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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CHARLENE STEVENS, suing
individually and by and on behalf
of all others similarly situated,
and the general public,

Plaintiffs,

v.

DATASCAN FIELD SERVICES LLC, a
Delaware Company d/b/a DATASCAN
FIELD SERVICES,

Defendant.*

No. 2:15-cv-00839-GEB-AC

**ORDER GRANTING DEFENDANT'S
DISMISSAL MOTION**

Defendant moves for dismissal of Plaintiff's putative class action and collective action Complaint under Federal Rule of Civil Procedure ("Rule") 12(b)(6), arguing Plaintiff's claims are too conclusory to satisfy the federal pleading standard. Plaintiff alleges in her Complaint: Defendant "had a consistent policy of requiring [Plaintiff] and the [putative c]lass [m]embers to work in excess of eight (8) hours per day and/or forty (40) hours per week without paying them full and proper overtime compensation" as required by the federal Fair Labor

* The caption has been modified in light of the parties' May 26, 2015 stipulation to dismiss certain defendants. (ECF No. 5.)

1 Standards Act ("FLSA") and the California Labor Code; Defendant
2 "fail[ed] to provide [Plaintiff] and the [putative c]lass
3 [m]embers with mandatory rest periods . . . [and] mandatory meal
4 periods" as required by the California Labor Code; Defendant
5 "fail[ed] to pay compensation . . . in a prompt and timely manner
6 to [Plaintiff] and the [putative c]lass [m]embers" as required by
7 the California Labor Code; and [Defendant] . . . fail[ed] to
8 provide [Plaintiff] and the [putative c]lass [m]embers with
9 accurate . . . wage statements of the total number of hours each
10 of them worked . . ." as required by the California Labor Code.
11 (Compl. ¶ 10.) Plaintiff also alleges that Defendant's failure to
12 pay Plaintiff and the putative class members the referenced
13 overtime pay and compensation for missed meal and rest breaks
14 constitutes an unfair business practice proscribed in the
15 California Business and Professions Code. (Id. ¶ 141.)

16 I. DISCUSSION

17 To survive a motion to dismiss, a plaintiff
18 asserting a claim to overtime payments **must**
19 **allege that she worked more than forty hours**
20 **in a given workweek without being compensated**
21 **for the overtime hours worked during that**
22 **workweek A plaintiff may establish a**
23 **plausible claim by estimating the length of**
24 **her average workweek during the applicable**
25 **period and the average rate at which she was**
26 **paid, the amount of overtime wages she**
27 **believes she is owed, or any other facts that**
28 **will permit the court to find plausibility.**

24 Landers v. Quality Communications, Inc. 771 F.3d 638, 644-45 (9th
25 Cir. 2014) (emphasis added). "As the [Ninth Circuit] explained in
26 Landers, [Rule] 8 . . . require[s] allegations indicating that a
27 plaintiff worked shifts during which she was harmed. Allegations
28 that speak only to class members generally are insufficient to

1 **state a claim**" Sanchez v. Ritz Carlton, No. CV 15-3484
2 PSG, 2015 WL 5009659 (C.D. Cal. Aug. 17, 2015) (emphasis added).

3 When deciding a dismissal motion the federal "court
4 must accept a complaint's allegations as true[; however, this
5 tenant] is inapplicable to threadbare recitals of a cause of
6 action's elements, supported by mere conclusory statements."
7 Ashcroft v. Iqbal, 556 U.S. 662, 663 (2009).

8 None of Plaintiff's claims are pleaded with
9 plausible factual allegations [evincing] that
10 [P]laintiff was the victim of
11 [D]efendant's alleged violations of the labor
12 laws [T]here are no allegations about
13 Plaintiff's [or putative class
14 members'] schedules to substantiate that they
15 worked . . . shifts that would trigger
overtime pay [or pay for missed meal and rest
breaks] [W]ithout factual allegations
about Plaintiff[']s specific experiences, the
claims against Defendant[] are merely
'conceivable,' not 'plausible.'

16 Sanchez, 2015 WL 5009659 at *2-3 (citing Dejesus v. HF Mgmt.
17 Servs., LLC, 726 F.3d 85, 90 (2d Cir. 2013)). Plaintiff is
18 required to

19 provide [sufficient] factual context that
20 nudge[s her] claim from conceivable
21 to plausible[;] and even though [P]laintiff
[is not required] to keep careful records and
22 plead [her] hours with mathematical precision
23 . . . [Plaintiff is required to use her]
24 memory and experience [when pleading a] claim
in federal court . . . and to draw on those
resources in providing [her] complaint[] with
sufficiently developed factual allegations.

25 Dejesus, 726 F.3d at 90.

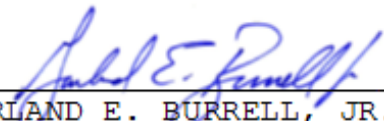
26 **II. CONCLUSION**

27 Since Plaintiff's Complaint consists of conclusory
28 allegations that are insufficient to state plausible claims,

1 Defendant's motion to dismiss all of Plaintiff's claims is
2 granted. Plaintiff has ten days from the date on which this Order
3 is filed to file an amended complaint addressing the referenced
4 deficiencies in her claims.

5 Dated: September 4, 2015

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GARIAND E. BURRELL, JR.
Senior United States District Judge