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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

KIM ROUSH, et al.,  
  
                                Plaintiffs,  
  
                                v.  
  
MSI INVENTORY SERVICE CORP.,  
et al.,  
  
                                Defendants.

No. 2:17-cv-1010-JAM-KJN

**ORDER GRANTING IN PART  
INDIVIDUAL DEFENDANTS JAMES O.  
MCLAIN AND SANDRA B. MCCLAIN'S  
MOTION FOR JUDGMENT ON THE  
PLEADINGS**

Kim Roush, Sheila Emmerling, and Cindy Henderson (collectively "Plaintiffs") filed this putative class action against their employers MSI Inventory Service Corporation, I-Fran, Inc., James O. McClain, and Sandra B. McClain (collectively "Defendants") alleging various wage and labor law violations.<sup>1</sup> James O. McClain and Sandra B. McClain (the "McClains") seek dismissal, or judgment on the pleadings, of Plaintiffs' Complaint against them. For the reasons set forth below, the McClains' motion is granted in part, with leave to amend.

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<sup>1</sup> This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for July 10, 2018.

1 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

2 The following facts are taken as true for purposes of this  
3 motion:

4 Plaintiffs are current or former employees who have worked  
5 for Defendants within the last four years. First Amended  
6 Complaint ("FAC"), ECF No. 5, ¶ 7. Their job is to count  
7 product inventory in retail stores within the State of  
8 California by traveling to store locations and manually  
9 capturing the stock keeping unit number for each item of  
10 physical inventory. FAC ¶¶ 7, 13. They claim that they were  
11 not properly paid for time spent reporting to local company  
12 offices, loading equipment into vehicles used to travel to the  
13 retail stores, and traveling to those retail stores. FAC ¶ 14.  
14 They further claim that Defendants' time-keeping system resulted  
15 in unlawful deductions of employee work hours. FAC ¶ 15.  
16 Specifically, Defendants "record their employees' work hours in  
17 finite increments of minutes during periods in which the  
18 scanners [(the tool employees use to scan barcodes or enter  
19 stock keeping unit numbers of products being counted)]  
20 transmitted electronic signals to the host computer." FAC ¶ 15.  
21 Under this system, employees are not compensated for time during  
22 which the scanners are left idle or malfunction but the  
23 employees continue to perform work or are otherwise engaged to  
24 wait. FAC ¶ 15. These systems have resulted in long workdays  
25 of 10 to 13 hours of labor but only 4 to 6 hours of actual pay.  
26 FAC ¶ 16.

27 Plaintiffs claim that all four named defendants violated  
28 their rights under the Fair Labor Standards Act, the California

1 Labor Code, and California's Unfair Competition Law. Defendants  
2 MSI Inventory Service Corporation and I-Fran, Inc.,  
3 (collectively "Corporate Defendants") are corporations  
4 headquartered in Mississippi. FAC ¶¶ 3, 4. Defendant James O.  
5 McClain is the President and Director of Defendant MSI and the  
6 President, Treasurer, and Director of Defendant I-Fran. FAC  
7 ¶ 5. Defendant Sandra B. McClain is the Secretary and Director  
8 of Defendant MSI, and is the Vice President, Secretary, and  
9 Director of Defendant I-Fran. FAC ¶ 6. Due to their respective  
10 roles, Plaintiffs allege that the McClains are each an "owner,  
11 director, officer, managing agent, or 'other person acting on  
12 behalf of' the Defendant Employers within the meaning of Labor  
13 Code section 558.1." FAC ¶¶ 5, 6.

14 Plaintiffs filed their Complaint against all Defendants on  
15 May 13, 2017, ECF No. 1, and filed their First Amended Complaint  
16 on August 8, 2017, adding a claim under the Private Attorney  
17 General Act, ECF No. 5. The McClains filed their Motion to  
18 Dismiss and/or for Judgment on the Pleadings in February of  
19 2018, but, due to notice deficiencies, the motion was not set to  
20 be heard until July 10, 2018. ECF Nos. 10, 11, 12, 14, & 16.

## 22 II. OPINION

### 23 A. Legal Standard

24 A complaint may be dismissed pursuant to Federal Rule of  
25 Civil Procedure 12(b)(6) for failure to state a claim upon which  
26 relief may be granted. After an answer has been filed, a  
27 defendant may move for judgment on the pleadings under Federal  
28 Rule of Civil Procedure 12(c) on the same basis. Aldabe v.

1 Aldabe, 616 F.2d 1089, 1093 (9th Cir. 1980) (“We believe the  
2 best approach is . . . treating the motion to dismiss as a  
3 motion for judgment on the pleadings. . . . Rule 12(h)(2) should  
4 be read as allowing a motion for judgment on the pleadings,  
5 raising the defense of failure to state a claim, even after an  
6 answer has been filed.”). “Because the motions are functionally  
7 identical, the same standard of review applicable to a Rule  
8 12(b) motion applies to its Rule 12(c) analog.” Dworkin v.  
9 Hustler Magazine Inc., 867 F.2d 1188, 1192 (9th Cir. 1989). As  
10 with a motion to dismiss, a district court granting a Rule 12(c)  
11 motion based on the plaintiff’s failure to state a claim should  
12 grant leave to amend where appropriate. Jackson v. Barnes, 749  
13 F.3d 755, 767 (9th Cir. 2014) (district court erred in granting  
14 judgment on the pleadings and not permitting plaintiff an  
15 opportunity to amend his complaint where it was not “absolutely  
16 clear” that he could not cure its deficiencies by amendment).

17 Defendants filed their Answer to the First Amended  
18 Complaint on September 5, 2017. ECF No. 6. The Court issued  
19 its Status (Pre-Trial Scheduling) Order on January 1, 2018. ECF  
20 No. 9. Given this background, the Court treats the McClains’  
21 motion as one for judgment on the pleadings. As outlined above,  
22 the standard of review is identical to a motion to dismiss for  
23 failure to state a claim and leave to amend should be granted  
24 unless it is clear Plaintiffs will be unable to cure any  
25 identified deficiencies.

26 B. Analysis

27 1. State Law Claims

28 In 2016, a new law took effect that changes the terms of

1 individual liability for California Labor Code violations.

2 California Labor Code section 558.1 reads as follows:

3 (a) Any employer or other person acting on behalf of  
4 an employer, who violates, or causes to be violated,  
5 any provision regulating minimum wages or hours and  
6 days of work in any order of the Industrial Welfare  
7 Commission, or violates, or causes to be violated,  
8 Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may  
9 be held liable as the employer for such violation.

7 (b) For purposes of this section, the term "other  
8 person acting on behalf of an employer" is limited to  
9 a natural person who is an owner, director, officer,  
10 or managing agent of the employer, and the term  
11 "managing agent" has the same meaning as in  
12 subdivision (b) of Section 3294 of the Civil Code.

11 (c) Nothing in this section shall be construed to  
12 limit the definition of employer under existing law.

12 Cal. Lab. Code § 558.1 (emphasis added) ("section 558.1").

13 Plaintiffs' Labor Code claims against the McClains are premised  
14 on this new Labor Code section.

15 The McClains argue that Plaintiffs have failed to state a  
16 claim against them. First, they argue that they cannot be held  
17 personally liable for Plaintiffs' wage and hour claims because  
18 Plaintiff has not sufficiently pled that either of them employed  
19 Plaintiffs. Mot. at 5-7. Second, they argue Plaintiffs failed  
20 to sufficiently allege that they are alter egos of the Corporate  
21 Defendants. Mot. at 8-9. Third, they argue section 558.1 does  
22 not apply to them because it did not exist when the alleged  
23 Labor Code violations began. Mot. at 9-11. Fourth, they argue  
24 section 558.1 should not be interpreted in a manner that  
25 interferes with long-standing corporate protections. Mot. at  
26 11-13. The Court addresses each argument in turn.<sup>2</sup>

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27 <sup>2</sup> The Court declines the McClains' invitation to hold the law  
28 "invalid, unlawful, and unconstitutional on the basis that it  
directly clashes with the various, long-standing protections that

1           The text of Labor Code section 558.1 disposes of the  
2 McClains' argument that Plaintiffs' claims fail because  
3 Plaintiffs did not allege that the McClains are "employers."  
4 Because section 558.1 expands liability beyond just "employers"  
5 to include "other persons acting on behalf of the employer,"  
6 "employer" allegations are no longer necessary. Accordingly,  
7 the McClains' cited authority defining "employer" is inapposite.  
8 See Mot. at 5-7 (discussing Cordell). The district court's  
9 analysis in Cordell involved the question of whether an owner of  
10 a company could be held liable as an "employer" under the Labor  
11 Code. See Cordell v. PICC Lines Plus LLC, No. 16-CV-01814-TEH,  
12 2016 WL 4702654 (N.D. Cal. Sept. 8, 2016). It found that an  
13 owner is to be treated similarly to a corporate agent and cannot  
14 be held individually liable for a violation of Labor Code  
15 section 203. Id. at \*9. However, the Cordell court  
16 specifically noted that section 558.1 entered into effect after  
17 the alleged violations in that case took place and did not apply  
18 to Cordell's (plaintiff's) claims. Id. at \*8 n.3. Now, section  
19 558.1 expands liability to those acting on behalf of an  
20 employer, including "a natural person who is an owner, director,  
21 officer, or managing agent of the employer." Thus, authority  
22 limiting liability for Labor Code violations to "employers" has  
23 been superseded insofar as it conflicts with the newly enacted  
24 law.

25           Similarly, the Court is not persuaded that the absence of  
26 alter ego allegations defeats liability here. Again, the new  
27 have been afforded to corporate shareholders, officers[,] and  
28 directors for decades" because the McClains cite no legal  
authority for this proposition. See Mot. at 13.

1 statute expressly expands liability to include owners of an  
2 employer when those owners have violated the enumerated sections  
3 of the Labor Code. In the McClains' only cited case supporting  
4 their theory that alter ego allegations need to be asserted to  
5 establish liability, the California Appellate Court—like the  
6 district court in Cordell—specifically noted that section 558.1  
7 went into force after the events at issue in that case. See  
8 Terrazaz v. Unlimited Baking Ingredients, No. B278856, 2017 WL  
9 6398191, at \*5 n.10 (Cal. App. Dec. 15, 2017) (unpublished).  
10 Thus Terrazaz—which is an unpublished California Appellate  
11 decision—offers no insight into the relationship between section  
12 558.1 and the alter ego doctrine.

13 The Court agrees that the McClains cannot be held liable  
14 for violations that occurred before January 1, 2016. See Mot.  
15 at 9-11. Plaintiffs do not appear to dispute this point. See  
16 Opp'n at 7. In California, "[a] statute is presumed to operate  
17 prospectively unless there is 'an express declaration of  
18 retrospectivity or a clear indication' that the Legislature  
19 intended otherwise." Preston v. State Bd. of Equalization, 25  
20 Cal. 4th 197, 228 (2001) (quoting Tapia v. Super. Ct., 53 Cal.  
21 3d 282, 287 (1991)). Plaintiffs have not pointed to any express  
22 declaration or clear indication from the State Legislature that  
23 it intended section 558.1 to operate retrospectively.

24 Therefore, the Court grants the McClains' motion for judgment on  
25 the pleadings with prejudice insofar as Plaintiffs' state law  
26 claims against them encompass violations occurring before  
27 January 1, 2016.

28 As for the proper interpretation of the new law, the Court

1 finds that section 558.8 does not enable courts to, in effect,  
2 pierce the corporate veil to hold corporate owners,  
3 shareholders, or other officers liable for wrongdoing committed  
4 by the employer corporation.<sup>3</sup> Instead, the law makes these  
5 individuals (owners, directors, officers, or managing agents)  
6 liable for their own violations of the enumerated state laws or  
7 for causing such violation. Accordingly, Plaintiffs cannot  
8 recover against the McClains by virtue of their position as  
9 officers and directors of the corporate defendants alone.  
10 Rather, the McClains may only be held liable under the statute  
11 if they themselves acted to violate or cause the violation of  
12 California's labor laws.

13 The Court finds Plaintiffs' allegations insufficient to  
14 state a claim against the McClains. Plaintiffs only allege that  
15 the McClains are officers and directors of the Corporate  
16 Defendants. They do not allege what specific actions the  
17 McClains took in their individual capacity to violate  
18 Plaintiffs' labor rights or to cause such violation. See Mot.  
19 at 7. While it may be acceptable to group all four Defendants  
20 together with respect to some allegations, conclusory  
21 allegations that do not specify the McClains' role in the  
22 alleged wrongdoing do not suffice. For this reason, the  
23 McClains' motion is granted with respect to the state law claims  
24 asserted against them. Plaintiffs are permitted leave to amend  
25 the allegations against the McClains, only.

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27 <sup>3</sup> As of the date of this Order, it appears that no California  
28 Appellate Court has been called upon to interpret Labor Code  
section 558.1 or to address the arguments presented in this  
motion.



1                     2.     Federal Claim

2             As Plaintiffs point out, “[t]he McClains make no challenge  
3 to their personal liability for FLSA violations as corporate  
4 officers of [Corporate Defendants].” Opp’n at 4. Indeed, in  
5 their moving papers, the McClains only argue that the  
6 allegations are insufficient to establish their status as  
7 “employers” as defined under California law. See Mot. at 6-7.  
8 They did not argue that Plaintiffs failed to state a claim under  
9 FLSA, set forth any legal standards under FLSA, or cite any  
10 court authority interpreting FLSA. The Court declines to grant  
11 the McClains’ motion on a claim that the McClains failed to  
12 address in their moving papers.

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14   III.     ORDER


15             For the reasons set forth above, the Court GRANTS the  
16 McClains’ Motion for Judgment on the Pleadings with respect to  
17 the state law claims, with prejudice as to violations alleged to  
18 have occurred prior to January 1, 2016, and with leave to amend  
19 those allegations against the McClains as to violations alleged  
20 to have occurred on and after January 1, 2016. The Court DENIES  
21 the McClains’ Motion for Judgment on the Pleadings as to  
22 Plaintiffs’ Fair Labor Standards’ Act claim. Plaintiffs shall  
23 file their amended complaint within twenty days of the date of  
24 this Order and the McClains shall file their responsive pleading  
25 within twenty days thereafter.

26             On May 15, 2017, this court issued its Order re Filing  
27 Requirements. ECF No. 4-2. The Order limits memoranda of law  
28 in support of and in opposition to motions, including those made

1 under Federal Rule of Civil Procedure 12, to fifteen pages and  
2 reply memoranda to five pages. It further states: "A violation  
3 of this Order will result in monetary sanctions being imposed  
4 against counsel in the amount of \$50.00 per page and the Court  
5 will not consider any arguments made past the page limit."  
6 Order re Filing Requirements at 1. The McClains' Reply is eight  
7 pages long. The Court has not considered any arguments made  
8 after page five of the Reply. Counsel for the McClains is  
9 ordered to pay \$150.00 in sanctions to the Clerk of the Court  
10 within five days of the date of this Order.

11 IT IS SO ORDERED.

12 Dated: July 30, 2018

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15 **JOHN A. MENDEZ,**  
16 **UNITED STATES DISTRICT JUDGE**  
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