estate Mortgage Network, the Third Circuit held that the plaintiff plausibly pleaded that two entities, REMN and Security Atlantic, were joint employers under the FLSA. 748 F.3d at 14. There, the amended complaint pleaded specific facts such as: (1) e was hired by Security

oader degree of corporate

Id.

The allegations at issue in this case are more similar to those in Williams than those in Thompson. (See Doc. No. 146-4 at ¶¶ 16, 28 29, 38.) Nowhere in their complaint do Plaintiffs plead any specific facts indicating that CSSG, CSMG, and CSPA were joint employers, such as that employees of CSSG or CSMG conducted their training, that CSSG or CSMG hired them or had responsibility for disciplining them, or that individuals supervising them represented that CSSG and CSMG were sister organizations to CSPA, among other things.

In their reply brief, Plaintiffs argue that their allegations satisfy the Twombly/Iqbal pleading standard, citing Johnson v. Mattress Warehouse, Inc., Civil Action No. 20-891, 2020 WL 2839109 (E.D. Pa. June 1, 2020) and Jordan v. Meridian Bank, Civil Action No. 17-5251, 2018 WL 6079314 (E.D. Pa. Nov. 20, 2018). (Doc. No. 149 at p. 12.) Johnson and Jordan are inapposite: neither Johnson nor Jordan involved the joint employer theory of liability. See Johnson the Complaint fails to allege which Defendants implemented the scheme, what the scheme

consisted of, what concrete actions Defendants took to enact the scheme, how the Plaintiffs discovered the scheme, and which Loan Officers were affected by the scheme. . . . Since prima facie claim for an FLSA overtime Jordan, 2018 WL 6079314, at *3 (denying motion to

dismiss where the employer-defendant claimed that certain exemptions applied that barred the

Plaintiffs also appear to argue that because they attached hundreds of pages of jurisdictional discovery to their supplemental memorandum of law in support of their opposition to Defendants motion to dismiss for lack of personal jurisdiction, this saves their failure to plausibly allege that CSSG, CSMG, and CSPA were joint employers in their proposed second amended complaint. (See, e.g. attempt to argue [futility] falls flat in the face of evidence that CSSG and CSMG, as wholly owned

generally to Doc. No. 142)); id. oles that CSSG and CSMG have in supervising, managing, and carrying out the day-to- (citing generally to Doc. No. 142)).) This is not so. The standard for considering whether a

proposed amendment is futile is the same as that for deciding motions to dismiss, pursuant to which the Court need only consider the allegations in the complaint or any document that is explicitly relied upon or integral to the complaint. See In re Burlington Coat Factory Sec. Litig., 114 dismiss may not consider matters extraneous to the pleadings. However an exception to the general rule is that a document integral to or explicitly relied upon in the complaint may be ; see also Kiarie, 473 F. Supp. 3d at 355 (denying a motion to amend to add two defendants because the plaintiff failed to plead with specificity that those two individuals were his employers within the

consider any such evidence inasmuch as it is well-settled that in deciding a motion to dismiss, a court is limited to consideration of the allegations of the complaint, as well as certain materials laint challenged on

United States v. Morton, 993 F.3d 198, 204 n.10 (3d Cir. 2021); Inc. v. Doebler, 442 F.3d 812, 820 n.8 (3d Cir. 2006) (cleaned up).

[CSPA] in their original Complaint, and Defendants never previously challenged the specificity

CSPA chose not to file a motion to dismiss for failure to state a claim as to it does not impact whether the proposed second amended complaint states a claim against CSSG and CSMG. See Kiarie also argues that if the proposed [first amended complaint] is insufficient to Dura and Gibson, the original complaint is insufficient as to the other individual defendants. The Court agrees that the original complaint may well be insufficient as to the other individual defendants. But the fact that defendants chose not to make a motion to dismiss as to those defendants has no bearing on whether the proposed [first amended complaint] before the Court meets the Iqbal standard as against Dura and

Because Plaintiffs have failed to plausibly allege that CSSG and CSMG were their employers within the meaning of the FLSA, the second amended complaint, as currently pled,

fails to state a FLSA claim against CSSG and CSMG. Therefore, granting Plaintiffs leave to file the proposed second amended complaint is futile, and we will deny to amend.

Because the Court finds that Plaintiffs do not plausibly allege that CSSG and CSMG were their employers within the meaning of the FLSA, t other futility argument namely, that the amendments are futile because Plaintiffs will be

each Plaintiff signed.

For these reas 19 II. Conclusion For the foregoing reasons, the Court personal jurisdiction and

19 Plaintiffs also argue that adding CSSG and CSMG as Defendants is proper under Federal Rule of Civil Procedure 20. (Doc. No. 146-1 at pp. 22 24.) Rule 20 governs permissive joinder of parties. Rule against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and (B) any question of law or fact common to all (2)(A) (B). However, even assuming that the proposed joinder of CSSG and CSMG satisfies the Rule 20(a)(2) requirements, the proposed amendment is futile under Rule 15(a)(2). See Exeter Township that the proposed joinder of Gardecki satisfies the requirements of Rule 20(a), the proposed amendment Bamgbose discretion to deny a motion for joinder, even if the conditions of Rule 20(a) are met, in order to prevent