IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

LUIS ANTONIO AGUILAR MARQUINEZ, *et al.*,

Plaintiffs,

v.

DOLE FOOD COMPANY, INC., *et al.*,

Defendants.

Civil Action No. 1:12-cv-00695-RGA

(Consolidated with 00696, 00697, 00698, 00699, 00700, 00701, 00702)

PLAINTIFFS' REPLY MEMORANDUM IN SUPPORT OF PLAINTIFFS' CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT

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Introduction

The Ecuadorian Plaintiffs ("Plaintiffs") in these consolidated cases respectfully file this Reply Memorandum in support of their Cross-Motion For Partial Summary Judgment on this issue of limitations. Under the Delaware Borrowing Statute, 10 Del. C. § 8121, Plaintiffs' claims are governed by the Delaware statute of limitations, rather than by Article 2235 of the Ecuadorian Civil Code. The reason? Ecuador's fours years are more years than Delaware's two. The undisputed facts demonstrate that the claims are timely under Delaware law, and Plaintiffs are entitled to summary judgment on limitations.

Argument

I. Ecuador Organic and Constitutional law does not impose any time limitation on Plaintiffs' claims.

Defendants argue that Plaintiffs' claim would be governed by a four-year time-bar under Ecuador law. D.I. 352 at 8; D.I. 356 at 16–18. Defendants' argument is wrong. As explained by Professor Maria Dolores Mino ("Mino Decl.," attached as Exhibit 1 to D.I.), "the adequate remedy that the plaintiffs in this case could and most likely [would] pursue [in Ecuador] to obtain redress for their claim is the constitutional jurisdiction through 'acción de protección,'" which is a constitutional claim that would be subject to *no statute of limitations at all*. Ex. 1, ¶ 16; Ex. 2 (Mino 2d Decl.), ¶ 16. Defendants do not deny Professor Mino's qualifications, nor could they. She is an expert on the Ecuadorian Constitution, an alternate judge on the Constitutional Court in Ecuador, Professor of Law and Director of the Center for Transparency and Human Rights of Universidad Internacional del Ecuador, and the Executive Director of Observatorio de Derechos y Justicia, an Ecuadorian NGO that works on the protection of human rights. Ex. 1, ¶¶ 1–3; Ex. 2 ¶¶ 1–3.

Defendants are wrong in arguing that the Ecuadorian constitutional claim cannot be considered because it is "unpled." Under the Borrowing Statute, courts ask whether the statute of limitations for an "analogous" foreign claim is longer or shorter than Delaware's. *Pallano v. AES Corp.*, 2011 WL 2803365, *4 n.37 (Del. Super. July 15, 2011). That standard is more than met here. Indeed, Professor Mino has opined that the facts alleged in Plaintiffs' complaint *as currently*

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pled already state a constitutional claim: *"According to the facts alleged in the Complaint*, the plaintiffs in this case can pursue redress under the [acción de protección] against the defendants under article 88 of the [Ecuador Constitution], at any time. The plaintiffs may argue that the defendant violated their constitutional right to health when a) it did not take any measures to prevent labor-related illnesses among workers; and b) once those illnesses were reported, no measure was adopted to provide redress to the plaintiffs." Ex. 1, ¶ 7(8) (emphasis added). "[T]he claims presented by the plaintiffs in this case fall under constitutional and human rights law." *Id.* ¶ 17. "The facts of the case could therefore be subject matter for an [acción de protección], regardless the moment of their occurrence." *Id.* ¶ 7(c); *see also* Ex. 2, ¶¶ 7(a), (d). Plaintiffs need not amend their Complaint to add a constitutional claim. The claim is already there.

Defendants contend Plaintiffs have not labeled their claim as "acción de protección." This ignores Professor Mino's testimony that a negligence claim can be brought as an acción de protección. *Id*. ¶ 10 ("the fact that the negligent conduct of the defendant caused harm to the plaintiffs' health, gives them grounds to present successfully an [acción de protección]"); Ex. 2 ¶ 8. So Plaintiffs' negligence claim already qualifies as an acción de protección. And Defendants misplace their focus on a claim's label. A plaintiff need only present "a short and plain statement of the claim showing that the pleader is entitled to relief." *Jutrowski v. Township of Riverdale*, 904 F.3d 280, 293 n.14 (3d Cir. 2018) (quoting Fed. R. Civ. P. 8(c)). "[A] complaint...must contain either direct or inferential allegations respecting all the material elements necessary to sustain recovery under *some* viable legal theory." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 562 (2007) (internal quotation marks and citation omitted; emphasis in original). "[I]mperfect statements of the legal theory supporting the claim asserted" are not a basis for dismissal. *Jones v. USPS Postal Service*, 2018 WL 324730 (D. Del. Jan. 8, 2018) (Andrews, J.); *see also Strassman v. Essential Images*, 2018 WL 5718286 (M.D. Pa. Nov. 1, 2018) (no need to plead "specific legally cognizable claims").

Dole submits a declaration from Dr. Santiago Velázquez Coello (D.I. 351-1, Ex. J), which strikingly does not dispute Professor Mino's conclusion that the facts *already pleaded* in Plaintiffs' Complaint state a claim under the Ecuadorian Constitution. Dr. Velázquez asserts in conclusory

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