



1     **II.    BACKGROUND**

2           On November 18, 2008, Plaintiffs, on behalf of themselves and  
3 all others similarly situated, filed an Amended Complaint. Am.  
4 Compl., Docket No. 22. It contains ten counts, including (1)  
5 failure to pay overtime compensation in violation of the Fair  
6 Labor Standards Act ("FLSA"), 29 U.S.C. § 201 et seq.; (2) failure  
7 to pay the federal minimum wage in violation of the FLSA; (3)  
8 failure to pay the California minimum wage in violation of Cal.  
9 Code Regs. tit. 8, § 11000; and (4) failure to pay overtime  
10 compensation in violation of Cal. Code Regs. tit. 8, § 11040, and  
11 Cal. Labor Code § 510(a). Id. ¶¶ 58-82. On December 3, 2008,  
12 Defendants moved for a more definite statement under Federal Rule  
13 of Civil Procedure 12(e), or, alternatively, to strike portions of  
14 the Amended Complaint under Federal Rule of Civil Procedure 12(f).  
15 Mot. at 2.

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17     **III. LEGAL STANDARD**

18         **A.    Motion for a More Definite Statement**

19           "A party may move for a more definite statement of a pleading  
20 to which a responsive pleading is allowed but which is so vague or  
21 ambiguous that the party cannot reasonably prepare a response."  
22 Fed. R. Civ. P. 12(e). Rule 12(e) motions are viewed with  
23 disfavor and are rarely granted because of the minimal pleading  
24 requirements of the Federal Rules. Sagan v. Apple Computer, Inc.,  
25 874 F. Supp. 1072, 1077 (C.D. Cal. 1994). A Rule 12(e) motion is  
26 not a substitute for discovery; such a motion attacks  
27 unintelligibility in a pleading, not mere lack of detail. Wood v.

1 Apodaca, 375 F. Supp. 2d 942, 949 (N.D. Cal. 2005). If the detail  
2 sought by a motion for more definite statement is obtainable  
3 through discovery, the motion should be denied. Beery v. Hitachi  
4 Home Elecs. (America), Inc., 157 F.R.D. 477, 480 (C.D. Cal. 1993).

5 A motion for a more definite statement must be considered in  
6 light of the liberal pleading standards of Rule 8(a). Bureerong  
7 v. Uvawas, 922 F. Supp. 1450, 1461 (C.D. Cal. 1996). This rule  
8 requires "a short and plain statement of the claim showing that  
9 the pleader is entitled to relief." Fed. R. Civ. P. 8(a).

10 **B. Motion to Strike**

11 "The court may strike from a pleading an insufficient defense  
12 or any redundant, immaterial, impertinent, or scandalous matter."  
13 Fed. R. Civ. P. 12(f). The essential function of a Rule 12(f)  
14 motion is to "avoid the expenditure of time and money that must  
15 arise from litigating spurious issues by dispensing with those  
16 issues prior to trial." Fantasy, Inc. v. Fogerty, 984 F.2d 1524,  
17 1527 (9th Cir. 1993), rev'd on other grounds, 510 U.S. 517 (1994).  
18 Rule 12(f) motions are disfavored because of the limited  
19 importance of pleading in federal practice. In re Wal-Mart  
20 Stores, Inc. Wage and Hour Litigation, 505 F. Supp. 2d 609, 614  
21 (N.D. Cal. 2007).

22  
23 **IV. DISCUSSION**

24 **A. Defendants' Motion for a More Definite Statement**

25 Defendants move for a more definite statement regarding  
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1 Plaintiffs' claims for failure to pay overtime compensation.<sup>1</sup>  
2 Defendants point out that they cannot determine from the face of  
3 the Amended Complaint whether Plaintiffs are claiming they are  
4 entitled to overtime compensation because they were mis-classified  
5 as exempt, or because they worked off-the-clock. Mot. at 5.  
6 Without more detailed information concerning the basis for  
7 Plaintiffs' claims for overtime compensation, Defendants contend  
8 that they cannot frame a responsive pleading. Id. at 4.

9 Defendants rely on Bell Atlantic Corp. v. Twombly, 127 S. Ct.  
10 1955 (2007), to argue that Plaintiffs are required to provide the  
11 grounds of their entitlement to relief. Mot. at 6. However,  
12 Twombly did not alter Rule 8(a)'s requirement of a short and plain  
13 statement that gives "the defendant fair notice of what the . . .  
14 claim is and the grounds upon which it rests." See Swierkiewicz  
15 v. Sorema N.A., 534 U.S. 506, 512 (2002) (quoting Conley v.  
16 Gibson, 355 U.S. 41, 47, (1957)).

17 The requirements to state a cause of action for overtime  
18 compensation under federal and California law are straightforward.  
19 Section 207(a) of the FLSA provides that "no employer shall employ  
20 any of his employees . . . for a workweek longer than forty hours  
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22 <sup>1</sup> Defendants assert that "Counts One through Four of the FAC  
23 purport to allege claims for unpaid overtime." Mot. at 4.  
24 However, only Count One and Count Four allege claims for unpaid  
25 overtime. Am. Compl. ¶¶ 58-65; ¶¶ 77-82. Count Two alleges a  
26 claim for failure to pay the federal minimum wage. Id. ¶¶ 66-71.  
27 Count Three alleges a claim for failure to pay the California  
28 minimum wage. Id. ¶¶ 72-76. Defendants' Motion does not raise any  
concerns regarding the claims for failure to pay the required  
minimum wage. Hence, the Court assumes Defendants are moving for a  
more definite statement regarding Count One and Count Four of the  
Amended Complaint.

1 unless such employee receives compensation for his employment in  
2 excess of the hours above specified at a rate not less than one  
3 and one-half times the regular rate at which he is employed." 29  
4 U.S.C. § 207(a). Section 510(a) of the California Labor Code  
5 provides that "[a]ny work in excess of eight hours in one workday  
6 and any work in excess of 40 hours in any one workweek and the  
7 first eight hours worked on the seventh day of work in any one  
8 workweek shall be compensated at the rate of no less than one and  
9 one-half times the regular rate of pay for an employee." Cal.  
10 Labor Code § 510(a). Title 8, Section 11040 of the California  
11 Code of Regulations prohibits employees from working more than  
12 eight hours per workday or forty hours per workweek unless they  
13 are paid overtime for all hours worked over forty hours in the  
14 workweek. Cal. Code Regs. tit. 8, § 11040(3)(A)(1).

15 Plaintiffs' Amended Complaint gives the Defendants fair  
16 notice of Plaintiffs' claims for failure to pay overtime  
17 compensation and the grounds upon which those claims rest. Count  
18 One states a claim for failure to pay overtime compensation in  
19 violation of the FLSA. See Am. Compl. ¶¶ 58-65; see also 29  
20 U.S.C. § 207(a). Count Four states a claim for failure to pay  
21 overtime compensation in violation of California labor law. See  
22 Am. Comp. ¶¶ 77-82; see also Cal. Code Regs. tit. 8, §  
23 11040(3)(A)(1); Cal. Labor Code § 510(a). Plaintiffs allege that  
24 "Account Executives" employed by Defendants regularly worked in  
25 excess of forty hours per workweek and/or eight hours per day  
26 without receiving overtime compensation for those hours. Am.  
27 Compl. ¶¶ 3, 4, 14, 19, 26. Plaintiffs allege that Defendants  
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1 knowingly and willfully failed to pay them overtime compensation.  
2 Id. ¶ 27. Plaintiffs describe the manner of the failure to pay  
3 overtime by alleging that Defendants had a policy and practice of  
4 refusing to pay overtime compensation to their Account Executives.  
5 Id. ¶ 62. Plaintiffs also allege that Account Executives were not  
6 exempt from coverage under these laws. Id. at ¶¶ 21-25.

7 The FLSA does not require Plaintiffs to allege that they were  
8 mis-classified as exempt, or that they worked off-the-clock. In  
9 Chao v. Rivendell Woods, Inc., the Fourth Circuit determined that  
10 a claim for overtime compensation under the FLSA met the  
11 requirements of Rule 8 where the amended complaint identified the  
12 employer, identified the employees by job title, and described the  
13 manner of FLSA violations by alleging that the employer  
14 compensated the employees based on a "formula" which did not  
15 compensate them at rates not less than one and one-half their  
16 regular rate for hours worked in excess of forty hours in a  
17 workweek. 415 F.3d 342, 348 (4th Cir. 2005).<sup>2</sup> Similarly, here,  
18 the Amended Complaint identifies the employers, identifies the  
19 employees as "Account Executives," and describes the manner of the  
20 overtime violation by stating that Defendants had a policy and  
21 practice of refusing to pay overtime compensation to its Account  
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23 <sup>2</sup> The Fourth Circuit's opinion merely states that the amended  
24 complaint described the manner of the FLSA violations. The  
25 Appellate Briefs clarify that the allegation in the amended  
26 complaint was that the employer compensated the employees based on  
27 a formula which did not compensate such employees at rates not less  
28 than one and one-half their regular rate for hours worked in excess  
of forty hours. See Brief for the Secretary of Labor, No. 04-2330,  
2005 WL 882170, at \*7 (Jan. 18, 2005); see also Brief of Appellees,  
No. 04-2330, 2005 WL 882169, at \*7 (Feb. 22, 2005).

1 Executives. Am. Compl. ¶¶ 3, 4, 14, 19, 26, 27, 62. As such,  
2 Count One of the Amended Complaint meets Rule 8's requirement of a  
3 short and plain statement showing that Plaintiffs are entitled to  
4 relief.

5 California law does not require Plaintiffs to allege that  
6 they were mis-classified as exempt, or that they worked  
7 off-the-clock. In Whiteway v. FedEx Kinko's Office and Print  
8 Services, Inc., the Court determined that once plaintiffs had  
9 alleged activity showing a violation of California's labor laws,  
10 the plaintiffs were not required to more particularly identify how  
11 that activity occurred. No. 05-2320, 2005 WL 3095864, at \*2 (N.D.  
12 Cal. Nov. 14, 2005). Here, Plaintiffs allege that Defendants had  
13 a policy and practice of refusing to pay overtime compensation to  
14 Account Executives. Am. Compl. ¶ 62. Under notice pleading  
15 standards, Plaintiffs are not required to more particularly  
16 identify how Defendants refused to pay overtime compensation.

17 Plaintiffs' overtime compensation claims are intelligible,  
18 and the Court is convinced Defendants can frame a responsive  
19 pleading to the allegations. Defendants' real concern is not  
20 unintelligibility, but rather a lack of detail in the Amended  
21 Complaint. To the extent that Defendants want more detailed  
22 information about how the alleged failure to pay overtime  
23 compensation occurred, Defendants can obtain this information by  
24 taking deposition testimony. A Rule 12(e) motion should not be  
25 used as a substitute for discovery. Wood, 375 F. Supp. 2d at 949.  
26 The Court DENIES Defendants' Motion for a More Definite Statement.

1           B.    Defendants' Motion to Strike Class Allegations and Class  
2                    Definitions

3           Defendants move to strike Plaintiffs' class definitions as  
4           improper "fail-safe" classes. Mot. at 8-10. In the Amended  
5           Complaint, the Nationwide Collective Class is defined as:

6                   All persons, who: (i) are/were employed as  
7                   Account Executives with the Company, excluding  
8                   persons employed by Decision One Mortgage  
9                   Company; (ii) are/were not paid the federal  
10                  minimum wage for all hours worked; (iii)  
11                  are/were not paid overtime compensation work  
12                  [sic] performed beyond the forty (40) hour  
13                  work week; and (iv) choose to opt-in to this  
14                  action (the "Nationwide Collective Class").

15           Am. Compl. ¶ 55. The California Class is defined as:

16                   All persons within the State of California  
17                   who: (i) are/were employed as Account  
18                   Executives with the Company, excluding persons  
19                   employed by Decision Mortgage Company [sic];  
20                   (ii) are/were not paid for all hours worked in  
21                   a given workweek; and (iii) are/were not paid  
22                   premium overtime compensation at a rate not  
23                   less than one and one-half times their regular  
24                   rage [sic] for hours worked beyond the forty  
25                   (40) hour work week, and/or eight (8) hours in  
26                   a workday.

27           Id. ¶ 57.

28           Fail-safe classes are defined by the merits of their legal  
claims, and are therefore unascertainable prior to a finding of  
liability in the plaintiffs' favor. Brazil v. Dell, Inc., No. 07-  
1700, 2008 WL 2693629, at \*7 (N.D. Cal. July 7, 2008); In re Wal-  
Mart Stores, 505 F. Supp. 2d at 614. In Brazil, the classes were  
defined as all persons or entities who purchased Dell computer  
products that "Dell falsely advertised." 2008 WL 2693629 at \*7.  
The court noted that to determine who should be a member of the  
classes, it would be necessary for the court to reach a legal

1 conclusion that Dell had falsely advertised. Id. The court  
2 therefore granted a motion to strike the class definitions. Id.  
3 In In re Wal-Mart Stores, the court found plaintiffs' class  
4 definitions suspicious for similar reasons. 505 F. Supp. 2d at  
5 615. However, the Court determined that it would be premature to  
6 rule on the propriety of the class allegations and definitions.  
7 Id. at 615-16.

8 In Brazil, the court ruled on the class definitions, while in  
9 In re Wal-Mart Stores, the court deferred making such a ruling  
10 for the following reason. In Brazil, the court determined that  
11 Texas rather than California law applied, and the court granted  
12 plaintiffs leave to amend their complaint to state claims under  
13 Texas law. 2008 WL 2693629 at \*6-7. Because the plaintiffs were  
14 almost certain to amend their complaint, it made sense for the  
15 court to strike plaintiffs' fail-safe class definitions at that  
16 juncture. In In re Wal-Mart Stores, on the other hand, the court  
17 granted in part Wal-Mart's motion to dismiss without leave to  
18 amend. 505 F. Supp. 2d at 621. While the court struck  
19 plaintiffs' prayer for punitive damages with leave to amend, they  
20 could only do so if they could allege an adequate basis for  
21 punitive damages. Id. Since an amended complaint was not likely,  
22 it made sense for the court to defer ruling on the class  
23 definitions.

24 Here, the Court also finds the class definitions troubling  
25 because, for example, the classes cannot be defined before first  
26 making the legal determination that Account Executives were not  
27 paid overtime compensation for hours worked beyond forty in any  
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1 one week. However, since the Court has denied Defendants' motion  
2 for a more definite statement, the Court will follow the approach  
3 adopted in In re Wal-Mart Stores. Generally, courts review class  
4 allegations and definitions through a motion for class  
5 certification. Id. at 614. "Motions to strike class allegations  
6 are disfavored because a motion for class certification is a more  
7 appropriate vehicle for the arguments." Thorpe v. Abbott Labs.,  
8 Inc., 534 F. Supp. 2d 1120, 1125 (N.D. Cal. 2008). In In re Wal-  
9 Mart Stores, the court denied the motion to strike class  
10 allegations, noting that the non-moving party "has not answered in  
11 this case, discovery has not yet commenced, and no motion for  
12 class certification has been filed." Id. at 615. For the same  
13 reasons, the Court DENIES Defendants' motion to strike as  
14 premature.

15  
16 **V. CONCLUSION**

17 For the reasons stated above, Defendants' Motion for a More  
18 Definite Statement or, in the Alternative, to Strike Class  
19 Allegations and Class Definitions is DENIED. The parties shall  
20 appear for a Case Management Conference on February 6, 2009, at  
21 10:00 a.m. in Courtroom 1, on the 17th floor, U.S. Courthouse, 450  
22 Golden Gate Avenue, San Francisco, CA 94102.

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24 IT IS SO ORDERED.

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26 Dated: January 16, 2009

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UNITED STATES DISTRICT JUDGE