

1 Plaintiff is no longer employed by Defendants and filed his Labor Code claims more than three
2 years after his employment with Defendants was terminated.

3 The Court ruled on Defendants' motion and made the following two conclusions. See
4 Howell v. Leprino Foods Co., 2020 WL 704778 (E.D. Cal. Feb. 12, 2020) (Doc. No. 53). First,
5 former employees lack standing to seek injunctive relief to ensure their former employer's
6 compliance with the California Labor Code. Second, Plaintiff's Labor Code claims are subject to
7 a three-year statute of limitations for damages and a one-year statute of limitations for penalties.

8 In light of the evidence submitted by Defendants showing that Plaintiff is no longer
9 employed by Defendants and filed his Labor Code claims more than three years after his
10 employment was terminated, the Court noted that, first, Plaintiff likely lacked standing to seek
11 injunctive relief against Defendants and, second, Plaintiff's Labor Code claims were likely barred
12 by the statute of limitations. However, because Defendants' standing argument was not properly
13 framed under Rule 12(b)(1), and because Defendants' statute of limitations defense relied on
14 evidence that went beyond the face of Plaintiff's complaint in contravention of Rule 12(c), the
15 Court concluded that Defendants' standing and statute of limitations arguments were not suited for
16 adjudication under Rule 12(c).

17 Accordingly, as for the standing argument, the Court ruled that it would construe the
18 argument under the framework of Rule 12(b)(1), and the Court ordered Plaintiff respond to the
19 argument under the Rule 12(b)(1) framework. As for statute of limitations argument, the Court
20 ruled that it would convert the argument into a Rule 56 summary judgment motion, and the Court
21 ordered Plaintiff to respond to the motion under the Rule 56 framework.

22 In response to the Court's foregoing order, Plaintiff filed a brief wherein he conceded that
23 he was not currently employed by Defendants and he filed his Labor Code claims more than three
24 years after his employment was terminated. Based on that concession, Plaintiff asserted that he
25 "does not oppose [the dismissal of] the claim for injunctive relief" and he "does not contend he is
26 within the statutory period for the standalone Labor Code causes of action." Doc. No. 55.

27 ///

II. Legal Standards

A. Rule 12(b)(1) and subject-matter jurisdiction.

Under Rule 12(b)(1), a claim will be dismissed if the federal court lacks subject-matter jurisdiction over the claim. Fed. Rule Civ. Proc. 12(b)(1). Federal courts are of limited jurisdiction, having subject-matter jurisdiction only over matters authorized by the Constitution and Congress. See, e.g., Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994); A–Z Intern. v. Phillips, 323 F.3d 1141, 1145 (9th Cir. 2003). “[L]ack of Article III constitutional standing requires dismissal for lack of subject matter jurisdiction under Rule 12(b)(1).” Head v. Wilkie, 936 F.3d 1007, 1012 n.4 (9th Cir. 2019).

A defendant may challenge subject-matter jurisdiction in one of two ways: through a “facial attack” or a “factual attack.” Leite v. Crane Co., 749 F.3d 1117, 1121 (9th Cir. 2014). Whereas a facial attack challenges the sufficiency of the plaintiff’s allegation to invoke federal jurisdiction, a factual attack challenges the truth of the allegations. Id. When a defendant makes a factual challenge “by presenting affidavits or other evidence properly brought before the court, the party opposing the motion must furnish affidavits or other evidence necessary to satisfy its burden of establishing subject matter jurisdiction.” Safe Air For Everyone v. Meyer, 373 F.3d 1035, 1039 (9th Cir. 2004). The court need not presume the truthfulness of the plaintiff’s allegations under a factual attack. Wood v. City of San Diego, 678 F.3d 1075, 1083 n.2 (9th Cir. 2011). The plaintiff must show by a preponderance of the evidence each requirement for subject-matter jurisdiction, and as long as the dispute is not intertwined with an element of the plaintiff’s cause of action, the court may resolve any factual disputes itself. Leite, 749 F.3d at 1121.

B. Summary judgment under Rule 56.

Summary judgment under Rule 56 is proper when it is demonstrated that there exists no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56; Adickes v. S.H. Kress & Co., 398 U.S. 144, 157 (1970); Fortyune v. American Multi-Cinema, Inc., 364 F.3d 1075, 1080 (9th Cir. 2004). The party seeking summary judgment bears the initial burden of informing the court of the basis for its motion and of identifying the portions of the declarations, pleadings, and discovery that demonstrate an absence

1 of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986);
2 Soremekun v. Thrifty Payless, Inc., 509 F.3d 978, 984 (9th Cir. 2007). A fact is “material” if it
3 might affect the outcome of the suit under the governing law. See Anderson v. Liberty Lobby,
4 Inc., 477 U.S. 242, 248-49 (1986); United States v. Kapp, 564 F.3d 1103, 1114 (9th Cir. 2009). A
5 dispute is “genuine” as to a material fact if there is sufficient evidence for a reasonable jury to
6 return a verdict for the non-moving party. Anderson, 477 U.S. at 248; Freecycle Sunnyvale v.
7 Freecycle Network, 626 F.3d 509, 514 (9th Cir. 2010).

8 Where the moving party will have the burden of proof on an issue at trial, the movant must
9 affirmatively demonstrate that no reasonable trier of fact could find other than for the movant.
10 Soremekun, 509 F.3d at 984. Where the non-moving party will have the burden of proof on an
11 issue at trial, the movant may prevail by presenting evidence that negates an essential element of
12 the non-moving party’s claim or by merely pointing out that there is an absence of evidence to
13 support an essential element of the non-moving party’s claim. See James River Ins. Co. v. Herbert
14 Schenk, P.C., 523 F.3d 915, 923 (9th Cir. 2008); Soremekun, 509 F.3d at 984. If a moving party
15 fails to carry its burden of production, then “the non-moving party has no obligation to produce
16 anything, even if the non-moving party would have the ultimate burden of persuasion.” Nissan
17 Fire & Marine Ins. Co. v. Fritz Cos., 210 F.3d 1099, 1105-06 (9th Cir. 2000). If the moving party
18 meets its initial burden, the burden then shifts to the opposing party to establish that a genuine
19 issue as to any material fact actually exists. See Matsushita Elec. Indus. Co. v. Zenith Radio
20 Corp., 475 U.S. 574, 586 (1986); Nissan Fire, 210 F.3d at 1103. The opposing party cannot “‘rest
21 upon the mere allegations or denials of [its] pleading’ but must instead produce evidence that ‘sets
22 forth specific facts showing that there is a genuine issue for trial.’” Estate of Tucker v. Interscope
23 Records, 515 F.3d 1019, 1030 (9th Cir. 2008).

24 The opposing party’s evidence is to be believed, and all justifiable inferences that may be
25 drawn from the facts placed before the court must be drawn in favor of the opposing party. See
26 Anderson, 477 U.S. at 255; Matsushita, 475 U.S. at 587; Narayan v. EGL, Inc., 616 F.3d 895, 899
27 (9th Cir. 2010). While a “justifiable inference” need not be the most likely or the most persuasive
28 inference, a “justifiable inference” must still be rational or reasonable. See Narayan, 616 F.3d at

1 899. Summary judgment may not be granted “where divergent ultimate inferences may
2 reasonably be drawn from the undisputed facts.” Fresno Motors, LLC v. Mercedes Benz USA,
3 LLC, 771 F.3d 1119, 1125 (9th Cir. 2015); see also Holly D. v. Cal. Inst. of Tech., 339 F.3d 1158,
4 1175 (9th Cir. 2003). Inferences are not drawn out of the air, and it is the opposing party’s
5 obligation to produce a factual predicate from which the inference may be drawn. See Fitzgerald
6 v. El Dorado Cnty., 94 F.Supp.3d 1155, 1163 (E.D. Cal. 2015); Sanders v. City of Fresno, 551
7 F.Supp.2d 1149, 1163 (E.D. Cal. 2008). “A genuine issue of material fact does not spring into
8 being simply because a litigant claims that one exists or promises to produce admissible evidence
9 at trial.” Del Carmen Guadalupe v. Agosto, 299 F.3d 15, 23 (1st Cir. 2002); see Bryant v.
10 Adventist Health System/West, 289 F.3d 1162, 1167 (9th Cir. 2002). The parties have the
11 obligation to particularly identify material facts, and the court is not required to scour the record in
12 search of a genuine disputed material fact. Simmons v. Navajo Cnty., 609 F.3d 1011, 1017 (9th
13 Cir. 2010). Further, a “motion for summary judgment may not be defeated . . . by evidence that is
14 ‘merely colorable’ or ‘is not significantly probative.’” Anderson, 477 U.S. at 249-50; Hardage v.
15 CBS Broad. Inc., 427 F.3d 1177, 1183 (9th Cir. 2006). If the nonmoving party fails to produce
16 evidence sufficient to create a genuine issue of material fact, the moving party is entitled to
17 summary judgment. Nissan Fire, 210 F.3d at 1103.

18 **III. Discussion**

19 **A. Statute of limitations.**

20 Plaintiff conceded that he filed his Labor Code claims more than three years after his
21 employment with Defendants was terminated. Further, Plaintiff “does not contend he is within the
22 statutory period for the standalone Labor Code causes of action.” Doc. No. 55. Consequently,
23 because Plaintiff’s Labor Code claims for damages and penalties are subject to a three-year statute
24 of limitations for damages and a one-year statute of limitations for penalties, Howell v. Leprino
25 Foods Co., 2020 WL 704778, at *4 (E.D. Cal. Feb. 12, 2020) (citing cases and statutes), Plaintiff’s
26 Labor Code claims are barred by the statute of limitations. Accordingly, the Court will grant
27 summary judgment in Defendants’ favor on Plaintiff’s remaining Labor Code claims.
28

1 **B. Standing for injunctive relief.**

2 Plaintiff conceded that he is not currently employed by Defendants. Further, Plaintiff
3 asserted that he “does not oppose [the dismissal of] the claim for injunctive relief.” Doc. No. 55.
4 Consequently, because former employees lack standing to seek injunctive relief to ensure their
5 former employer’s compliance with the California Labor Code, Howell, 2020 WL 704778, at *5
6 (citing cases), Plaintiff lacks standing to seek injunctive relief and the Court lacks subject-matter
7 jurisdiction over Plaintiff’s claim for injunctive relief. See id. Accordingly, the Court will
8 dismiss Plaintiff’s claim for injunctive relief pursuant to Rule 12(b)(1).

9 **C. Remaining jurisdiction.**

10 In Plaintiff’s briefing on the issue of whether Plaintiff is no longer employed by
11 Defendants and filed his Labor Code claims more than three years after his employment with
12 Defendants was terminated, Plaintiff raised for the first time the argument that the Court will lack
13 subject-matter jurisdiction over Plaintiff’s remaining unfair competition claim once the Labor
14 Code claims are adjudicated. Plaintiff also raised for the first time the argument that the Court
15 should discontinue exercising supplemental jurisdiction over the unfair competition claim.

16 The Court will not adjudicate Plaintiff’s new jurisdictional arguments at this time because
17 the arguments were not properly raised in a motion. The Court’s motion procedures are designed
18 to provide the Court with thorough briefing from the parties, which did not occur here as to
19 Plaintiff’s new jurisdictional arguments. If Plaintiff wants the Court to adjudicate these new
20 jurisdictional arguments, then Plaintiff should follow the Court’s motion procedures. See L.R.

21 230

22 **ORDER**

23 Accordingly, IT IS HEREBY ORDERED that:

- 24 1. Pursuant to Rule 56, judgment is GRANTED in Defendants’ favor on Plaintiff’s claims for
25 minimum wages (first cause of action), compensation for all hours worked (second cause
26 of action), legally-compliant meal breaks and rest breaks (fourth cause of action), wages

27 ///

1 paid upon termination (fifth cause of action), and accurate itemized wage statements (sixth
2 cause of action).

3 2. Pursuant to Rule 12(b)(1), Plaintiff's claim for injunctive relief is DISMISSED.

4
5 IT IS SO ORDERED.

6 Dated: April 9, 2020



7 SENIOR DISTRICT JUDGE