UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CHRISTIAN DECENA, ET AL.,

Plaintiffs,

v.

ALLEGIANT FINAL MILE, INC., ET AL.

Defendants.

Case No. 4:23-cv-03633-YGR

ORDER GRANTING IN PART AND DENYING IN PART THE MOTION TO DISMISS AND DENYING THE MOTION TO STRIKE IN THE ALTERNATIVE

Re: Dkt. No. 6

Plaintiffs Christian Decena, Hairon Martinez, Miguel Rios, and Rigoberto Godoy bring this putative class action lawsuit against three defendants—Allegiant Final Mile, Inc. ("Allegiant"), Diverse Logistics & Distribution, Inc. ("DL&D"), and Mattress Firm, Inc. ("MFI")—for violations of California employment laws and regulations, including failure to pay minimum wage (Count 1); failure to pay overtime compensation (Count 2); failure to reimburse employment expenses (Count 3); unlawful deduction from wages (Count 4); failure to provide meal periods (Count 5); failure to authorize and permit rest periods (Count 6); failure to furnish accurate wage statements (Count 7); and waiting time penalties (Count 8). Plaintiffs also allege violations of California's Unfair Business Practices Act (Count 9) and bring a claim under the California Private Attorneys General Act (Count 10).

Defendants Allegiant and DL&D move to dismiss for failure to state a claim or in the alternative, move to strike or dismiss the Second, Fifth, and Sixth Causes of Action in the First Amended Complaint, (Dkt. No. 1-1, "FAC"). Having carefully considered the parties' arguments, and for the reasons set forth herein, the Motion to Dismiss for Failure to State a Claim is **GRANTED IN PART AND DENIED IN PART** and the Motion to Strike in the Alternative is **DENIED.**[1]

[1] Pursuant to Federal Rule of Civil Procedure 78(b) and Civil Local Rule 7-1(b), the Court finds this motion appropriate for decision without oral argument.

I. BACKGROUND[2]

The FAC alleges as follows:

Plaintiffs bring this suit on behalf of "Drivers," "Helpers," and "Contract Carriers" (together, "Delivery Drivers") who perform delivery services for defendants. The named plaintiffs work as "Drivers" or "Helpers" pursuant to "Broker/Carrier Agreements" with defendants Allegiant and DL&D, who in turn manage the planning and execution of "last mile deliveries" to retail customers such as defendant MFI. (*Id.* ¶¶ 11, 13, 14, 24, 25, 30, 36.) Through these "Broker/Carrier Agreements," defendants reserve and exercise the right to control how the Delivery Drivers perform their duties for defendants. (*Id.* ¶ 14.) For example, defendants employ supervisory employees who instruct the Delivery Drivers on their job performance and assignments; require the Delivery Drivers to purchase or rent certain tools and equipment from defendants; and reserve the right to control the Delivery Drivers' physical appearance, including requiring them to wear defendants' uniforms. (*Id.* ¶¶ 28–30.) In practice, defendant MFI is also "greatly involved in the training and expected conduct of the Delivery Drivers." (*Id.* ¶ 25.)

Defendants allegedly misclassified plaintiffs and the other Delivery Drivers as independent contractors. (*Id.* ¶ 26.) Defendants thus have failed to reimburse the Delivery Drivers for necessary business expenditures; failed to pay wages for all hours worked by the Delivery Drivers; failed to pay the Delivery Drivers applicable legal minimum wages and overtime wages; failed to provide meal and rest periods due to Delivery Drivers; failed to provide the Delivery Drivers with timely and accurate wage and hour statements; failed to pay the Delivery Drivers compensation in a timely manner upon their termination or resignation or maintain complete and accurate payroll records for the Delivery Drivers; and wrongfully withheld wages and compensation due to the Delivery Drivers. (*Id.* ¶¶ 23–35, 50–117.)

[2] Defendants' Request for Judicial Notice (Dkt. 10) of certain public documents is granted. However, the Court only gives the documents their proper evidentiary weight and does not admit the truth of the facts therein. *See Disabled Rights Action Comm. v. Las Vegas Events, Inc.* 375 F.3d 861, 866 n.1 (9th Cir. 2004) (courts may "take notice of the records of state agencies or other undisputed matters of public record").

II. LEGAL FRAMEWORK

A. Motion to Dismiss for Failure to State a Claim

A motion to dismiss under Rule 12(b)(6) tests for the legal sufficiency of the claims alleged in the complaint. *Ileto v. Glock. Inc.*, 349 F.3d 1191, 1199–1200 (9th Cir. 2003). To survive a motion to dismiss for failure to state a claim, a complaint generally must satisfy only the minimal notice pleading requirements of Federal Rule of Civil Procedure 8. The complaint need only include a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Specific facts are unnecessary—the statement need only give the defendant "fair notice of the claim and the grounds upon which it rests." *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (*citing Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Allegations of material fact are taken as true. *Id.* at 94. However, legally conclusory statements, not supported by actual factual allegations, need not be accepted. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Plaintiffs' obligation to provide the grounds of their entitlement to relief "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555 (citations and quotations omitted). Rather, the allegations in the complaint "must be enough to raise a right to relief above the speculative level." *Id.*

B. Motion to Strike

A court "may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). "The function of a [Rule] 12(f) motion to strike is to avoid the expenditure of time and money that must arise from litigating spurious issues by dispensing with those issues prior to trial." *Whittlestone, Inc. v. Handi–Craft Co.*, 618 F.3d 970, 973 (9th Cir. 2010) (quoting *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993) *rev'd on other grounds*, 510 U.S. 517 (1994)). "Motions to strike 'are generally disfavored because they are often used as delaying tactics and because of the limited importance of pleadings in federal practice.'" *Shaterian v. Wells Fargo Bank, N.A.*, 829 F. Supp. 2d 873, 879 (N.D. Cal. 2011) (quoting *Rosales v. Citibank, Fed. Sav. Bank*, 133 F. Supp. 2d 1177, 1180 (N.D. Cal. 2001)). Further, because Rule 12(f) motions are disfavored, "courts often require a showing of prejudice by the moving party before granting the requested relief." *Sanchez v. City of Fresno*,

914 F. Supp. 2d 1079, 1122 (E.D. Cal. 2012) (quoting *Cal. Dep't of Toxic Substances Control v. Alco Pac., Inc.*, 217 F. Supp. 2d 1028, 1033 (C.D. Cal. 2002)).

III. ANALYSIS

A. Failure to State a Claim as to All Counts

Defendants argue that the FAC fails to adequately define the named plaintiffs' relationship with defendants and thus fails to state a claim as to any of the counts alleged. On this front, the pleadings are indeed confusing (*see infra* III.(D)), even where the Court construes the pleadings with every inference in favor of plaintiffs. *Ass'n for Los Angeles Deputy Sheriffs v. Cnty. of Los Angeles*, 648 F.3d 986, 994 (9th Cir. 2011).

Plaintiffs allege that defendants engaged the services of "Delivery Drivers"—which includes plaintiffs—and allegedly misclassified them as independent contractors. These allegations sufficiently tie the named plaintiffs with defendants despite certain inconsistencies in the pleadings. Because defendants only specifically challenge the FAC's allegations relating to plaintiffs' relationships with defendants, their generalized attack on all causes of actions alleged is **DENIED**. That said, plaintiffs shall clarify the inconsistencies of their pleadings and provide allegations showing the employment and contractual relationships at issue, including but not limited to the function of the limited liability entities referred to in the FAC. In this regard, the motion is **GRANTED WITH LEAVE TO AMEND.**

B. Failure to Provide Meal Periods (Count 5) and Failure to Authorize and Permit Rest Periods (Count 6)

Defendants argue that federal law preempts plaintiffs' California meal and rest period claims. In 2018, the Federal Motor Carrier Safety Administration (FMCSA) determined that California's meal and rest break laws are preempted by the federal regulations for commercial motor carriers covered by the Department of Transportation's Hours of Service regulations ("HOS regulations"). *See International Brotherhood of Teamsters, Local 2785 v. Federal Motor Carrier Safety Administration*, 986 F.3d 841, 858 (9th Cir. 2021), *cert. denied sub nom. Trescott v.*

Federal Motor Carrier Safety Administration, 142 S.Ct. 93 (2021). Preemption for the meal and rest claims therefore turns on whether plaintiffs are subject to FMCSA's HOS regulations.[3]

Even though not specifically pled, plaintiffs argue that as short-haul truck drivers they are entirely exempt from HOS rules and that the FAC should be construed to include the same. In support of their position, plaintiffs primarily rely on a pair of Ninth Circuit cases. The Court provides the following analysis to inform further pleading.

Neither of plaintiffs' cases are directly on point. In the first case, *Dilts v. Penske Logistics*, 769 F.3d 637 (9th Cir. 2014), the Ninth Circuit held that a provision of the Federal Aviation Administration Authorization Act of 1994 (FAAAA), not at issue here, did not preempt California's Meal and Rest Break rules. The court noted in a footnote that:

> Were we to construe Defendant's argument as an "as applied" challenge, we would reach the same conclusion and, if anything, find the argument against preemption even stronger. Plaintiff drivers work on short-haul routes and work exclusively within the state of California. They therefore are not covered by other state laws or federal hours-of-service regulations, 49 C.F.R. § 395.3, and would be without *any* hours-of-service limits if California laws did not apply to them.

Id. at 648 n.2. In the second case, *Int'l Bhd. of Teamsters, Loc. 2785*, the Ninth Circuit upheld the FMCSA's preemption determination from the 2018 Order at issue in this section. 986 F.3d at 853. In doing so, it found that *Dilts* was not controlling because it addressed a different statute, and further distinguished *Dilts* by observing that "the plaintiffs in *Dilts* worked exclusively in California as short-haul drivers and were thus not even 'covered by . . . federal hours-of-service regulations.'" *Id.* (citing *Dilts*, 769 F.3d at 648 n.2).

Defendants persuasively argue that the proposition in *Dilts* is non-binding dictum because the relevant statement in *Dilts* supports a policy argument for an alternative interpretation of the challenge at issue in that case. Defendants further argue that the proposition is incorrect regardless, pointing out that *Dilts* relied on 49 C.F.R. § 395.3, which only deals with the short-haul exceptions for rest periods and does not establish a wide-ranging exemption. In support of this interpretation, defendants cite the recent California state appeals case, *Espinoza v. Hepta Run,*

[3] Plaintiffs do not appear to contest that they fall within the definition of "commercial motor carrier."

Inc., which held that "the [federal Hours of Service regulations] rules, as a general matter, apply to short-haul drivers. The fact that those drivers are exempted from one rule does not remove them from the universe of drivers subject to the [federal Hours of Service regulations], and it is not reasonable to read the language of the order to suggest that they are." 74 Cal.App.5th 44, 55 (2022), *review denied* (Apr. 27, 2022).

Further, the Court agrees that defendants' argument that *Espinoza*'s reading comports with a plain reading of 49 C.F.R. § 395.3, which provides: "(a) Except as otherwise provided in § 395.1, no motor carrier shall permit or require any driver used by it to drive a property-carrying commercial motor vehicle, nor shall any such driver drive a property-carrying commercial motor vehicle, regardless of the number of motor carriers using the driver's services, unless the driver complies with the following requirements[.]" One of these requirements involves "[d]riving time and interruptions of driving periods," which includes: "[i]nterruption of driving time. Except for drivers who qualify for either of the short-haul exceptions in § 395.1(e)(1) or (2), driving is not permitted if more than 8 hours of driving time have passed without at least a consecutive 30-minute interruption in driving status . . . ." 49 C.F.R. § 395.3(a).

Section 395.1(a)(1) provides the default rule that the HOS regulations "apply to all motor carriers and drivers, except as provided in paragraphs (b) through (x) of this section." Section 395.1(e) in turn sets forth some specific limits on driving time and record-keeping requirements with respect to short-haul drivers, but it does not altogether exempt them from the HOS regulations. Specifically, Section 395.1(e)(1) provides that a "driver is exempt from the requirements of §§ 395.8 and 395.11" if, among other things, the driver operates within a 150 air-mile radius of the normal work reporting location. Similarly, Section 395.1(e)(2) provides that a driver is exempt from various requirements if among other things, the driver operates within a 150 air-mile radius of the normal work reporting location. Defendants argue that if the short-haul exemptions in Section 395.1(e) were intended to exempt such drivers from the HOS regulations altogether, these opening sentences in Sections 395.1(e)(1) and 395.1(e)(2) would be rendered unnecessary.

The parties raise a conflict in the law recently identified in *Sobaszkiewicz v. FedEx Corp.*,

No. 18-CV-07553-PJH, 2022 WL 4004773 at *6–7 (N.D. Cal. Sept. 1, 2022) (recognizing conflict between *International Bhd. of Teamsters* and *Dilts* and *Espinoza*). In that case, and on a minor issue, the court noted that the uncertainty around the short-haul driver exception was insufficiently briefed and allowed the plaintiffs' overtime claim to go forward given that defendant faced the burden of proving preemption applied. *Id.* This Court departs from that decision. First, the Court finds that the relevant statement in *Dilts* amounts to dictum and is not binding. The statement in *Teamsters* similarly did not directly support a holding and only distinguished the factual situation from *Dilts* using *Dilts* own words. *See Cetacean Cmty. v. Bush*, 386 F.3d 1169, 1173 (9th Cir. 2004) (circuit court's statement is non-binding dictum when it is "made during the course of delivering a judicial opinion, but unnecessary to the decision.") Second, there is no indication in the statute that short-haul drivers are entirely exempt from the HOS regulations. A plain reading of the statute conveys that short haul drivers are only specifically exempt from certain delineated portions of these regulations.

It is not clear from the FAC that the drivers at issue here fall within those delineated portions, and given the exemption, the Court is not willing to assume they are. Accordingly, the Court **GRANTS** the motion with leave to amend.

C. Failure to Pay Overtime Compensation (Count 2)

Defendants move to dismiss the overtime claim on the grounds that federal law preempts California law on this issue. Again the Court provides guidance:

California Code of Regulations (CCR) Title 8, section 11020, subdivision 3(J)(1) provides that federal law applies to employees whose hours of service are regulated by the United States Department of Transportation Code of Federal Regulations, Title 49, Sections 395.1 to 395.13, Hours of Service of Drivers. CCR Title 8, section 11020, subdivision 3(J)(2) also provides that federal law applies to employees regulated under Title 13, Section 1200a of the CCR. The latter provision, in turn, applies to vehicles listed in CCR Vehicle Code Section 34500. Subsection (j) of Section 34500, in turn, applies to "[a]ny other motortruck not specified in subdivisions (a) to (h), inclusive or subdivision (k) that is regulated by … the United States Secretary of Transportation."

For the reasons set forth above, plaintiffs appear to be governed by the U.S. Department of Transportation, which would preclude the state overtime claim. Plaintiffs counter that they can plead facts suggesting that they fall into subdivision (k) of Section 34500, which involves the weight of the trucks at issue. This point appears irrelevant as plaintiffs already fall within the purview of section 11020, subdivision 3(J)(1).

The Court **GRANTS** the motion with leave to amend.

D. Motion to Strike Under Rule 12(f)

Defendants move under Rule 12(f) to strike class allegations from the suit involving the work of "Drivers and Helpers" because the pleadings in the FAC do not clearly establish that defendants owe these parties a payment obligation. The Court agrees that allegations relating to the definitions provided are far from clear. (*Compare* FAC ¶ 33 (Delivery Drivers "engage other Drivers and Helpers *at their own expense*") *with* FAC ¶ 30 (Delivery Drivers (defined to include Contract Carriers, Drivers and Helpers) are "each paid a flat rate by the Defendants")). Indeed, the FAC does not clarify whether plaintiffs are Contract Carriers, Drivers, or Helpers, and what these categories exactly entail. As noted, the Court construes the pleadings in favor of plaintiffs to establish plausible liability between Delivery Drivers and defendants. Generally, whether plaintiffs can adequately represent a class containing all three categories under the "Delivery Driver" category is a question better determined on a motion for class certification. *See Cholakyan v. Mercedes-Benz USA, LLC*, 796 F. Supp. 2d 1220, 1245 (C.D. Cal. 2011) ("[I]t is in fact rare to [strike class allegations] in advance of a motion for class certification."); *In re Wal-Mart Stores, Inc. Wage & Hour Litig.*, 505 F. Supp. 2d 609, 615 (N.D. Cal. 2007) ("[T]he granting of motions to dismiss class allegations before discovery has commenced is rare").

However, the Court cannot determine whether the other references are meant to include the putative class or not. Plaintiffs shall clarify. Defendants' claims of unwarranted expenses relating to these class members does not compel the Court to strike these allegations. The Court **GRANTS** the motion as instructed herein with leave to amend.

IV. CONCLUSION

For the foregoing reasons, the Court **GRANTS** the Motion to Dismiss with leave to amend

plaintiffs' claims for failure to pay overtime (Count 2); failure to provide meal periods (Count 3); and failure to provide rest periods (Count 4). The Court also **GRANTS** the motion to clarify but otherwise **DENIES** the Motion to Dismiss and Motion to Strike in the Alternative.

Plaintiffs shall file an amended complaint within twenty-one (21) days of this Order and comply with paragraph 13 of the standing order. Defendants shall respond within twenty-one (21) days thereafter and shall not assert any new arguments which could have been asserted in the first instance. Parties are encouraged to avoid further motion practice on these topics.

This terminates Docket No. 6.

IT IS SO ORDERED.

Dated: January 2, 2024

YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE

United States District Court
Northern District of California