UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KIMBERLY BEHZADI and JASON RINDENAU, on behalf of themselves and all others similarly situated, Plaintiffs, v. INTERNATIONAL CREATIVE MANAGEMENT PARTNERS, LLC, Defendant.	:	Case No.: 14-CV-4382 (LGS) **ECF Case**

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT INTERNATIONAL CREATIVE MANAGEMENT PARTNERS LLC'S MOTION TO DISMISS THE FIRST AMENDED COMPLAINT

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PRELIMINARY STATEMENT

Defendant International Creative Management Partners LLC ("ICM" or "Defendant"), by its undersigned counsel, seeks the dismissal of the First Amended Complaint, pursuant to Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6)[1], on the following grounds: (i) the First Cause of Action should be dismissed as to Plaintiff Jason Rindenau because his Fair Labor Standards Act ("FLSA") claim is time-barred; and (ii) this Court should decline to exercise jurisdiction over the California state law claims asserted in the Fifth, Sixth, Seventh, Eighth, Ninth, and Tenth Causes of Action.[2]

The only federal statute identified in the Complaint is the FLSA. However, jurisdiction is not sustainable under the FLSA as to Rindenau because Rindenau's internship with ICM ended on August 5, 2011, more than three-years prior to the filing of the First Amended Complaint on August 15, 2014. Thus, he is time-barred from bringing any claims pursuant to the FLSA.

The only timely claims asserted by Rindenau are his California state claims.[3] However, this Court should decline to exercise supplemental jurisdiction over those claims because

[1] On June 17, 2014, Behzadi, despite previously having signed an agreement to arbitrate, filed a Complaint against ICM alleging that she and other academic interns were employees of ICM and, thus, were entitled to damages under the FLSA and New York Labor Law ("NYLL"). On July 29, 2014, ICM filed a motion, pursuant to Fed. R. of Civ. P. 12(b)(1) and 12(b)(6) and the Federal Arbitration Act, 9 U.S.C. §§ 3, 4, seeking an order: (i) dismissing the Complaint because all claims contained in the Complaint are subject to arbitration under a valid arbitration agreement; and (ii) compelling Behzadi to arbitrate the claims asserted in her Complaint pursuant to the arbitration clause contained in the "Mutual Agreement to Arbitrate All Employment-Related Disputes," signed by Behzadi. For the same reasons set forth in ICM's July 29, 2014 motion, the First Amended Complaint is subject to dismissal as to Behzadi.

[2] The Fifth through Eighth and Tenth Causes of Action assert claims under various sections of the California Labor Code; the Ninth Cause of Action is brought under the California Unfair Competition Law ("UCL") (collectively, these claims are referred to herein as the "California state claims").

[3] Behzadi never interned in California and, therefore, never had any right to assert claims under California law. Likewise, Rindenau only interned in ICM's Los Angeles office; he never

allowing the California state claims to proceed in this forum neither would further judicial economy nor be a productive use of Court resources. Rather, if this Court retains jurisdiction over the California state claims, it would likely be required to decide a matter of first impression under California law: what standard should apply to determine if an intern should be considered a paid employee under California state law.

Accordingly, for the reasons set forth in detail herein, this Court should grant ICM's motion and dismiss the First Amended Complaint, in its entirety, with prejudice.

LEGAL ARGUMENT

I. RINDENAU'S FLSA CLAIM SHOULD BE DISMISSED BECAUSE IT IS TIME-BARRED.

Rindenau was an ICM academic intern in ICM's Los Angeles office from May 23, 2011 through August 5, 2011. (*See* First Amended Complaint, attached to the Declaration of Steven D. Hurd, Esq. ("Hurd Decl."), Ex. A, ¶ 15; Abrams Decl., Exh. 3). Plaintiffs filed the First Amended Complaint on August 15, 2014, more than three years after Rindenau's ICM internship ended. (*See* Dkt. 23). As a result, Rindenau is time-barred under the FLSA's three-year statute of limitations from asserting any FLSA claim and, therefore, the First Cause of Action is not cognizable as to Rindenau and should be dismissed.

II. THIS COURT SHOULD DECLINE TO EXERCISE SUPPLEMENTAL JURISDICTION OVER THE CALIFORNIA STATE CLAIMS.

Pursuant to 28 U.S.C. § 1367, district courts have discretion to assume jurisdiction over state law claims that "are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." It is not enough, however, for the state and federal Rule 23 claims in an action

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interned or worked in ICM's New York office. Thus, Rindenau never had any right to assert a claim under the NYLL.

just to "bear some factual relationship to each other"; rather, they must arise out of "a common nucleus of operative facts" and "approximately the same set of events." *Achtman v. Kirby, McInerney & Squire, LLP*, 150 F. App'x 12, 14-15 (2d Cir. 2005). In addition, the Second Circuit has held that declining supplemental jurisdiction "is especially appropriate where the pendent claims present novel or unsettled questions of state law." *Oneida Indian Nation v. Madison Cnty*., 665 F.3d 408, 437 (2d Cir. 2011); *Shahriar v. Smith & Wollensky Rest. Grp., Inc.*, 659 F. 3d 234, 245 (2d Cir. 2011).

Moreover, where, as here, a newly asserted state law claim is dependent on the addition of a new party plaintiff, the considerations governing the addition of parties under Rule 21 also apply. *Rush v. Artuz*, No. 00 Civ. 3436, 2001 WL 1313465, at *5 (S.D.N.Y. Oct. 26, 2001); *Momentum Luggage & Leisure Bags v. Jansport*, No. 00 Civ. 7909, 2001 WL 58000, at *1 (S.D.N.Y. Jan. 23, 2001); *Sheldon v. PHH Corp*., No. 96 Civ. 1666, 1997 WL 91280, at *3 (S.D.N.Y. Mar. 4, 1997), *aff'd*, 135 F.3d 848 (2d Cir. 1998). Rule 21 provides that "[p]arties may be . . . added by order of the court on motion of any party . . . on such terms as are just." Fed. R. Civ. P. 21. Under Second Circuit law, courts applying Rule 21 must consider: judicial economy; their ability to manage each particular case; how the amendment would affect the use of judicial resources; and the impact the amendment would have on the judicial system and on each of the parties already named in the action. *JPMorgan Chase Bank, N.A. v. IDW Grp., LLC*, No. 08 Civ. 9116, 2009 WL 1357946, at *2 (S.D.N.Y. May 12, 2009); *Sly Magazine, LLC v. Weider Publ'ns LLC*, 241 F.R.D. 527, 532 (S.D.N.Y. 2007); *Momentum Luggage*, 2001 WL 58000, at *2. All of these 28 U.S.C. § 1367 and Rule 21 considerations militate strongly against the exercise of supplemental jurisdiction over the California state claims.

Indeed, exercising supplemental jurisdiction over the California state claims would neither further judicial economy nor be a productive use of this Court's resources. Rather, the California state claims would require this Court to decide a matter of first impression under California law: what standard should apply to determine if an intern should be considered a paid employee under California state law. Since the California Department of Labor Standards Enforcement ("DLSE") endorsed a change in that standard in April 2010, no California court has addressed whether courts should follow the DLSE's proposed new intern test or whether that DLSE opinion should be disregarded (as both California and federal courts often decide to do with respect to agency guidance). *See* Hurd Decl. Ex. B, which is a copy of the April 7, 2010 DLSE Opinion Letter (abandoning the 11-factor intern test used under NY law and endorsing a different test). Thus, while the DLSE adopted the Department of Labor's six factor test, abandoning its own prior application of an 11-factor test, it is unclear whether California courts will follow the DLSE's opinion. *See*, *e.g.*, *Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004 (Cal. 2012) (ruling by the California Supreme Court rejecting and refusing to follow a series of DLSE opinion letters). As such, this Court would be deciding a California state law issue of first impression. As the Second Circuit held in *Grace v. Rosenstock*, 228 F.3d 40, 55 (2d Cir. 2000), when affirming a district court's denial of supplemental jurisdiction: "The decision to exercise pendent jurisdiction is vested in the sound discretion of the district court. *The discretion is limited, however*, by the consideration that [n]eedless decisions of state law should be avoided." (Emphasis added; quotation and citation omitted.) *See also Fay v. S. Colonie Cent. Sch. Dist.*, 802 F.2d 21, 34 (2d Cir. 1986) (reversing district court's exercise of pendent jurisdiction over state-law claims where state law governing such claims was unsettled), *overruled on other grounds sub nom., Taylor v. Vt. Dep't of Educ.*, 313 F.3d 768 (2d Cir. 2002);

DiMare Homestead, Inc. v. Alpha Co. of NY, No. 09 Civ. 6644, 2012 WL 2930072, at *3 (S.D.N.Y. July 18, 2012) (declining jurisdiction over claims that could raise "potentially complex issues" of NY state law); *Jean-Laurent v. Wilkerson*, No. 05 Civ. 0583, 2012 WL 1977920, at *1 (S.D.N.Y. May 21, 2012) (same result where claims involved "novel and complex" state law issues on which was "no clear authority").

Litigating the California state claims would also necessitate analyses of local California case law and publications of the California Industrial Welfare Commission, *see* First Amended Complaint ¶¶ 9, 126-130, 139, 155, 158, 160, 162 (citing, *inter alia*, IWC Wage Orders; Cal. Labor Code §§ 1194, 1197)—none of which otherwise would have relevance in this case, since the original Complaint asserts only FLSA and NYLL claims. In addition, the California state claims would be governed by California state statutory provisions and regulations that differ substantively from those governing the FLSA and NYLL claims alleged in the original Complaint.

Finally, the California state claims and the FLSA and NYLL claims would need to be established by different evidence. Among other factors, Behzadi and Rindenau interned in different offices; Behzadi interned in New York (First Amended Complaint, ¶ 11), whereas Rindenau interned in Los Angeles (*Id.* ¶ 15). Behzadi and Rindenau also interned during completely different time periods. Behzadi was an ICM intern in 2012 (*Id.* ¶ 70); Rindenau interned in 2011 (*Id.* ¶ 87).

Ultimately, because Rindenau has not, and cannot, assert any of the FLSA or NYLL claims that are alleged by Behzadi in the original Complaint, the facts, evidence and legal analysis necessary for determining Rindenau's California state claims otherwise would not be relevant in this matter. Accordingly, for all these reasons, this Court should decline to exercise

supplemental jurisdiction over the California state claims asserted in the First Amended Complaint.

CONCLUSION

For the foregoing reasons, ICM is entitled to an Order dismissing the First Cause of Action as to Rindenau and the Fifth, Sixth, Seventh, Eighth, Ninth, and Tenth Causes of Action, in their entirety. In addition, the First Amended Complaint should be dismissed, in its entirety, for the reasons set forth in Defendant's July 29, 2014 Motion to Dismiss.

Dated: September 5, 2014
New York, New York

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