that a temporary restraining order shall issue herewith. The State of Pohnpei, Governor Marcelo Peterson, Administrator Cassiano Shoniber and Young Sun shall be immediately enjoined from conducting, endorsing, or coordinating any further commercial sea cucumber harvesting in Pohnpei waters by citizens of Pohnpei and from selling or purchasing sea cucumbers harvested in Pohnpei waters by citizens of Pohnpei, PROVIDED that any sea cucumber already harvested prior to the date of this Order may be sold to and purchased by Young Sun pursuant to the laws and regulations and any sea cucumber coming into the possession of Young Sun that was harvested prior to the date of this Order may be handled accordingly so as to prevent the unnecessary waste of those sea cucumbers already harvested prior to this restraining order.

A hearing on Plaintiffs' motion for a preliminary injunction is scheduled for August 2, 2016 at 1:00 p.m.

* * * *

FSM SUPREME COURT TRIAL DIVISION

KRAMWELL LINTER and LENSTER JOEL, Plaintiffs, vs. GOVERNMENT OF THE FEDERATED STATES OF MICRONESIA, Defendant.	CIVIL ACTION NO. 2015-019

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Beauleen Carl-Worswick
Associate Justice

Trial: April 19, 2016
Decided: August 5, 2016

APPEARANCES:

For the Plaintiffs: Salomon M. Saimon, Esq.
Directing Attorney
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For the Defendant: Clayton M. Lawrence, Esq.
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* * * *

HEADNOTES

Constitutional Law – Due Process; Constitutional Law – Taking of Property

The fundamental concept of due process is that the government may not be permitted to strip citizens of life, liberty or property in an unfair or arbitrary manner. When such interests are subject to possible government taking or deprivation, the Constitution requires that the government follow procedures calculated to assure a fair and rational decision-making process. Linter v. FSM, 20 FSM R. 553, 557 (Pon. 2016).

Constitutional Law – Due Process; Constitutional Law – Taking of Property

In order to prevail on a claim of deprivation of liberty or property without due process of law, a plaintiff must: 1) identify a liberty or property right which implicates the due process clause; 2) identify a governmental action which amounts to deprivation of that liberty or property right; and 3) demonstrate that the deprivation occurred without due process of law. Linter v. FSM, 20 FSM R. 553, 557 (Pon. 2016).

Constitutional Law – Due Process; Constitutional Law – Taking of Property

When no property right can be ascribed to the alleged property at issue, the due process standard does not apply. Linter v. FSM, 20 FSM R. 553, 557 (Pon. 2016).

Constitutional Law – Due Process; Constitutional Law – Taking of Property; Public Officers and Employees

Government employment that is property within the meaning of the due process clause cannot be taken without due process. To be property protected under the FSM Constitution, there must be a claim of entitlement based upon governmental assurance of continual employment or dismissal for only specified reasons. These assurances may come from various sources, such as statute, formal contract, or actions of a supervisory person with authority to establish terms of employment. Linter v. FSM, 20 FSM R. 553, 558 (Pon. 2016).

Constitutional Law – Due Process; Public Officers and Employees

Although a governmental entity's breach of contract, without more, does not constitute a civil rights or due process violation, a person who has been employed for twelve years under a series of one year contracts could prove that by that length of employment, there was an unwritten claim to continued employment. Linter v. FSM, 20 FSM R. 553, 558 (Pon. 2016).

Constitutional Law – Due Process; Public Officers and Employees – Compensation

When no one ever notified the plaintiffs that they must stop working in their respective positions or that they would not be paid for the work done from October 2014 to April 2015; when the government continued to assign them projects and retained the benefits conferred by their work, but did not compensate them for the work; when the plaintiffs never received notification from the government that their contracts had not or would not be renewed although the plaintiffs eventually became aware that the Project Control Documents that controlled their contracts were unsigned; when the government's consistent delay in renewing the contracts and disbursing wages was a common occurrence experienced by the plaintiffs during their previous years' contracts; and when the government continued to accept, approve, sign, and maintain the plaintiffs' submitted time sheets thereby implying assurances of forthcoming wages, the evidence, viewed in its entirety, presents a situation whereby the plaintiffs had a reasonable justified expectation to continued employment and, therefore, payment for those services rendered to the government's benefit between October 2014 and April 2015. Linter v. FSM, 20 FSM R. 553, 558 (Pon. 2016).

Constitutional Law – Due Process; Public Officers and Employees – Compensation

A government employee's pay is a form of property that a government cannot deprive the employee of without due process. Linter v. FSM, 20 FSM R. 553, 559 (Pon. 2016).

Civil Rights; Evidence – Burden of Proof

In any case brought under 11 F.S.M.C. 701, a plaintiff must prove each element of his case by a preponderance of the evidence. Linter v. FSM, 20 FSM R. 553, 559 (Pon. 2016).

Civil Rights – Acts Violating; Constitutional Law – Due Process; Public Officers and Employees – Compensation

When the government has willingly deprived the plaintiffs of wages that they are entitled to without due process of law, it is civilly liable under 11 F.S.M.C. 701(3) for violating the plaintiffs' civil rights. Linter v. FSM, 20 FSM R. 553, 559 (Pon. 2016).

Constitutional Law – Interpretation

Since unnecessary constitutional adjudication is to be avoided, if a matter may properly be resolved on a statutory basis without reaching potential constitutional issues, then the court should do so. Linter v. FSM, 20 FSM R. 553, 559 (Pon. 2016).

Public Officers and Employees

When the executive branch was substantially responsible for conducting administrative tasks in relation to the plaintiffs' employment as well as assigning work to them; when the person with the power to renew and approve their contracts was the allottee, the FSM President, who designated a sub-allottee; when the past contracts were also signed by the FSM Attorney General and for each of the plaintiffs' past periods of employment were prepared by procuring a form from the Attorney General's office and working with the suballottee's employees to complete, after which the FSM Attorney General and the suballottee would sign them; when no one in Congress ever signed any of the plaintiffs' contracts; and when the completed time sheets were submitted, reviewed and approved and signed by the suballottee and forwarded to the Department of Finance for disbursement of wages, the preponderance of the evidence supports the conclusion that the plaintiffs were executive branch employees. There was substantial evidence to confirm that the plaintiffs were performing work to execute the laws passed by Congress by implementation of public projects. That is to say that the plaintiffs' work was executive in nature. Linter v. FSM, 20 FSM R. 553, 560 (Pon. 2016).

Separation of Powers – Judicial Powers

The Supreme Court has the power to review legislative enactments of the Congress, and the implementation of those enactments, and it has the responsibility to set aside any national statute to the extent that it violates the Constitution. Linter v. FSM, 20 FSM R. 553, 560 (Pon. 2016).

Separation of Powers – Legislative Powers

The formal involvement by Congress in the implementation and execution of the laws is unconstitutional. Linter v. FSM, 20 FSM R. 553, 561 (Pon. 2016).

Civil Rights – Remedies and Damages; Evidence – Burden of Proof

The burden of proof is upon the plaintiffs to show the fact and extent of the injury and the amount or value of damages. Determination of damages is an essential element of the plaintiffs' cause of action, which, at trial, the plaintiffs must prove as to amount by a preponderance of evidence. Linter v. FSM, 20 FSM R. 553, 562 (Pon. 2016).

Civil Rights – Remedies and Damages; Evidence – Burden of Proof; Public Officers and Employees – Compensation

When the evidence shows that the plaintiffs did in fact perform work during the relevant time period and that the standard operating procedure for many years was to submit employee-created time sheets similar to those that the plaintiffs submitted and when the government concedes that, if there was a valid contract, the plaintiffs would have been paid based on the submission of the same time sheets, there is sufficient evidence to carry the plaintiffs' burden on damages. Linter v. FSM, 20 FSM R. 553, 562 (Pon. 2016).

Attorney's Fees – Court-Awarded – Statutory; Civil Rights – Remedies and Damages

In an action brought under 11 F.S.M.C. 701(3), the court may award costs and reasonable attorney's fees to the prevailing party. Linter v. FSM, 20 FSM R. 553, 562 (Pon. 2016).

* * * *

COURT'S OPINION

BEAULEEN CARL-WORSWICK, Associate Justice:

I. BACKGROUND

On April 10, 2015, the Plaintiffs Kramwell Linter (Linter) and Lenster Joel(Joel) filed a complaint against the Defendant Government of the Federated States of Micronesia (Government) with the following causes of action:

1. Violation of due process protected under FSM Constitution art. IV, § 3;

2. Involuntary servitude in violation of FSM Constitution art. IV, § 10;

3. Violation of equal protection of the laws in violation of FSM Constitution art. IV, § 3; and

4. Civil rights violations under 11 F.S.M.C. 701.

At trial, the Plaintiffs were represented by Salomon M. Saimon, Esq., Directing Attorney of the Micronesian Legal Services Corporation. The Defendant was represented by FSM Assistant Attorney General, Chief of Litigation, Clayton M. Lawrence, Esq. The Plaintiffs put on three witnesses, Plaintiff Lenster Joel, Stanley Ernest, Project Manager for FSM Department of Transportation, Communication and Infrastructure (TC&I), Division of Infrastructure, and Plaintiff Kramwell Linter. The Government called former Speaker of FSM Congress Dohsis Halbert (Halbert) and Assistant Secretary for the Division of Infrastructure, TC&I, Dickson Wichep.

II. FINDINGS OF FACT

The Plaintiffs worked for the Department of TC&I for over ten years under a series of successive part-time special services contracts. The Plaintiffs were hired pursuant to special services contracts with TC&I as liaison officers in the past. Plaintiff Joel began work as a project coordinator for TC&I in 1995 where he assisted employees of TC&I with implementation of public projects in Election District 1 (ED 1). At the conclusion of his original contract, he was re-hired several times for over twenty years in different capacities under short, successive employment contracts. Plaintiff Linter began working with what he described as the ED 1 office in the year 2000 pursuant to a short contract and re-hired several times over fifteen years until he ceased working in April 2015.

The Plaintiffs' contracts were for short periods, between six months and one year, and were customarily finalized two to three months after the Plaintiffs had already begun or continued their work for TC&I. The Plaintiffs held the belief that they were expected to continue working while the approval of their expected forthcoming successive contract was pending. Successive contracts were approved, although always delayed until after the Plaintiffs were performing their duties, and they were paid for their services after completion of the contract. At issue in this matter is the time period between October 2014 and April 2015 during which the Plaintiffs continued to perform their duties as liaison officers as they had in past years, but which the Government claims the Plaintiffs had no contracts of employment and therefore no property rights to the unpaid wages. It is clear to me that services were rendered by the Plaintiffs to the Government; the questions remaining are whether they are entitled to compensation for such services when they were allegedly performed without an employment contract, how many hours of services were performed for the Government, and for which branch of the Government the services were performed.

III. ANALYSIS

The Plaintiffs contend that they were denied due process under the FSM Constitution. They allege that their due process rights were violated by non-payment for work performed for the Government, thereby denying them a property right guaranteed by FSM Constitution, article IV, § 3. The Plaintiffs also contend the Government required them to work without compensation in violation of the FSM Constitution, article IV, § 10, which guarantees the right to be free from involuntary servitude. Last, Plaintiffs allege that they were denied payment for work performed while other FSM government employees were paid, thereby denying them their right to equal protection of the law guaranteed by FSM Constitution, article IV, § 3. The Plaintiffs contend the actions of the Government constitute a violation of their civil rights and is therefore liable for violations of 11 F.S.M.C. 701(3).

A. *Alleged Violation of Due Process*

The FSM Constitution, article IV, § 3 states: "A person may not be deprived of life, liberty, or property without due process of law, or be denied equal protection of the law."

The fundamental concept of due process is that the government may not be permitted to strip citizens of life, liberty or property in an unfair or arbitrary manner. Isaac v. Weilbacher, 8 FSM R. 326, 333 (Pon. 1998) (quoting Suldan v. FSM (II), 1 FSM R. 339, 354-55 (Pon. 1983)). Where such interests are subject to possible government taking or deprivation, the Constitution requires that the government follow procedures calculated to assure a fair and rational decision making process. *Id.* "In order to prevail on a claim of deprivation of liberty or property without due process of law, a plaintiff must: (1) identify a liberty or property right which implicates the Due Process Clause; (2) identify a governmental action which amounts to deprivation of that liberty or property right; and (3) demonstrate that the deprivation occurred without due process of law." Kama v. Chuuk, 18 FSM R. 326, 333 (Chk. S. Ct. Tr. 2012).

Thus, the Court must first determine whether the Plaintiffs' right to payment for services rendered is a property right which implicates the due process clause of the FSM Constitution because where no property right can be ascribed to the alleged property at issue, the due process standard does not apply. I believe, under the circumstances presented here, the Plaintiffs' expectation to be paid was a property interest qualifying for protection under the due process clause of the FSM Constitution. *See* Falcam v. FSM, 3 FSM R. 194, 200 (Pon. 1987) (explaining that an expectation of being paid for work already performed is a property interest qualifying for protection under the due process clause of the FSM Constitution), *aff'd*, 9 FSM R. 1 (App. 1999).

Government employment that is property within the meaning of the due process clause cannot be taken without due process. To be property protected under the FSM Constitution, there must be a claim of entitlement based upon governmental assurance of continual employment or dismissal for only specified reasons. "These assurances may come from various sources, such as statute, formal contract, or actions of a supervisory person with authority to establish terms of employment." Suldan III, 1 FSM R. at 351-52 (citing J. NOWAK, R. ROTUNDA & J. YOUNG, CONSTITUTIONAL LAW 495-96 (1978)). Although a governmental entity's breach of contract, without more, does not constitute a civil rights or due process violation, Stephen v. Chuuk, 18 FSM R. 22, 25 (Chk. 2011), "a person who has been employed for twelve years under a series of one year contracts could prove that by that length of employment, there was [an] unwritten claim to continued employment. . . ." Talley v. Lelu Town Council, 10 FSM R. 226, 237 (Kos. S. Ct. Tr. 2001) (citing Perry v. Sindermann, 408 U.S. 593, 92 S. Ct. 2694, 33 L. Ed. 2d 570 (1972)).

The question, then, is whether the Plaintiffs had an expectation interest in continued employment for the time period between October 2014 and April 2015, thereby granting them the right to payment for the work they performed during that period.

The Plaintiffs worked in their respective positions under short successive contracts for over ten years. It was typical during these successive employment periods for the Plaintiffs to perform their work and receive compensation sometime after the completion of the contract. Over the course of the years they worked for the Government, the Plaintiffs became familiar with the Government's method and time line for payment and renewal of their contracts whereby the Plaintiffs were impliedly expected to continue working despite a two or three month delay in approving the contracts and delays in payment of wages as long as eight months. It is a close case, but I find it is not unreasonable that a person of sound mind might believe that a delay of seven months, the period between October 2014 and April 2015, was out of the ordinary but genuinely possible considering the lengthy delays in the past. I believe the plaintiffs could have reasonably expected similar delays to occur during the time period in question.

Furthermore, although there were no assurances that the Plaintiffs would be paid, no person affiliated with TC&I or the Executive Branch took any action to inform the Plaintiffs to refrain from continuing to work and carrying out the responsibilities of their respective positions. Likewise, no person ever notified them that they must stop working in their respective positions or that they would not be paid for the work done from October 2014 to April 2015. The Government continued to assign the Plaintiffs projects, retained the benefits conferred by the Plaintiffs' work and the Plaintiffs, to date, have not been compensated therefore.

Likewise, during the time period at issue, the Plaintiffs never received notification from any person affiliated with the Government that their contracts had not or would not be renewed, although at some point,[1] the Plaintiffs became aware that the Project Control Documents that controlled their contracts were sent back to TC&I unsigned by the President. It is unclear whether, like the Government's consistent delay in renewing the contracts and disbursing wages, this was a common occurrence experienced by the Plaintiffs during their previous years' contracts. Notwithstanding, TC&I continued to accept, approve, sign, and maintain the Plaintiffs' submitted time sheets, thereby implying assurances of forthcoming wages. Viewing the evidence in its entirety, these facts present a situation whereby the Plaintiffs had a reasonable justified expectation to continued employment and, therefore, payment for those services rendered to the benefit of the Government between October 2014 and April

[1] The record and testimony at trial do not indicate when the Plaintiffs became aware of the unsigned PCD.

2015.

It is settled that a government employee's pay is a form of property a government cannot deprive the employee of without due process. Falcam v. FSM, 3 FSM R. 194, 200 (Pon. 1987); Semes v. FSM, 4 FSM R. 66, 74 (App. 1989); Oster v. Cholymay, 7 FSM R. 598, 599 (Chk. S. Ct. Tr. 1996). Based on the foregoing, the Plaintiffs' claim for unpaid wages area property right that implicate the due process clause of the FSM Constitution.

I find that the second and third factors set forth by the Kama court are likewise satisfied. The Government refused to pay and continues to withhold from the Plaintiffs payment for work completed between October 2014 and April 2015 and such refusal occurred without the Government affording the Plaintiffs an opportunity to contest the Government's position first or soon thereafter.

In any case brought under 11 F.S.M.C. 701, a plaintiff must prove each element of his case by a preponderance of the evidence. Estate of Mori v. Chuuk, 12 FSM R. 24, 26 (Chk. 2003). Based on my findings *supra*, I conclude that the Government is liable because it has taken the Plaintiffs' property – their justified expectation of wages for work completed between October 2014 and April 2015 – without due process of law in violation of the FSM Constitution. FSM Const. art. IV, § 3. All employees of the FSM must be afforded minimal due process protection. Alexander v. Hainrick, Civ. Act. No. 2011-027 (Pon. Apr. 15, 2014), *aff'd*, 20 FSM R. 377 (App. 2016). Accordingly, because the Government willingly deprived the Plaintiffs' wages that they are entitled to without due process of law, it is civilly liable under 11 F.S.M.C. 701(3) for violating the Plaintiffs' civil rights.

B. *Alleged Violations of Equal Protection and Prohibition Against Involuntary Servitude*

If a matter may properly be resolved on a statutory basis without reaching potential constitutional issues, then the court should do so since unnecessary constitutional adjudication is to be avoided. Kosrae v. Langu, 9 FSM R. 243, 251 (App. 1999). The Court therefore does not address the claims for denial of equal protection and involuntary servitude in light of the fact that it finds *supra* that the Government deprived Plaintiffs of property without due process in violation of the FSM Constitution and 11 F.S.M.C. 701.

C. *The Government's Defenses*

The Government brought forth three primary defenses. First, the Government conceded that the Plaintiffs deserved some compensation, but contended that the Plaintiffs were employed by the FSM Congress, not the Executive, and that therefore the Plaintiffs had sued the wrong party. Second the Government contended that, pursuant to Udot Municipality v. FSM, 10 FSM R. 354 (Chk. 2001), it is unconstitutional for a congressman to be involved in the implementation and execution of public projects. Last, the Government argued that the Plaintiffs failed to bring sufficient evidence to prove their claim for 1040 hours of work performed.

1. *Whether the Plaintiffs worked for the Executive Branch or Congress*

The Government argued and put forth evidence suggesting that the FSM Congress, not the Executive Branch, is where the remedy lies for Plaintiffs' unpaid wages because they were actually employees of Congress and not the Executive Branch through TC&I. First, it is clear that former Speaker Halbert had at least minimal interaction with the Executive Branch in the formation and approval of the Plaintiffs' employment contract for the period of October 2014 and April 2015, as evidenced by the Government's Exhibit 1, a letter from Mr. Halbert to the Secretary of TC&I referencing the Plaintiffs' revised employment contracts for the Secretary of TC&I's review. Second, the

Government showed that the Plaintiffs worked very closely with Mr. Halbert, generating reports for him, meeting his constituents to discuss current projects, and following orders from him to meet with constituents and local governments regarding public projects. Plaintiff Joel stated that Mr. Halbert was his supervisor, although he indicated that there were two other individuals who were employees of TC&I that could have possibly been his supervisor as well. Mr. Halbert also made correspondence to the President and TC&I on behalf of the Plaintiffs. Additionally, the time sheets generated by the Plaintiffs were created using Congress computers. I will admit that this is rather substantial evidence that the Plaintiffs were employed by Congress, not the Executive.

Notwithstanding, although it is a close case, I believe the preponderance of the evidence supports the conclusion that the Plaintiffs were employed by the Executive Branch. TC&I was substantially responsible for conducting administrative tasks in relation to the Plaintiffs' employment as well as assigning work to them. The person with the power to renew and approve their contracts was the allottee, the President of the FSM, who designated the Secretary of TC&I sub-allottee. The past contracts were also signed by the FSM Attorney General. The contracts for each of the Plaintiffs' past periods of employment were prepared by procuring a form from the Attorney General's office and working with employees of TC&I to complete, after which they would be signed by the FSM Attorney General and Secretary for TC&I. Neither Mr. Halbert nor anyone else in Congress at the time ever signed any of the Plaintiffs' contracts.

Furthermore, completed time sheets were submitted to either Stanley Ernest, project manager for TC&I during the relevant time, or Maristella Liwy, an executive secretary for then-Secretary of TC&I Francis Itimai, every two weeks. The time sheets were reviewed by TC&I, approved and signed by Francis I. Itimai as Secretary of TC&I, maintained by TC&I, and, for the past contracts, ultimately forwarded to the Department of Finance for disbursement of wages after which the Plaintiffs would receive payment. Neither Mr. Halbert nor anyone else in Congress at the time had control over Plaintiffs' time sheets or paychecks. Last, there was substantial evidence to confirm that the Plaintiffs were performing work to execute the laws passed by Congress by implementation of public projects. That is to say that the Plaintiffs' work was executive in nature.

Based on the foregoing, I find there is sufficient evidence to prove that the Plaintiffs worked under the administrative supervision and direction of the Executive Branch.

2. *Unconstitutionality of a congressman's involvement in the implementation of public projects*

The Government contends that, pursuant to Udot Municipality v. FSM, 10 FSM R. 354 (Chk. 2001), it is unconstitutional for a congressman to be involved in the implementation and execution of public projects. It argues that the Plaintiffs were hired based on appropriations by Congress to execute public projects and that therefore Congress, specifically former Speaker Halbert, should not have been involved based on separation of powers principles. "The Supreme Court has the power to review legislative enactments of the Congress, and the implementation of those enactments, and it has the responsibility to set aside any national statute to the extent that it violates the Constitution." FSM v. Udot Municipality, 12 FSM R. 29, 47 (App. 2003) (citing Constitutional Convention 1990 v. President, 4 FSM R. 320 (App. 1990); Suldan v. FSM (II), 1 FSM R. 339 (Pon. 1983); FSM Const. art. XI, §§ 6, 7).

In Udot, the Court held, in relevant part:

> Involvement by the "relevant" congressman in the administration and execution of the appropriation laws in this manner still violates the constitutional principle of separation of powers. The time for consultation with a Congressman concerning which

> projects should be funded is before Congress has voted the appropriation, so that it can be put in the appropriation bill for Congress to consider and vote upon and for the President to approve or veto. If Congress wishes to appropriate money for projects without designating by legislation the projects to be funded, it must then leave the administrative and executive decision-making as to which projects to fund to those whose duty it is to faithfully administer and execute the laws. Congress can give as much guidance as it wishes in the appropriation legislation about which projects will be funded, and must of this guidance will, no doubt, be the product of individual congressmen's consultation with their constituents. But this consultation takes place before the appropriation bill becomes law, not afterwards. After the appropriation bill has become law, it is the duty of those who execute the law and administer the funds to follow the guidance Congress has given them by consulting the language Congress put in the public law, and any applicable regulations, not by consulting individual congressmen. . . . What Congress, or individual congressmen, may not do is involve themselves in the administrative and executive process of determining which projects are to be funded after the money has already been appropriated.

[Udot Municipality, 12 FSM R. at 47 n.16 (quoting Udot Municipality v. FSM, 10 FSM R. 354, 359-60 (Chk. 2001).] The Government argues, based on the Udot court's analysis, that the Plaintiffs' actions, as well as those of former Speaker Halbert, were unconstitutional. In that case, Pub. L. No. 11-27, § 5 (as amended by Pub. L. No. 11-65, § 3) stated, *inter alia*, that "[t]he allottees shall not obligate funds appropriated under this act without consultation on the most appropriate usage of said funds between allottee and the relevant Congressional Delegation." That is to say, the law specifically required the allottees to consult with Congress before they could obligate funds. If Congress was not consulted, no obligation could be made.

The relevant laws at issue here, including Pub. L. No. 18-61, further amending Pub. L. No. 18-35, as amended by Pub. L. 18-49, and further amended by Pub. L. Nos. 18-78, 18-94, and 18-111, contains no such requirement to consult with Congress prior to the obligation of funds. It appears that the Plaintiffs in this matter worked alongside Congress and freely and willingly consulted former Speaker Halbert, but it is clear that the law did not require them to do so. Instead, the Plaintiffs and former Speaker Halbert engaged in informal, voluntary consultation regarding the funding of projects. In other words, Plaintiffs sought input from a community leader according to the Micronesian custom and tradition that consultation is encouraged in the customary way decisions are made throughout the Nation. *See* FSM v. Udot Municipality, 12 FSM R. 29, 48 (App. 2003). It is clear from FSM v. Udot Municipality that the formal involvement by Congress in the implementation and execution of the laws is unconstitutional. *Id.* at 50. However, that Court went on to state that

> [t]he problem, therefore, is not with consultation *per se*, but with making the obligation of funds contingent upon "consultation." *Consultation may be widely used on an informal basis, and may be an important component in the process of decision making throughout our Nation.* However, the legal requirement of consultation inserted in Pub. L. No. 11-65 went beyond mere consultation because it placed a condition on the Allottees' ability to obligate funds: that they must consult with a Congressional delegation before making any obligation. This provided the Congressional delegation the ability to control, or, if it so chose, to impede the execution and implementation of the line item.

Id. (emphasis added). Thus, this matter is distinguishable from Udot Municipality v. FSM and FSM v. Udot Municipality because there is nothing in the record to suggest that the Plaintiffs were required to consult with Congress before performing their work. They simply did so informally and voluntarily, which is permissible under the reasoning in FSM v. Udot Municipality.

3. *Sufficiency of the evidence for Plaintiffs' claim of 1040 hours of work performed*

The burden of proof is upon the plaintiffs to show the fact and extent of the injury and the amount or value of damages. Determination of damages is an essential element of the plaintiffs' cause of action, which the plaintiffs must prove as to amount by a preponderance of evidence at trial. William v. Kosrae State Hosp., 18 FSM R. 575, 583 (Kos. 2013) (citing Tulensru v. Wakuk, 10 FSM R. 128, 132 (App. 2001); Kimeuo v. Simina, 15 FSM R. 664, 667 (Chk. 2008)).

Plaintiffs testified that they worked a total of 1040 hours between October 2014 and April 2015, during which time they submitted time sheets to TC&I as they had done for many years in the past. In the past, they were paid for the work they performed based on the submission of similar time sheets. Plaintiff Joel testified that his hourly rate during the relevant time period was $7.87 per hour and Plaintiff Linter testified his hourly rate was $6.40 per hour, as reflected in their past contracts. Based on their contentions, Plaintiff Joel claims $8,184.80 and Plaintiff Linter claims $6,656.00 in unpaid wages.

The Government contests the persuasiveness of the time sheets because they do not accurately reflect the actual times that the Plaintiffs worked. The Plaintiffs would sometimes arrive late to work, which is not reflected on the time sheets. The Plaintiffs would also sometimes work late, on weekends, or on holidays, which is also not reflected on the time sheets. The Government asks this Court to disregard the time sheets as unpersuasive because they are "too perfect to be true." The Government did not directly contest the Plaintiffs' averred hourly wages.

Although it proves to be a very close call, because the evidence shows that the Plaintiffs did in fact perform work during the relevant time period, the standard operating procedure for many years in the past was to submit employee created time sheets similar to those the Plaintiffs submitted here, and the Government concedes that, if there was a valid contract, the Plaintiffs would have been paid based on the submission of the same time sheets, I find that there is sufficient evidence to carry the Plaintiffs' burden.

D. *Costs and Attorney's Fees*

11 F.S.M.C. 701(3) states that "[i]n an action brought under this section, the court may award costs and reasonable attorney's fees to the prevailing party." Thus, as the prevailing party, Plaintiffs Joel and Linter are entitled to costs and reasonable attorney's fees. The Plaintiffs shall therefore submit to the Court, no later than August 19, 2016, their statement of fees and costs incurred. The Defendant shall have ten days after service to respond.

IV. Conclusion

For the reasons set out above, the Court finds in favor of Plaintiffs Joel and Linter and against the Defendant FSM on the first and fourth causes of action as set forth in the Complaint. The second and third causes of action are dismissed based on the doctrine of constitutional avoidance because the court finds in favor of Plaintiffs on statutory grounds.

Let judgment be entered against the Defendant and in favor of Plaintiff Joel in the amount of $8,184.80 and in favor of Plaintiff Linter in the amount of $6,656.00.

* * * *