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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

KURT SCHNELL,

Plaintiff,

v.

INTERSTATE ASSEMBLY SYSTEMS,  
INC.,

Defendant.

No. 2:24-cv-01314-CKD

ORDER

Plaintiff Kurt Schnell proceeds on a verified complaint for damages alleging wrongful termination under California law and violations of the California Labor Code. (ECF No. 1-1.) This matter is before the undersigned for all purposes including trial and entry of judgment. (See ECF Nos. 6, 7, 8.)

Defendant, Interstate Assembly System, Inc., moves to dismiss the complaint under Rule 12(b) and Rule 12(h)(3) of the Federal Rules of Civil Procedure. (ECF No. 9.) This matter is appropriate for decision without oral argument under Local Rule 302(g). For the reasons set forth below, the motion to dismiss is denied. Plaintiff's request for sanctions under 28 U.S.C. § 1927 is also denied. The hearing set to take place on September 11, 2024, is vacated. The parties shall meet, if they have not already done so, as required by Federal Rule of Civil Procedure 26 and file a Joint Status Report addressing the relevant portions of Local Rule 240(a) for the court's entry of a pretrial scheduling order.

1           **I. Background**

2                   **A. Complaint’s Allegations**

3           Plaintiff began working at Defendant Interstate Assembly Systems in about November  
4 2021. (ECF No. 1-1, ¶ 6.) In January 2024, plaintiff asked defendant’s Vice President Spencer  
5 Hinson “when Plaintiff would receive the roughly \$10,000 bonus that Plaintiff earned for work  
6 performed in 2023.” (Id., ¶ 8.) Mr. Hinson stated Plaintiff was no longer entitled to the bonus  
7 because the previous company, Lodi Truck and Equipment, sold to defendant, Defendant  
8 Interstate Assembly Systems. (Id., ¶ 9.) Plaintiff informed Mr. Hinson defendant “legally owed  
9 plaintiff the money.” (Id.) Defendant refused to pay plaintiff the wages owed. (Id.)

10           Plaintiff then complained to defendant’s Executive Vice President, Landis Brozard,  
11 “regarding Plaintiff not getting paid the bonus that Plaintiff had earned.” (ECF No. 1-1, ¶ 10.)  
12 “Mr. Brozard informed Plaintiff that Plaintiff did not qualify for the bonus.” (Id.) Plaintiff  
13 responded to Mr. Brozard that “Plaintiff was legally entitled to the bonus.” (Id.)

14           On or about February 9, 2024, defendant paid plaintiff the \$10,5000 bonus plaintiff had  
15 earned. (ECF No. 1-1, ¶ 11.) On the same day, defendant terminated plaintiff’s employment. (Id.)  
16 The complaint asserts the following causes of action: (1) retaliation under California Labor Code  
17 § 98.6; (2) retaliation under California Labor Code § 1102.5; and (3) wrongful termination in  
18 violation of public policy. (ECF No. 1-1.)

19                   **B. Relevant Procedural History**

20           Plaintiff filed the complaint in the Yolo County Superior Court and defendant removed  
21 the case to this court on May 6, 2024. (ECF No. 1.) On June 26, 2024, defendant filed the present  
22 motion seeking dismissal of the complaint. (ECF No. 9.) Defendant argues the court should  
23 dismiss the complaint without leave to amend because (1) plaintiff lacks standing and (2) the  
24 complaint fails to state a claim. (Id.)

25           Plaintiff opposes the motion to dismiss and requests sanctions against defendant’s counsel  
26 under 28 U.S.C. § 1927, arguing defendant was warned the arguments presented relied on  
27 “outdated case law, versions of statutes that had since been amended, and presentations of the  
28 California Labor Code that directly conflicted with the plain language of the referenced statutes

1 and the interpretations of those same statutes published by the Labor Commissioner.” (ECF No.  
2 10.) Defendant filed a reply. (ECF No. 11.)

## 3 **II. Legal Standards**

### 4 **A. Subject Matter Jurisdiction and Standing**

5 A motion to dismiss pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure  
6 seeks dismissal for lack of subject matter jurisdiction. Pursuant to Rule 12(h)(3) of the Federal  
7 Rules of Civil Procedure, “[i]f the court determines at any time that it lacks subject-matter  
8 jurisdiction, the court must dismiss the action.”

9 Standing is a constitutional requirement for the exercise of subject matter jurisdiction over  
10 disputes in federal court. Spokeo, Inc. v. Robins, 578 U.S. 330, 339 (2016). A key component of  
11 standing is satisfaction of the injury-in-fact requirement that plaintiff has “suffered ‘an invasion  
12 of a legally protected interest’ that is ‘concrete and particularized’ and ‘actual or imminent, not  
13 conjectural or hypothetical.’” Id. (quoting Lujan v. Defenders of Wildlife, 504 U.S. 555, 560  
14 (1992)); see also Tailford v. Experian Info. Sols., Inc., 26 F.4th 1092, 1099 (9th Cir. 2022).

### 15 **B. Rule 12(b)(6)**

16 Dismissal under Rule 12(b)(6) may be warranted for “the lack of a cognizable legal theory  
17 or the absence of sufficient facts alleged under a cognizable legal theory.” Balistreri v. Pacifica  
18 Police Dep’t, 901 F.2d 696, 699 (9th Cir. 1990). In evaluating whether a complaint states a claim  
19 on which relief may be granted, the court accepts as true the allegations in the complaint and  
20 construes the allegations in the light most favorable to the plaintiff. Hishon v. King & Spalding,  
21 467 U.S. 69, 73 (1984); Love v. United States, 915 F.2d 1242, 1245 (9th Cir. 1989).

22 For a complaint to survive a Rule 12(b)(6) motion to dismiss, it must “contain sufficient  
23 factual matter, accepted as true, to state a claim for relief that is plausible on its face.” Ashcroft v.  
24 Iqbal, 556 U.S. 662, 678 (2009) (internal quotation marks omitted). A claim is plausible on its  
25 face if the plaintiff has pleaded sufficient facts to allow the court, taking all of the complaint's  
26 factual allegations as true, to draw a “reasonable inference that the defendant is liable” for the  
27 alleged misconduct. Id.

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1           **III. Discussion**

2                   **A. Defendant’s Motion**

3           Defendant argues plaintiff fails to allege facts sufficient to state a claim that he suffered a  
4 violation of his statutory rights implicated by section 98.6 or section 1102.5 of the California  
5 Labor Code, and thus that he has not suffered an injury in fact and lacks standing. (ECF No. 9 at  
6 4-8.) Defendant argues the complaint alleges a mere dispute over plaintiff’s employment contract,  
7 which is not a violation of law or protected whistleblower complaint. (*Id.* at 7-8.) Defendant  
8 argues no Labor Code section entitles plaintiff to the bonus payment at issue in this action and  
9 that plaintiff’s internal complaint concerning the bonus is insufficient to constitute protected  
10 activity under either Labor Code section asserted in the complaint. (*Id.* at 4-9.)

11           Plaintiff responds that he meets the injury in fact requirement and has standing to sue  
12 because his statutory rights were abridged under both sections of the California Labor Code  
13 pleaded. (ECF No. 10 at 9-13.) Plaintiff charges defendant with “deliberate[ly] misrepresent[ing]”  
14 that a “bonus” is not “wages” for purposes of California Labor Code. (*Id.* at 10.) Plaintiff argues  
15 the complaint also states a plausible claim in the third cause of action (wrongful termination in  
16 violation of public policy). (*Id.* at 20-21.)

17           In reply, defendant argues plaintiff fails to specifically allege he met the conditions  
18 precedent entitling him to a bonus payment, and thus that he fails to allege protected activity.  
19 (ECF No. 11 at 2-4.) Defendant argues plaintiff’s opposition fails to address the distinction  
20 between a contingent expectation of wages and earned wages, and that demanding an unearned  
21 sum of money is not protected activity under either statute. (*Id.* at 2, 4-6.) Defendant argues  
22 plaintiff’s opposition misconstrues defendant’s arguments, including to state the Labor Code does  
23 not protect internal complaints.<sup>1</sup> (ECF No. 11 at 2, 6-7.) Defendant agrees that an earned “bonus”  
24 constitutes “wages” under California Labor Code section 98.6(a). (ECF No. 11 at 4.) However,  
25 defendant argues plaintiff cannot plausibly allege a violation of his rights without alleging both  
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27 <sup>1</sup> Defendant has clarified the confusing argument in the reply, but plaintiff reasonably construed  
28 defendant’s motion to dismiss as arguing that internal complaints are not protected activity. (*See*  
ECF No. 9 at 7-8.)

1 that the bonus was still in effect and that plaintiff met the conditions precedent to earn the bonus.  
2 (Id.)

3 First, the authorities cited by defendant fail to establish that plaintiff must discretely allege  
4 both that the bonus was still in effect and that plaintiff met the conditions precedent in order to  
5 state a statutory retaliation claim under the California Labor Code. That the bonus was still in  
6 effect and that plaintiff met the conditions precedent are inferences fairly drawn from the  
7 complaint's allegations discussed below. Second, contrary to defendant's arguments, the  
8 allegations do not involve an unearned or unilaterally expected sum of money. (See ECF No. 1-1,  
9 ¶ 8 (describing the bonus at issue as a bonus "that Plaintiff earned for work performed in 2023";  
10 id., ¶ 9 (alleging, in relevant part, that "Defendant... refused to pay Plaintiff the wages that  
11 Plaintiff was owed"; ¶ 10 ("Plaintiff was forced to complain... regarding Plaintiff not getting paid  
12 the bonus that Plaintiff had earned").)

13 California Labor Code section 98.6 expressly makes it unlawful to "discharge an  
14 employee or in any manner discriminate, retaliate, or take any adverse action against any  
15 employee" because they "made a written or oral complaint that they are owed unpaid wages"  
16 among other listed protected conduct. Cal. Lab. Code § 98.6(a). Defendant acknowledges plaintiff  
17 made internal complaints "regarding [plaintiff's] belief that he was entitled to a performance  
18 bonus." (ECF No. 9 at 6.) Defendant construes the complaint's allegations too narrowly and not  
19 in a light favorable to the plaintiff. Plaintiff's complaint was that plaintiff was owed an earned  
20 bonus which constituted unpaid wages within the meaning of section 98.6 of the California Labor  
21 Code. (See ECF No. 1-1, ¶¶ 8-10.)

22 In addition, under California Labor Code section 1102.5, it is unlawful to "retaliate  
23 against an employee for disclosing information, or because the employer believes that the  
24 employee disclosed or may disclose information... to a person with authority over the employee  
25 or another employee who has the authority to investigate, discover, or correct the violation or  
26 noncompliance... if the employee has reasonable cause to believe that the information discloses a  
27 violation of state or federal statute, or a violation of or noncompliance with a local, state, or  
28 federal rule or regulation." Cal. Lab. Code § 1102.5(b). Plaintiff adequately alleged he demanded

1 an earned sum of money first from defendant's Vice President, Spencer Hinson, and then raised  
2 the issue to defendant's Executive Vice President, Landis Brozard. (See ECF No. 1-1, ¶¶ 8-10.)  
3 Plaintiff adequately alleged he was complaining about a violation of law when he did so. (See id.)  
4 Under the complaint's allegations, defendant paid plaintiff the bonus plaintiff had earned and  
5 terminated plaintiff's employment on the same date, after plaintiff complained. (Id., ¶ 11.)

6 Considering the above, plaintiff satisfies the injury-in-fact requirement for Article III  
7 standing and pleads a plausible retaliation claim under both section 98.6 and section 1102.5 of the  
8 California Labor Code. In addition, the complaint states a plausible claim for wrongful  
9 termination in violation of public policy in plaintiff's third cause of action. As set forth above, the  
10 court rejects defendant's argument that plaintiff did not plead any protected activity under the  
11 California Labor Code. Thus, the motion to dismiss is denied on all asserted grounds.

## 12 **B. Sanctions**

13 Plaintiff argues the conduct of defendant's counsel in bringing the motion to dismiss  
14 warrants sanctions under 28 U.S.C. § 1927, which provides

15 Any attorney or other person admitted to conduct cases in any court  
16 of the United States or any Territory thereof who so multiplies the  
17 proceedings in any case unreasonably and vexatiously may be  
required by the court to satisfy personally the excess costs, expenses,  
and attorneys' fees reasonably incurred because of such conduct.

18 28 U.S.C. § 1927. Plaintiff requests sanctions in the amount of \$7,100 for attorneys' fees and  
19 expenses incurred in opposing the motion to dismiss. (Id. at 21-22.)

20 Plaintiff's opposition argument requesting sanctions is a "request made to the Court for an  
21 order or other judicial activity" and is therefore a "motion" under Local Rule 101. The motion  
22 does not comply with Local Rule 230 and is deficiently filed. In addition, although some of  
23 defendant's arguments are not well-taken, the court does not make the required finding of bad  
24 faith to support an award of sanctions under 28 U.S.C.A. § 1927. See In re Keegan Mgmt. Co.,  
25 Sec. Litig., 78 F.3d 431, 436 (9th Cir. 1996) (sanctions under section 1927 "must be supported by  
26 a finding of subjective bad faith" which is present "when an attorney knowingly or recklessly  
27 raises a frivolous argument" or "argues a meritorious claim for the purpose of harassing an  
28 opponent").

1           **IV. Conclusion and Order**

2           For the reasons set forth above, IT IS ORDERED as follows:

- 3           1. The court VACATES the hearing on defendant’s motion to dismiss set to take place  
4           on September 11, 2024.
- 5           2. Defendant’s motion to dismiss (ECF No. 9) is DENIED.
- 6           3. Plaintiff’s request for sections under 28 U.S.C. § 1927 is DENIED.
- 7           4. Defendant shall file a responsive pleading within 14 days of the date of this order. See  
8           Fed. R. Civ. P. 12(a)(4)(A).
- 9           5. Within 30 days from the date of this order, if they have not already done so, the parties  
10           shall meet, in person or by telephone, as required by Federal Rule of Civil Procedure  
11           26.
- 12           6. Within 7 days after the parties’ Rule 26 discussion, the parties shall file a joint status  
13           report and may optionally request a hearing before the Magistrate Judge for the  
14           purpose of entry of a pretrial scheduling order. The report shall address the following  
15           matters:
- 16                 a. Service of process;
- 17                 b. Possible joinder of additional parties;
- 18                 c. Any expected or desired amendment of the pleadings;
- 19                 d. Jurisdiction and venue;
- 20                 e. Anticipated motions and their scheduling;
- 21                 f. The report required by Federal Rule of Civil Procedure 26 outlining the  
22           proposed discovery plan and its scheduling, including disclosure of expert witnesses;
- 23                 g. Future proceedings, including setting appropriate cut-off dates for discovery  
24           and law and motion, and the scheduling of a pretrial conference and trial;
- 25                 h. Special procedures, if any;
- 26                 i. Estimated trial time;
- 27                 j. Modification of standard pretrial procedures specified by the rules due to the  
28           simplicity or complexity of the proceedings;

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- k. Whether the case is related to any other cases, including bankruptcy;
- l. Whether a settlement conference should be scheduled;
- m. The parties' positions with respect to Voluntary Dispute Resolution (VDRP) under Local Rule 271(d); and
- n. Any other matters that may add to the just and expeditious disposition of this matter.

Dated: August 29, 2024

  
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CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

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