Mode v. S-L Distribution Company, LLC et al

2019 | Cited 0 times | W.D. North Carolina | March 6, 2019

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NORTH CAROLINA

CHARLOTTE DIVISION 3:18-cv-00150-RJC-DSC JARED MODE, on behalf of himself) and all others similarly situated,)

Plaintiffs,)

vs.)

ORDER S-L DISTRIBUTION COMPANY,) LLC, S-L DISTRIBUTION) COMPANY, INC., and S-L ROUTES,) LLC,)

Defendants.) _____)

THIS MATTER comes before the Court on several pending motions 1

and the

s. 22 23, 83, 94); Third- s 2

to

1 before this Court. (Doc. Nos. 109 10). The Court will address and adjudicate it by separate order. 2 On June 26, 2018, Third-Party Defendants J & M Mode Distribution, LLC, Mason Snacks, LLC, Rich Ferencak Distributing LLC, Siempre Avanti LLC, Wetzel Pretzel LLC, Grunts, LLC, McAlister Distributing, Inc., JJA Distribution LLC, Snack It Now LLC, R.A. Distributors LLC, MBS Distribution LLC, Sturino Distributing LLC, Auch Distributions, Inc., Bushnell Distributing, Inc., Culpepper Distributors LLC, JLH Enterprises, Inc., Ravas Distribution Inc., BK3 Distributors, LLC, KW Distributorships, Inc., Ryan Douds LLC, A&V Snacks, Inc., Fritts Distributing LLC, Ron Glass Distribution LLC, 3 Prutt Inc., Twisted Business, LLC, and Christian Way Distributing LLC filed a Motion to Dismiss S- -Party Complaints under Federal Rule of Civil Procedure 12(b)(6). (Doc. No. 84). On August 8, 2018, Third-Party Defendant M&M Imports, Inc. also filed a Motion to Dismiss Third-Party Complaint, (Doc. No. 103), asserting the same grounds for dismissal as other Dismiss Third-Party Complaints, (Doc. Nos. 84 85, 100, 102 03 93, 99, 101 02). Also

before the Court is c. No.

97), to which Plaintiffs have objected, (Doc. No. 104), and Defendants have responded

Judge issued another M&R addressing Third-Party Defendants and Plaintiffs respective Motions to Dismiss, (Doc. No. 122), which recommended denying both Motions. Plaintiffs and Third-Party Defendants filed a joint Objection, (Doc. No. 125), and Defendants filed a Response in Opposition, (Doc. No. 126). Having been fully briefed, the motions are now ripe for adjudication. I. BACKGROUND 3

This is a class/collective action lawsuit centering on Plaintiff allegation that Defendants S-L Distribution Company, LLC, S-L

Distribution Company, Inc., and S-L Rouse -) intentionally misclassified him and a putative class as independent contractors in violation of federal and state wage and hour laws.

S-L collectively manufactures and distributes snack foods to retail stores in

Third-Party Defendants previously made and incorporating by reference the Memorandum of Law in Support of their Motion to Dismiss Third-Party Complaints filed by other Third-Party Defendants, (Doc. No. 85). 3 This Part is largely drawn from the facts and procedural history laid out in the , to which no objection was made. North Carolina and other states. (Doc. No. 1: Compl. ¶ 10). Plaintiff Jared Mode is Id. ¶ 12;

Doc. No. 26: Defs. -Party Compl. Against J&M ¶ 2). S-L entered into similar Distributor Agreements with various distribution companies of which the putative class are principals, officers, and/or employees. (See, e.g., Doc. No. 23-1: Distributor Agreement between S-L and J&M). These Agreements expressly state that the distribution companies are independent contractors and further provide that in the event a court finds the parties did not have an independent contractor relationship, either party would be entitled to declare the Agreements null and void. (Id. at 2; id. at Art. 2A).

Pursuant to these Agreements, S-L granted the distribution companies rights for its snack food products. Under the Agreements, the distribution companies would purchase the products at wholesale from S-L and then sell the products to various stores at a higher price. The distribution companies were responsible for ordering, selling, distributing, and merchandising S- tomers in their respective geographic territories. (Id. at Arts. 3 5, 9). The distribution companies also agreed to be financially responsible for certain aspects of the distributorship, including the costs associated with stale products and product delivery. (Id. at Arts. 3 4, 9). The Agreements provide that the distribution companies control the schedule, hours, and operations of their businesses, claim tax deductions for the expenses associated with running their businesses, and are allowed to distribute other products

in addition to S- (Id. at Arts. 2, 4 5). The distribution companies also agreed to comply with all federal, state, and local laws including wage, overtime and benefit provisions for their employees. (Id. at Art. 2E). The Agreements also contain indemnification provisions. (Id. at Art. 19).

On March 22, 2018, Named Plaintiff Jared Mode filed this action alleging that he and a putative class of S-L s distributors are actually S- employees and thus are entitled to various protections under the Fair Labor Standards Act, 29 U.S.C. §§ 201, et seq. - 25 et seq. (Doc. No. 1). Plaintiffs allege that S-L violated these wage and hour laws by failing to pay minimum wage and overtime pay under the FLSA and by making illegal wage deductions under the NCWHA. (Doc. No. 1 ¶¶ 27 39).

In response, S-L (i.e., -Party Plaintiffs n Answer and Counterclaim of unjust enrichment against Plaintiffs in the event that the Court determines that (1) Plaintiffs and/or their distribution companies were misclassified as independent contractors and (2) the Agreements are voided. (Doc. No. 25 Answer, Separate Defenses, and Co ¶¶ 68 73). Additionally,

S-L filed Third-Party Complaints stating claims for indemnification and unjust enrichment against the distribution companies - . (Doc. Nos. 26 47, 52 56: Third-Party Compls.).

Various motions to dismiss under Federal Rule of Civil Procedure 12(b)(6) are now pending before the Court. The Court has conducted a de novo review of the issued addressing the pending motions. II. STANDARD OF REVIEW

A district court may assign dispositive pretrial matters, including motions to 28 U.S.C. § 636(b)(1)(A) and (B). The court shall make a de novo determination of those portions of the report or specific

Id. at § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(3); Camby v. Davis, 718 F.2d 198, 200 (4th Cir. 1983). On a motion to dismiss for failure to state a claim, the Court must accept the factual allegations of the claim as true and construe them in the light most favorable to the nonmoving party. Coleman v. Maryland Ct. of Appeals, 626 F.3d [or counterclaim]

Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly a plaintiff (including a third-party plaintiff) Id. A plaintiff therefore must

claim entitling [it] to relief, i.e. Francis v. Giacomelli, 588 F.3d 186, 193 (4th Cir. 2009) (quoting Iqbal, 556 U.S. at 678). III. DISCUSSION

For the sake of clarity, and because each M&R implicates different legal issues, this Order will address the M&Rs in separate sections.

A. S- NCWHA Claim, (Doc. No. 22), and

the M&R Recommending Dismissal of Plaintiffs NCWHA Claim, (Doc. No. 97). Plaintiffs make two specific objections Court dismiss Plaintiffs NCWHA claim: the M&R erred by finding that (1) Plaintiffs

income does not meet the from Plaintiffs paychecks were primarily for S-L s benefit and, thus, were non-wages under 13 N.C.A.C. 12.0301(d). The Court addresses each objection in turn.

1. The M&R correctly determined that Plaintiffs income does not

The M&R recommended dismissal of Plaintiffs NCWHA claim because it determined that Plaintiffs income Under the NCWHA, the term is 95-2. precedent as established in Troche v. Bimbo Bakeries Distribution, Incorporated, the

M&R recognized that, when a plaintiff purchases goods from a defendant and earns income by selling those goods to third-party retailers at a higher price, the profits 2015 WL 4920280, at *7 (W.D.N.C. Aug. 18, 2015). The contractual relationship between the plaintiffs and defendant in Troche is identical to the one at issue here; in Troche, the plaintiff was an independent operator who had a distribution agreement with the Id. at *1. This agreement price and then re-sell them to various customers at a higher price, earning a profit on

Id. maintaining adequate supplies in the stores, rotating product, and removing stale or

Id.

Here, the terms of Plaintiff Distributor Agreements recognize the same relationship between Plaintiffs and S-L:

As set forth in this Agreement, S-L agrees to sell Products to Distributor, which Products may be sold by Distributor to its customers within the Territory. As permitted by this Agreement, the Products shall be sold to Distributor by S-L on the terms and at the prices established, in writing, by S-L from time to time. . . . Subject to the needs or requirements of its customers, Distributor has full authority to determine the Products and the amount of Products which it may wish to purchase, from time to time, from S-L. . . . Distributor shall pay S-L for all Products purchased each week, per the prices and terms on the current Price List, by Friday of the next week. Correspondingly, S-L will settle on a weekly basis with Distributor for any net amounts owed Distributor for sales made of Products by Distributor for which payment is made by Distributor's customers directly to S-L, from which settlement shall be deducted amounts owed by Distributor to S-L, including, but not limited to, purchase costs for the Products, leasing costs, charges, credits or deductions by Distributor's customers, other agreed upon or required charges, and other deductions authorized by Distributor. (Doc. No. 23-1 at Arts. 4A, 4C, 10A). 4

Additionally, the Distributor Agreement

4 Because Defendants attached the Distributor Agreement to its opening brief in specifies -L is interested only in the results obtained under this Agreement. The manner, means, and methods by which Distributor achieves the results . . . shall be determined solely by Distr Id. at Art. 2B). Plaintiffs even concede in their Complaint

[S-L] generally paid Plaintiff and other IBOs based on the volume of food Troche, while Plaintiffs performed basic merchandising services under the Distributor Agreement, 5 their compensation was solely based on the volume of goods they purchased from S- L and then resold to third parties at a higher price. In fact, Plaintiffs admitted in a filing submitted after the M&R was issued that they their] revenue directly from the customers and [S- No. 101 at 6).

The answer to whether Plaintiffs

in Troche. In Troche, the defendant made payments to the individual plaintiff, who

support of its Motion to Dismiss, and because the Distributor Agreement is referred to in the Complaint and is central to Plaintiffs claims, the Court may properly consider the Distributor Agreement in deciding the instant Motions. Adams v. Substitute Tr. Servs., Inc., No. 3:17-cv-00519, 2018 WL 1612207, at *1 (W.D.N.C. Apr. or attach a document to its complaint, but the document is referred to in the complaint and is central to the he Court uses language from the Distributor Agreement between S-L and J&M as illustrative of the language contained in other Distributor Agreements between S-L and Third-Party Defendants. 5 For example, J&M agreed to be financially responsible for certain aspects of running its distributorship, including the costs associated with stale product and product delivery. (Doc. No. 23-1 at Art. 9) was a party to the operative agreement. Here, on the other hand, the Distributor Agreements were between Plaintiffs employers the distribution companies, corporate entities and S-L. (Doc. No. 23-1 at 2). Plaintiffs were not parties to the Distributor Agreements in their individual capacity, and under the Distributor Agreements, S-L made payments to the corporate distribution entities, not to Plaintiffs directly. (Id. at Art. 5E Distributor agrees to, and shall, bear all costs and expenses associated with the employment or retention of [its personnel], including, but not limited to, wages, overtime, salaries Moreover, the Distributor Agreements [Distributor] nor its employees will receive from S-L any benefits of the type typically provided to an employee, including Id. at Art. 25B). Accordingly, S-L did not compensate Plaintiffs for their their under the NCWHA.

The fact that Troche was decided at summary judgment does not make dispositive resolution here premature. The M&R correctly recognized that the Court in Troche based its on any evidence developed during discovery. (Doc. No. 97 at 4). Therefore,

delay dismissal of Plaintiffs NCWHA claim until the summary-judgment stage.

Clehm v. BAE Sys. Ordinance, Inc., No. 7:16-CV-0012, 2016 WL 3982605, at *3 (W.D. Blair was decided on summary judgment, its reasoning applies with equal force to the present case, pending on a motion to dismiss . . . 6

Next, Plaintiffs argue that applying Troche to the present case was erroneous because the plaintiffs in Troche did not have a viable FLSA claim before the Court, unlike Plaintiffs have here. While North Carolina courts look to the FLSA for guidance in interpreting the NCWHA, Garcia v. Frog Island Seafood, Inc., 644 F. Supp. 2d 696, 707 (E.D.N.C. 2009), the laws are not so inextricably intertwined that claims under the respective laws automatically rise and fall together. When a plaintiff brings NCWHA and FLSA claims for different underlying violations, the claims must be analyzed separately and distinctly. See, e.g., Hanson-Kelly v. Weight , No. 1:10-cv-65, 2011 WL 2689352, at *2 (M.D.N.C. July 11, 2011). Here, Plaintiffs allege that S-L violated the FLSA by failing to pay them the federal minimum wage and overtime premium. In contrast, Plaintiffs base their NCWHA claim on the allegation that S-L made illegal deductions to the pay Plaintiffs received without first obtaining any authorizations. Accordingly, Plaintiffs allege distinct violations of law under the FLSA and NCWHA.

2. The M&R correctly determined that the challenged

deductions are non-wages under the NCWHA and its regulations. Plaintiffs 6

Cf. Ferrell v. City of Charlotte, No. 3:14-CV-47, 2015 WL 13604391, at *4 (W.D.N.C. tion before this Court is one for summary judgment see also Fleet v. CSX Intermodal, Inc., No. CV 17- 3562, 2017 WL 6520535, at *4 (E.D were decided at the summary judgment stage, we find the propositions applicable at that the deductions at issue in this case are non-wages under 13 N.C.A.C. § The NCWHA prohibits employers from making deductions to the pay of its employees without first payday for the pay period from which the deduction is to be made indicating the

reason for the dedu 95-25.8(2). Such authorizations must be which the deduction is made; (3) show the date of signing by the employee; and (4)

state the reason for the deduction. Hyman v. Efficiency, Inc., 605 S.E.2d 254, 258 (2004) (quoting 13 N.C.A.C. 12.0305(b)). These authorizations may either be "providing the exact dollar amount or percentage or (1) advance notice of the specific amount of the proposed deduction; and (2) a reasonable opportunity of at least three calendar days from the employer's notice of the amount to withdraw the authorization. Id. (citing 13 N.C.A.C. 12.0305(b) and (d)).

The NCWHA separates money into two categories: wages and non-wages. 13 N.C.A.C. § 12.0301(d) details a non-exhaustive list of non-wages:

Items which are primarily for the benefit of the employer and which will not be computed as wages

include but are not limited to: tools and equipment required by the employer; uniforms, where the business requires the employee to wear a unique or customized uniform; transportation charges where it is an incident of and necessary to the employment. In contrast, wages are re is benefit to the employee and the benefit has Under this regulation, an employer cannot include the value of items which are required by the employer as for purposes of the NCWHA without obtaining prior authorization to do so. Troche, 2015 WL 4920280, at *7 8. An employer cannot claim a credit for an item that is primarily for the benefit of the wages. See Garcia, 644 F. Supp. 2d at 707 08.

Here, Plaintiffs challenge five deductions under the NCWHA: (1) administrative service charges of approximately $40 per week; (2) leased vehicle charges; (3) vehicle loan repayment charges; (4) route loan repayment charges; and (5) charges for stale or unsold product. (Doc. No. 1 ¶ 18). The M&R correctly concluded that, like the deduction for handheld computers in Troche, these deductions were primarily for S-L s benefit and therefore are non-wages under the -exhaustive list detailed in 13 N.C.A.C. 12.0301(d). See Troche, 2015 WL 4920280 The costs allegedly diverted from Plaintiff's earnings for expenses related to operating the handheld computer are non-wages as a matter of law, therefore the Plaintiff's NCWHA claim cannot survive Additionally, argument that Plaintiffs authorized these deductions is persuasive. 7

7 The M&R did not address this argument, but that does not preclude the Court from considering the argument now. See, e.g., Walker v. Berryhill, No. 117CV00051RJCDSC, 2018 WL 1004753, at *3 (W.D.N.C. Feb. 21, 2018) (Conrad, Guseh v. N. Carolina Cent. Univ., No. 1:04CV00042, 2006 WL

reed to the challenged deductions through specific authorizations in the Suggested Operating Guidelines , (Doc. No. 97), is well reasoned and in accordance with law. Therefore, this Court ADOPTS the M&R and DISMISSES Plainti

B. - -

- -Party Complaint, and the M&R Recommending Denial of Both Motions, (Doc. No. 122) Plaintiffs and Third-Party Defendants object to the M&R, (Doc. No. 122), recommendation denying their motions to dismiss S- Plaintiffs, (Doc. No. 92), and the complaints against Third-Party Defendants, (Doc.

No. 84). (Doc. No. 125). First, they argue that, because a valid contract existed between the parties, S-L cannot bring a claim for unjust enrichment. Second, they argue that S-L cannot establish the first element of a claim for unjust enrichment because S-L did not confer a benefit on Plaintiffs and/or Third-Party Defendants. Third, they argue that, even if S-L could assert a prima facie case for unjust enrichment and indemnification, the FLSA bars their claims. The Court will address each argument in turn.

1. S-L permissibly plead claims for unjust enrichment in the

alternative.

and the Distributor Agreement. (See Doc. No. 23-2: Suggested Operating Guidelines at p.2 (authorizing weekly administrative service charges and daily leased vehicle charges); Doc. No. 23-1: Distributor Agreement at Art. 10 (authorizing deductions for leased vehicle and route loan repayment charges); Doc. No. 23-1 at Art. 9 (specifying that J&M would bear the loss of stale or out-of-code products)).

S-L pleads its unjust enrichment claims in the alternative. 8

Crucial to these claims are predicate findings: that some or all of the Counterclaim- Defendants (or their entities i.e., Third-Party Defendants) should have been classified as employees of S-L, and therefore that the Distributor Agreements are voidable. (Doc. No. 25 ¶ 72). When a valid contract or agreement exists between the parties, a party cannot also recover on an unjust enrichment claim. Watson Elec. Const. Co. v. Summit Companies, LLC, 587 S.E.2d 87, 92 (N.C. Ct. App. 2003). Plaintiffs and Third Party-Defendants argue that because the Distributor Agreements operate as a valid contract between the parties, S- for unjust enrichment must fail as a matter of law. However, parties may plead causes of action in the alternative. FMW/MJH at 2604 Hillsborough LLC v. WSA Constr., LLC, No. 3:13-CV-703, 2014 WL 6476187, at *2 (W.D.N.C. Nov. 19, 2014) (explaining that a party may plead unjust enrichment in the alternative even when

8 S-L pleads its claims as follows:

The Counterclaim-Defendants (or their entities) are and/or were enriched as a result of their status as independent contractors, including, but not limited to, by: retaining the revenue from the products that they sell; setting his/her own schedule, hours worked, and sequence of performing work; determining when breaks are taken, which vehicles and equipment are utilized, and other details of performance of their work; taking tax deductions for the costs of operating their businesses; serving as owners, officers, executives, members, agents, and/or employees of their respective entities and receiving compensation accordingly; enjoying the right to engage in other businesses and professions; enjoying the right to engage in other businesses and professions and to sell all or parts of their distribution rights and retain the revenue from such sales. (Doc. No. 25 ¶ 69; see e.g., Doc. No. 26 ¶ 32). an agreement exists between the parties), which is precisely what Defendants have done here:

The Court should find that some or all of the Counterclaim-Defendants (or their entities) have been properly classified as independent contractors and not employees of Counterclaim-Plaintiffs. In the alternative, if the Court concludes that some or all of the Counterclaim-Defendants (or their entities) should have been classified as employees of Counterclaim-Plaintiffs, it should then conclude that the Counterclaim- that Counterclaim-Defendants are and were not governed by the terms of the Distributor Agreement. Upon such a finding, any award(s) to those Counterclaim-Defendants (or

their entities) of some or all of the relief sought in the Complaint would unjustly enrich Counterclaim- Defendants at Counterclaim- (Doc. No. 25 ¶ 72 (emphasis added); see e.g., Doc. No. 26 ¶ 32). Defendants premise their counterclaim on the Court making two findings: a determination that (1) Plaintiffs and/or their entities were employees rather than independent contractors and (2) the Distributor Agreements are voidable. Therefore, the unjust enrichment claims arise only when and if the Court determines that a valid agreement (i.e., the p. lthough a quantum meruit claim can only prevail in the absence of an enforceable, express contract, TSC Research, LLC v.. Bayer Chemicals Corp., 552 F. Supp.2d 534, 540 (M.D.N.C.2008), dismissal is improper when the existence of such a contract has not been proven by evidence before the court. FMW/MJH, 2014 WL 6476187, at *2. Accordingly, the Court declines to dismiss S- ground at this stage.

2. The issue of conferral of a benefit is an issue of fact. After establishing that S-L may properly allege unjust enrichment in the alternative, the Court turns now to whether S-L has alleged facts that would plausibly support a claim entitling it to relief. T , S-L must articulate facts that, when accepted as true, would show that Defendants have stated a plausible claim. Francis v. Giacomelli, 588 F.3d 186, 193 (4th Cir. 2009) (quoting Iqbal, 556 U.S. at 678). Under North Carolina law, a prima facie claim for unjust enrichment has five elements:

First, one party must confer a benefit upon the other party. Second, the benefit must not have been conferred officiously, that is it must not be conferred by an interference in the affairs of the other party in a manner that is not justified in the circumstances. Third, the benefit must not be gratuitous. Fourth, the benefit must be measurable. Last, the defendant must have consciously accepted the benefit. JPMorgan Chase Bank, Nat'l Ass'n v. Browning, 750 S.E.2d 555, 559 (2013) (internal quotation marks and citations omitted). Plaintiffs and Third-Party Defendants challenge the first element. They argue that they purchased these benefits from S-L for good money and S- revenue terminated when it accepted Plaintiffs and Third- payment for their routes.

S-L has pled a non-exhaustive list of the alleged benefits it conferred upon Plaintiffs and Third-Party Defendants due to their independent contractor status. 9

9 S-L alleges that Plaintiffs and Third-Party Defendants received the following benefits due to their independent-contractor status:

If they were employees of Counterclaim-Plaintiffs, the Counterclaim- Defendants would not have enjoyed many of the rights and benefits set forth above including, but not limited to: retaining the revenue from the products that they sell; setting their own schedule, hours worked, and sequence of performing work; determining when breaks are taken, The principal benefit conferred upon Plaintiffs and/or their entities appears to be the exclusive right to distribute S- products a benefit which Plaintiffs and/or Third- Party Defendants [S-L] to buy that : Pls. and Third- at 15). Plaintiffs maintain that, after they (and/or their [S- L] forfeited all interest or ownership in the revenue Plaintiffs and/or [their entities] Id. This is disputed and may be developed through discovery. 10

The claims and facts at issue here are almost identical to Zapata et al. v. Flowers Foods Incorporated, No. 4:16-CV-676, 2016 WL 878349 (S.D. Tex. Dec. 19, 2016), an FLSA case alleging misclassification. There too, Defendants

which vehicles and equipment are utilized, and other details of performance of their work; taking tax deductions for the costs of operating their businesses; serving as owners, officers, executives, members, agents, and/or employees of their respective entities and receiving compensation accordingly; enjoying the right to engage in other businesses and professions and to sell all or parts of their distribution rights and retain the revenue from such sales. (Doc. No. 25 ¶ 60; see, e.g., Doc. No. 26 ¶ 32). 10 The exotic-dancer cases which Plaintiffs and Third-Party Defendants cite to argue that dismissal is proper had the benefit of discovery. In those cases, only after discovery did the courts conclude that dismissal of the unjust enrichment claims was proper because the alleged benefits conferred upon the plaintiffs were conferred by third parties, not the defendant employers. See, e.g. Shaw v. Set Enters., Inc., 241 F. Supp. 3d 1318, 1329 (S.D. Fla. 2017); , 967 F. Supp. 2d 901, 934 (S.D.N.Y. 2013). In fact, in one of the cases, the court orally declined to dismiss the counterclaim of unjust enrichment at the motion-to-dismiss stage without knowing more of the circumstances surrounding the claim, stating th see the reason to make that motion at this point given the highly conditional nature Hart, Tr. (attached as an exhibit to S- Third- Doc. No. 126-1 at 16). asserted a counterclaim involving profits and earnings from the sale of territories. Id. court found that Defendants had sufficiently alleged a claim for unjust enrichment. Id. counterclaim of unjust enrichment. Likewise, this Court determines that,

S-L has sufficiently plead facts to support its unjust enrichment claims.

3. The FLSA does not bar S- Claims

or its Indemnification Claim against Third-Party Plaintiffs at this point in the proceedings. Finally, Plaintiffs and Third-Party Defendants contend that S- , at heart, claims for indemnification or set-off. They maintain that the Court should prohibit S- claims for unjust enrichment from proceeding because the FLSA bars indemnification claims brought by employers against their employees and third-parties.

Congress enacted the FLSA to regulate the conduct of employers for the benefit of employees. detrimental to the maintenance of the minimum standard of living necessary for Darveau v. Detecon, Inc., 515 F.3d 334, 343 (4th Cir. 2008) (quoting 29 U.S.C. § 202(a)). The Fourth Circuit has held -defendant to plead a counterclaim or third-party complaint against its employee that essentially seeks to indemnify itself against its employee for its own violation of the FLSA. Lyle v. Food Lion, Inc., 954 F.2d 984, 987 (4th Cir. 1992).

Plaintiffs and Third-Party Defendants contend that allowing S- claims for unjust enrichment and indemnification to proceed would contravene

the purpose of the FLSA. But Plaintiffs and Third-Party Defendants miss a major point: to benefit from the protections of the FLSA, the Court must first conclude that Plaintiffs and/or Third-Party Defendants were employees rather than independent contractors a determination which the Court is not yet ready to make. The Court has not and cannot today answer the highly factual inquiry of whether Plaintiffs and/or Third-Party Defendants were misclassified as independent contractors without the benefit of further discovery. Additionally, as the M&R correctly found, the Court is not well positioned to make a determination now on the issue of whether Plaintiffs and Third-Party Defendants are one and the same without further development of the factual record. Taking the facts in the light most favorable to the nonmovant, S-L, it has alleged that Plaintiffs and Third-Party Defendants were independent contractors and thus not entitled to FLSA protections. The Court cannot conclude that S-L is improperly seeking to indemnify itself or seeking a set-off for its own alleged FLSA violations at this procedural posture of the case. To do so would be to put the cart before the horse.

In sum, the Court DENIES Plaintiff Counterclaim, (Doc. No. 92), and Third-Party Defendants Motion to Dismiss

Third-Party Complaints, (Doc. No. 84), without prejudice. IV. CONCLUSION IT IS THEREFORE ORDERED THAT:

1. 22) are ADOPTED; 2. Complaint, (Doc.

No. 22) is GRANTED DISMISSED;

3. DENIED without prejudice; and

4. Third- -Party Complaints,

(Doc. No. 84), is DENIED without prejudice.

Signed: March 6, 2019