

United States District Court
For the Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DAVID M. CATHCART, et al.,
Plaintiffs,
v.
SARA LEE CORPORATION, et al.,
Defendants

No. C-09-5748 MMC

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO DISMISS; VACATING APRIL 16, 2010 HEARING

Before the Court is the Motion to Dismiss, filed February 17, 2010 by defendants Sara Lee Corporation and Sara Lee Bakery Group. Plaintiffs David M. Cathcart, James H. Whitehead, Robert W. Decker, and Dale Baldisseri have filed opposition, to which defendants have replied. Having read and considered the papers filed in support of and in opposition to the motion, the Court deems the matter suitable for decision thereon, VACATES the hearing scheduled for April 16, 2010, and rules as follows.

1. Contrary to defendants' argument, the First Claim for Relief, by which plaintiffs assert a state law claim for failure to pay wages, is not subject to dismissal. In particular, to the extent plaintiffs' claim is based on an assertion that defendants violated state law by failing to compensate plaintiffs at required overtime rates, either when such work was performed or upon termination, plaintiffs' failure to allege facts to support a finding that defendants have misclassified plaintiffs as "exempt[] from the requirement that an

1 overtime rate of compensation be paid pursuant to [the Labor Code],” see Eicher v.
2 Advanced Business Integrators, Inc., 151 Cal. App. 4th 1363, 1371 (2007), is not a ground
3 for dismissal. Rather, “[t]he assertion of an exemption from the overtime laws is
4 considered to be an affirmative defense,” see Ramirez v. Yosemite Water Co., 20 Cal.4th
5 785, 794-95 (1999), and a plaintiff has no “obligation to anticipate [an affirmative] defense
6 by stating in his complaint that the defendant [is not entitled to an affirmative defense],” see
7 Gomez v. Toledo, 446 U.S. 635, 640 (1980). Further, to the extent the First Claim for
8 Relief is based on plaintiffs’ assertion that defendants failed to pay plaintiffs the minimum
9 wage, plaintiffs have not failed to allege sufficient facts to state a claim. The complaint
10 alleges that plaintiffs were “made to work off-the-clock, causing them to be paid nothing at
11 all for substantial amounts of work” (see Compl. ¶¶ 1, 22, 24); payment of “nothing at all”
12 for work performed necessarily contemplates payment in an amount less than the
13 minimum wage.¹

14 2. As plaintiffs concede, the Second Claim for Relief, by which plaintiffs allege
15 defendants failed to provide plaintiffs with meal periods, is subject to dismissal for the
16 reason plaintiffs do not allege they worked the requisite number of hours that would entitle
17 them to meal breaks. (See Pls.’ Opp. at 7:22-24.) Additionally, the Second Claim for
18 Relief is subject to dismissal because, as defendants correctly argue, the complaint
19 includes no facts to support plaintiffs’ pleaded conclusion that defendants “violated [the]
20 obligation” to provide meal breaks. (See Compl. ¶ 32); see Ashcroft v. Iqbal, 129 S. Ct.
21 1937, 1950 (2009) (holding courts “are not bound to accept as true a legal conclusion
22 couched as a factual allegation”) (internal quotation and citation omitted).

23
24 ¹In their motion, defendants assert that neither defendant is plaintiffs’ employer, but,
25 rather, that the employer is “The Earthgrains Companies, Inc.” (See Defs.’ at 1:27-28.) In
26 their opposition, plaintiffs assert that their respective wage statements identify the employer
27 as “Sara Lee,” and further assert that “The Earthgrains Companies, Inc.” is not authorized
28 to do business in California (see Pls.’ Opp. at 3:12 - 4:4), the state in which plaintiffs allege
they are or were employed. Because the complaint alleges that each plaintiff was
employed by the named defendants, the Court does not at this time consider any factual
dispute that may exist as to the identity of plaintiffs’ employer(s) and/or any entity’s ability to
do business in California.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. If plaintiffs wish to file a First Amended Complaint, plaintiffs shall file their First Amended Complaint no later than April 30, 2010.

IT IS SO ORDERED.

Dated: April 13, 2010


MAXINE M. CHESNEY
United States District Judge