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4 UNITED STATES DISTRICT COURT  
5 NORTHERN DISTRICT OF CALIFORNIA  
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7 JAMES HARALSON,  
8 Plaintiff,

9 v.

10 UNITED AIRLINES, INC., et al.,  
11 Defendants.

Case No.16-cv-05226-JST

**ORDER GRANTING IN PART AND  
DENYING IN PART MOTION TO  
DISMISS**

Re: ECF No. 20

12 Before the Court is Defendant United's Motion to Dismiss. ECF No. 20. Defendant U.S.  
13 Aviation joined in that Motion. See Haralson v. U.S. Aviation Services Corp., Case No. 16-cv-  
14 05226-JST (N.D. Cal.), ECF No. 18.<sup>1</sup> The Court will grant the motion in part and deny it in part.

15 **I. BACKGROUND**

16 Plaintiff James Haralson brings several claims under California wage and hour laws on  
17 behalf of himself and a putative class against Defendants United Airlines and U.S. Aviation  
18 Services. ECF No. 1-2 ¶ 1.

19 Haralson has worked as an aircraft cleaner for Defendants from June 2015 to the present.  
20 Id. ¶ 5. He alleges that during his employment he "was supervised and/or managed by United  
21 employees." Id. ¶ 8.

22 The gravamen of Haralson's complaint is that the Defendants had a policy or practice of  
23 requiring employees to be relieved—i.e., "released by a manager or supervisor"—before they  
24 could take meal or rest breaks. Id. ¶¶ 28, 31, 48, 49. As a result of this policy, Haralson alleges  
25 that employees had no control over their ability to take breaks or the timing of such breaks. Id. ¶¶  
26 29, 32, 49. Haralson further alleges that the Defendants failed to provide timely, uninterrupted  
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28 <sup>1</sup> U.S. Aviation filed its notice of joinder in the related case Haralson v. U.S. Aviation.

1 meal and rest breaks as a result of this policy. Id. ¶¶ 20-52.

2 Based on this alleged conduct, Haralson brings the following six causes of action under  
3 California law: (1) failure to provide meal periods; (2) failure to provide rest periods; (3) failure to  
4 pay hourly and overtime wages; (4) failure to provide accurate written wage statements; (5) failure  
5 to timely pay all final wages (waiting time penalty claim); and (6) unfair competition. The last  
6 four causes of action are derivative of the underlying meal and rest break claims.

7 Haralson also seeks to certify the following classes and subclasses:

8 **U.S. Aviation Class:** All persons employed by Defendant U.S.  
9 Aviation Services Corp. in hourly or non-exempt positions in  
California during the Relevant Time Period.

10 **United Airlines Sub-Class:** All U.S. Aviation Class members who  
11 worked at or in a United Airlines facility during the Relevant Time  
Period.

12 **Meal Break Sub-Class:** All U.S. Aviation Class and United  
13 Airlines Sub-Class members who worked a shift in excess of five  
hours during the Relevant Time Period.

14 **Auto-Deduct Sub-Class:** All U.S. Aviation Class and United  
15 Airlines Sub-Class members who had a half hour or hour deducted  
16 from their timecards regardless of whether or not they took a meal  
period.

17 **Rest Break Sub-Class:** All U.S. Aviation Class and United Airlines  
18 Sub-Class members who worked a shift of at least three and one-half  
(3.5) hours during the Relevant Time Period.

19 **Wage Statement Penalties Sub-Class:** All U.S. Aviation Class and  
20 United Airlines Sub-Class members employed by Defendants in  
California during the period beginning one year before the filing of  
this action and ending when final judgment is entered.

21 **Waiting Time Penalties Sub-Class:** All U.S. Aviation Class and  
22 United Airlines Sub-Class members who separated from their  
23 employment with Defendants during the period beginning three  
years before the filing of this action and ending when final judgment  
is entered.

24 **UCL Class:** All U.S. Aviation Class and United Airlines Sub-Class  
25 members employed by Defendants in California during the Relevant  
Time Period.

26 Id. ¶ 12.

27 Although Haralson initially filed this class action in the Superior Court of the State of  
28 California, County of Alameda, United removed it to federal court. See ECF No. 1. United has

1 now filed a motion to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1) and for  
2 failure to state a claim under Rule 12(b)(6). ECF No. 20. U.S. Aviation has joined in the motion.  
3 See Haralson v. U.S. Aviation Services Corp., Case No. 16-cv-05226-JST (N.D. Cal.), ECF No.  
4 18.

5 **II. JURISDICTION**

6 This Court has original jurisdiction of this action under the Class Action Fairness Act  
7 (“CAFA”) because the amount in controversy exceeds \$5,000,000, there is minimal diversity, and  
8 the number of class members exceeds 100. 28 U.S.C. § 1332(d)(2).

9 **III. LEGAL STANDARDS**

10 **A. Motions to Dismiss Under Rule 12(b)(1)**

11 “A Rule 12(b)(1) jurisdictional attack may be facial or factual. In a facial attack, the  
12 challenger asserts that the allegations contained in a complaint are insufficient on their face to  
13 invoke federal jurisdiction. By contrast, in a factual attack, the challenger disputes the truth of the  
14 allegations that, by themselves, would otherwise invoke federal jurisdiction.” Safe Air for  
15 Everyone v. Meyer, 373 F.3d 1035, 1039 (9th Cir.2004) (citation omitted).

16 In resolving a facial attack, the court assumes that the allegations are true and draws all  
17 reasonable inferences in the plaintiff’s favor. Wolfe v. Strankman, 392 F.3d 358, 362 (9th  
18 Cir.2004) (citations omitted).

19 “In resolving a factual attack on jurisdiction, the district court may review evidence beyond  
20 the complaint without converting the motion to dismiss into a motion for summary judgment. The  
21 court need not presume the truthfulness of the plaintiff’s allegations. Once the moving party has  
22 converted the motion to dismiss into a factual motion by presenting affidavits or other evidence  
23 properly brought before the court, the party opposing the motion must furnish affidavits or other  
24 evidence necessary to satisfy its burden of establishing subject matter jurisdiction.” Safe Air, 373  
25 F.3d at 1039 (citations omitted).

26 **B. Motions to Dismiss Under Rule 12(b)(6)**

27 Federal Rule of Civil Procedure 8(a)(2) requires that a complaint contain “a short and plain  
28 statement of the claim showing that the pleader is entitled to relief.” While a complaint need not

1 contain detailed factual allegations, facts pleaded by a plaintiff must be “enough to raise a right to  
2 relief above the speculative level.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). To  
3 survive a Rule 12(b)(6) motion to dismiss, a complaint must contain sufficient factual matter that,  
4 when accepted as true, states a claim that is plausible on its face. Ashcroft v. Iqbal, 556 U.S. 662,  
5 678 (2009). “A claim has facial plausibility when the plaintiff pleads factual content that allows  
6 the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”  
7 Id. While this standard is not a probability requirement, “where a complaint pleads facts that are  
8 merely consistent with a defendant’s liability, it stops short of the line between possibility and  
9 plausibility of entitlement to relief.” Id. (internal quotation marks omitted). In determining  
10 whether a plaintiff has met this plausibility standard, the Court must accept all factual allegations  
11 in the complaint as true and construe the pleadings in the light most favorable to the plaintiff.  
12 Knieval v. ESPN, 393 F.3d 1068, 1072 (9th Cir. 2005).

13 **IV. DISCUSSION**

14 United moves to dismiss Haralson’s complaint under Rule 12(b)(1) on the ground that this  
15 action raises representation disputes that the Railway Labor Act (“RLA”) relegates to the  
16 exclusive jurisdiction of the National Mediation Board (“NMB”). ECF No. 20 at 2. United also  
17 moves to dismiss Haralson’s complaint under Rule 12(b)(6) on the ground that it fails to state a  
18 plausible claim upon which relief may be granted. Id.

19 **A. Preemption under the Railway Labor Act (“RLA”)**

20 The RLA provides a framework for efficiently resolving labor disputes between  
21 transportation carriers, including air carriers like United, and their employees. See 45 U.S.C.  
22 §§ 151a, 181; United Air Lines, Inc. v. Int’l Ass’n of Machinist & Aerospace Workers, AFL-CIO,  
23 243 F.3d 349, 353 (7th Cir. 2001) (“United is a ‘carrier’ as defined by § 201 of the Railway Labor  
24 Act.”) (internal citations omitted). To that end, the RLA addresses three kinds of labor disputes:  
25 major disputes, minor disputes, and representation disputes. See 45 U.S.C. § 181; Aircraft Serv.  
26 Int’l, Inc. v. Int’l Bhd. of Teamsters, 779 F.3d 1069, 1081 (9th Cir. 2015) (quoting W. Airlines,  
27 Inc. v. Int’l Bhd. of Teamsters, 480 U.S. 1301, 1302 (1987)). Because the parties disagree as to  
28 the kind of dispute at issue here, the Court begins by briefly explaining each kind of dispute.

1 Major disputes relate to “the formation of collective [bargaining] agreements or efforts to  
2 secure them.” Consol. Rail Corp. v. Ry. Labor Executives' Ass'n, 491 U.S. 299, 302 (1989)  
3 (quoting Elgin, J. & E. Ry. Co. v. Burley, 325 U.S. 711, 723 (1945), adhered to on reh'g, 327 U.S.  
4 661 (1946)). “They arise where there is no such agreement or where it is sought to change the  
5 terms of one.” Id. In this way, major disputes “look to the acquisition of rights for the future, not  
6 the assertion of rights claimed to have vested in the past.” Id. “In the event of a major dispute, the  
7 RLA requires the parties to undergo a lengthy process of bargaining and mediation,” and  
8 eventually arbitration. Id.

9 While “major disputes seek to create contractual rights,” minor disputes seek to enforce  
10 existing contractual rights as embodied in existing collective bargaining agreements. Aircraft  
11 Serv., 779 F.3d at 1081. Minor disputes thus “contemplate[] the existence of a collective  
12 bargaining agreement already concluded” and “involve controversies over the meaning of an  
13 existing collective bargaining agreement in a particular fact situation.” Burley, 325 U.S. at 723;  
14 Aircraft Serv., 779 F.3d at 1081. The Supreme Court has explained that the “distinguishing  
15 feature” of a minor dispute is that it “may be conclusively resolved by interpreting the existing  
16 [CBA].” Hawaiian Airlines, Inc., 512 U.S. at 265 (internal quotation marks and citations omitted).  
17 Minor disputes must be resolved through the RLA’s non-judicial, procedural mechanisms. Id. at  
18 253; see also 45 U.S.C. § 184 (outlining the procedures for resolving disputes “growing out of . . .  
19 the interpretation or application of agreements”).

20 Finally, “representation disputes involve defining the bargaining unit and determining the  
21 employee representative for collective bargaining.” Aircraft Serv., 779 F.3d at 1081.  
22 Representative disputes “arise[] when there is bona fide confusion about who is the employees’  
23 representative.” Herrera v. Command Sec. Corp., 837 F.3d 979 (9th Cir. 2016). Because  
24 representation disputes are within the exclusive jurisdiction of the National Mediation Board  
25 (“NMB”), a district court faced with a representation dispute must therefore dismiss the case for  
26 lack of subject matter jurisdiction. Herrera, 837 F.3d at 979; United Transp. Union v. Gateway W.  
27 Ry. Co., 78 F.3d 1208, 1213 (7th Cir. 1996).

28 “Left outside the RLA—and so subject to resolution under state law—are quotidian

1 workplace disputes that do not concern the application or interpretation of a collective bargaining  
2 agreement.” Aircraft Serv., 779 F.3d at 1082. The Supreme Court has explained that “substantive  
3 protections provided by state law, independent of whatever labor agreement might govern, are not  
4 pre-empted under the RLA.” Hawaiian Airlines, 512 U.S. 246, 257 (1994). The RLA only pre-  
5 empts a state law claim if the claim is “founded directly on rights created by collective-bargaining  
6 agreements” or “substantially dependent on analysis of a [CBA].” Caterpillar Inc. v. Williams,  
7 482 U.S. 386, 395 (1987); Cramer v. Consol. Freightways, Inc., 255 F.3d 683, 693 (9th Cir. 2001),  
8 as amended (Aug. 27, 2001) (“A state law claim is not preempted under § 301 unless it necessarily  
9 requires the court to interpret an existing provision of a CBA that can reasonably be said to be  
10 relevant to the resolution of the dispute.”).<sup>2</sup> The RLA does not pre-empt “claims or causes of  
11 action involving rights and obligations that exist independently of the CBA.” Espinal v. Nw.  
12 Airlines, 90 F.3d 1452, 1456 (9th Cir. 1996).

13 United argues that this is a representation dispute under the RLA. United’s argument  
14 proceeds as follows. First, it explains that when the NMB certified the International Brotherhood  
15 of Teamsters to represent United’s “Mechanics and Related craft or class” (including aircraft  
16 cleaners), it did not specifically extend that union representation to employees like Haralson, who  
17 are jointly employed by United and another entity like U.S. Aviation. See ECF No. 20 at 15, 18-  
18 19. As a result, United argues, Haralson is not represented by the International Brotherhood of  
19 Teamsters and not covered by the existing collective bargaining agreements. ECF No. 22 at 4.  
20 Therefore, United argues, the only way that Haralson can prove his allegation that he is employed  
21 by United, and the only way this Court could apply the collective bargaining agreements to  
22 Haralson, is by resolving predicate representation issues. ECF No. 20 at 19-20. Those questions,  
23 United argues, include whether U.S. Aviation is a carrier subject to the RLA, whether United and  
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26 <sup>2</sup> Although the Supreme Court’s decision in Caterpillar and the Ninth Circuit’s decision in Cramer  
27 dealt with preemption under the Labor Management Relations Act (“LMRA”), the Supreme Court  
28 has explained that the preemption standards under the RLA and LMRA are “virtually identical.”  
Hawaiian Airlines, 512 U.S. at 260. And the Ninth Circuit has instructed courts deciding RLA  
preemption to apply the preemption test used under the LMRA. See Espinal v. Nw. Airlines, 90  
F.3d 1452, 1456 (9th Cir. 1996).

1 U.S. Aviation are a single carrier for the purposes of the employment of these workers, and  
2 whether the workers at issue in this case should be included into the existing cleaner class for  
3 representation purposes. Id.

4 United is tilting at a straw man: Haralson and the putative class members are not using this  
5 lawsuit to seek union representation or the protection of a collective bargaining agreement. A  
6 representation dispute only arises when a carrier’s employees disagree regarding their union  
7 representation. See 45 U.S.C. § 152 (giving the NMB authority to resolve disputes that “arise  
8 among a carriers employees as to who are the representatives of such employees”) (emphasis in  
9 original); Aircraft Serv., 779 F.3d at 1083 (holding that § 152 “does not apply where there is no  
10 such dispute among the employees”). There is no representation dispute if the employees agree  
11 that they are not represented by a union. See Aircraft Serv., 779 F.3d at 1083 (holding that there  
12 was no representation dispute because “the workers are not seeking to collectively bargain  
13 regarding future terms and conditions of employment, and have no interest in choosing a  
14 representative of their group at this time”). The RLA permits employees to seek collective union  
15 representation, but it does not require them to do so. Id.

16 Nothing in Haralson’s complaint or moving papers suggests that he or any other putative  
17 class member seeks union representation by the International Brotherhood of Teamsters or any  
18 other entity. To the contrary, Haralson disclaims any notion that he is covered by a collective  
19 bargaining agreement. ECF No. 21 at 11-12. United similarly contends that “[i]t is undisputed  
20 that Plaintiff and the putative class are U.S. Aviation employees who have never been determined  
21 by the NMB to be part of the Mechanics and Related craft or class at United. . . .” ECF No. 22 at  
22 4. In short, everyone agrees that Haralson and the putative class members are not currently  
23 represented by a union. And nothing in the record suggests any intent to seek collective  
24 representation, let alone any disagreement regarding the identity of that representative. As a  
25 result, this Court does not need “to examine whether a class of employees are represented” to  
26 resolve this dispute. Allegiant Air, LLC, 788 F.3d at 1088 (9th Cir. 2015).

27 The cases relied upon by United are distinguishable because those cases required the court  
28 to resolve an actual dispute between the parties regarding union representation in order to

1 determine whether the workers were protected by the collective bargaining agreement that they  
2 sought to enforce.

3 For example, in Frontier Airlines, the plaintiff union and an airline holding company  
4 actually disputed whether Frontier’s unionized employees would continue to be represented by the  
5 same union after the holding company bought Frontier as a subsidiary. See Int’l Bhd. of  
6 Teamsters Airline Div. v. Frontier Airlines, Inc., 628 F.3d 402, 403-05 (7th Cir. 2010). Because  
7 the class of workers asserted rights that were contained solely in the collective bargaining  
8 agreement, and their protection under the collective bargaining agreement was dependent upon  
9 their continued union representation, the court would have had to decide this predicate  
10 representation dispute to resolve the suit. See id. Based on this “dispute over who (if anyone)  
11 [was] the legitimate representative of a carrier’s workers,” the court concluded that the NMB had  
12 exclusive jurisdiction. Id.

13 Similarly, in United Transp. Union v. Gateway W. Ry. Co., 78 F.3d 1208, 1210-16 (7th  
14 Cir. 1996), the plaintiff union sought to represent workers who were hired as part of the defendant  
15 railroad’s new operations after it formed a wholly-owned subsidiary, whereas the railroad  
16 contended that the employees of its new subsidiary were no longer represented by the union or  
17 protected by the previous collective bargaining agreement. See id. Again, the parties actually  
18 disagreed regarding union representation, and that disagreement was material to the resolution of  
19 the plaintiff’s claims, which were rooted in a provision of the pre-existing collective bargaining  
20 agreement. See id. Without union representation, the workers were not protected by that  
21 collective bargaining agreement and therefore unable to succeed on their claims. The court  
22 therefore determined that this dispute regarding “[w]hether or not the . . . collective bargaining  
23 agreement would also apply to [the railroad’s] new operations in light of the relationship between  
24 those carriers raises a dispute over representation that is within the NMB’s exclusive jurisdiction.”  
25 Id. at 1215-16.

26 In contrast to Frontier Airlines and Gateway W. Ry. Co., the Plaintiff in this case does not  
27 claim to be represented by the union that the NMB certified to represent aircraft cleaners at United  
28 before the merger and United’s outsourcing of that job to U.S. Aviation. And United agrees that

1 the Plaintiff is not represented by the union or covered by the pre-existing collective bargaining  
2 agreements. Therefore, unlike in Frontier Airlines and Gateway W. Ry. Co., there is no predicate  
3 representation dispute that this Court must decide to resolve the Plaintiff’s state law claims.

4 This case does not raise a major or minor dispute under the RLA, either.<sup>3</sup> Haralson and the  
5 putative class members do not seek to form a new collective bargaining agreement or change the  
6 terms of an existing collective bargaining agreement. Cf. Consol. Rail Corp., 491 U.S. at 302.  
7 Nor do they seek to enforce contractual rights grounded in an existing collective bargaining  
8 agreement. See Aircraft Serv., 779 F.3d at 1081; Pearson v. Nw. Airlines, Inc., 659 F. Supp. 2d  
9 1084, 1089–90 (C.D. Cal. 2009) (“[M]inor disputes’ are those that are ‘grounded’ in the  
10 collective bargaining agreement.”) (quoting Felt v. Atchison, Topeka & Santa Fe Ry. Co., 60 F.3d  
11 1416 (9th Cir. 1995)).

12 In fact, Haralson and the putative class members base their claims solely on the protections  
13 afforded to them by California state law, without any reference to a collective bargaining  
14 agreement, let alone any need to interpret a collective bargaining agreement. Cramer, 255 F.3d at  
15 693; Valles v. Ivy Hill Corp., 410 F.3d 1071, 1082 (9th Cir. 2005) (holding that the plaintiff’s  
16 state law claim for meal periods was not preempted by the LMRA because “the construction of the  
17 collective bargaining agreement [was] simply not involved”). United does not point to any terms  
18 in the collective bargaining agreements that this Court would need to construe because it agrees  
19 that the Plaintiff is not covered by a collective bargaining agreement. ECF No. 22 at 4. Although  
20 United makes much of the Plaintiff’s allegation that United is a joint employer because it  
21 “supervised and/or managed” the Plaintiff, the Court can determine whether United is such an  
22 employer simply by looking to California law. See Martinez v. Combs, 49 Cal. 4th 35, 75–77,

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25 <sup>3</sup> United completely fails to address these issues in its briefing, arguing that the minor-dispute  
26 principles raised by the Plaintiff “are *irrelevant to United’s representation-dispute* arguments  
27 here.” ECF No. 22 at 4 (emphasis in original). United further argues that it does not need to  
28 address these issues until the representation dispute is resolved, claiming that it reserves any  
arguments in this regard. Id. n. 3. However, the Plaintiff addressed both representation and  
minor-dispute issues in his opposition, and United cites no authority for its argument that it can  
simply ignore the latter aspect of the RLA preemption analysis now only to resurrect any pertinent  
arguments later. See ECF No. 21 at 11-17. To the contrary, as United itself points out, the Court  
may treat those arguments as conceded. ECF No. 22 at 3.

1 231 P.3d 259, 286–87 (2010), as modified (June 9, 2010) (recognizing that a “joint employer[ ]”  
2 may be held liable under California wage and hour laws where it exercises control over the  
3 working conditions of the employees by supervising the work). Courts have routinely held that  
4 California wage and hour claims are not preempted in similar circumstances. See, e.g., Livadas v.  
5 Bradshaw, 512 U.S. 107, 124–25 (1994) (holding that there was no LMRA preemption because  
6 the plaintiff’s wage and hour claim raised “a question of state law, entirely independent of any  
7 understanding embodied in the collective-bargaining agreement between the union and the  
8 employer”); Angeles v. U.S. Airways, Inc., No. C 12-05860 CRB, 2013 WL 622032, at \*5-7  
9 (N.D. Cal. Feb. 19, 2013) (“Defendant allegedly violated a state law obligation to provide proper  
10 overtime compensation independent of its obligation under the CBA, and therefore [RLA]  
11 preemption is not appropriate. . . . [r]esolving Plaintiffs’ overtime claim only requires the Court to  
12 determine how many hours Plaintiffs worked and what Plaintiffs’ wages were in relation to those  
13 set forth by state law.”).

14 Even assuming that some collective bargaining agreement might potentially apply to  
15 Haralson or the putative class members, such an agreement would still be irrelevant because non-  
16 negotiable state law rights like those at issue here cannot be waived through such agreements. See  
17 Balcorta v. Twentieth Century-Fox Film Corp., 208 F.3d 1102, 1111 (9th Cir. 2000) (“This  
18 legislature could not have spoken more clearly, and we agree with the Supreme Court that § 219  
19 purports to “preclude[ ] any private contractual waiver of the[ ] minimum labor standards” set  
20 forth in the Code.”); Valles v. Ivy Hill Corp., 410 F.3d 1071, 1082 (9th Cir. 2005) (explaining that  
21 “any provision of the collective bargaining agreement purporting to waive the right to meal  
22 periods would be of no force or effect” because “[t]he right in question is plainly nonnegotiable”)  
23 (citing Cal. Lab. Code § 219; Balcorta, 208 F.3d at 1111).

24 In sum, this Court only needs to interpret California law, not a collective bargaining  
25 agreement, to resolve this dispute. See Gregory v. SCIE, LLC, 317 F.3d 1050, 1053 (9th Cir.  
26 2003) (“The dispute between the parties may require interpretation of the words “any work” in the  
27 statute, but its resolution does not require reference to, much less interpretation of, the CBA.”).  
28 As a result, the Plaintiff’s claims are not preempted by the RLA.

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**B. Failure to State a Claim**

United argues that, even if this Court has subject matter jurisdiction over the action, it should dismiss Haralson’s complaint because it fails to plausibly state a claim upon which relief could be granted. ECF No. 20 at 20-31. United makes several arguments in this regard. The Court addresses each in turn.

**1. United’s Employer Status**

To be liable for the California wage and hour violations alleged here, United must have employed Haralson and the putative class. See Martinez v. Combs, 49 Cal. 4th 35, 49 (2010), as modified (June 9, 2010); Ochoa v. McDonald's Corp., 133 F. Supp. 3d 1228, 1232 (N.D. Cal. 2015). The parties agree that the California Supreme Court’s decision in Martinez v. Combs outlines the test for joint employment when evaluating California wage and hour claims like these. See ECF No. 20 at 20-22; ECF No. 21 at 23-25. In that case, the court held that the Industrial Welfare Commission’s wage orders define who counts as an “employer” subject to liability under California’s minimum wage requirement.<sup>4</sup> Martinez, 49 Cal. 4th at 52. The wage orders, in turn, define an “employer” as one who “exercise[s] control over the wages, hours or working conditions,” or “suffer[s] or permit[s] to work,” or “engage[s], thereby creating a common law employment relationship.” Id. at 64 (citing Wage Order No. 14, Cal. Code Regs., tit. 8, § 11140).<sup>5</sup> “While [the] plaintiff is not required to conclusively establish that defendants were her joint employers at the pleading stage, [the] plaintiff must at least allege some facts in support of this legal conclusion.” Johnson v. Serenity Transp., Inc., 141 F. Supp. 3d 974, 988 (N.D. Cal. 2015) (internal quotation marks omitted) (quoting Hibbs–Rines v. Seagate Techs., LLC, No. C 08–05430 SI, 2009 WL 513496, at \*5 (N.D.Cal. Mar. 2, 2009)).

United argues that the Court should dismiss the claims against United because Haralson

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<sup>4</sup> “Although Martinez involved alleged minimum wage violations under California Labor Code § 1194, California courts have applied the Martinez definition of employment to causes of action arising under other sections of the Labor Code as well.” Ochoa, 133 F. Supp. 3d at 1241, n. 3 (summarizing cases).  
<sup>5</sup> Wage Order No. 9, which governs those who work in the transportation industry, defines “employer” in the same way. See Torres v. Air to Ground Servs., Inc., 300 F.R.D. 386, 394–95 (C.D. Cal. 2014).

1 fails to plausibly allege that United was his employer. ECF No. 20 at 20-22. In response,  
2 Haralson relies on the first part of the “employer” definition. He argues that his complaint  
3 plausibly alleges that United exercised control over Plaintiff’s working conditions such that  
4 United may be considered a joint employer under California law. ECF No. 21 at 23-25.

5 It is true that control over “any one of the three aspects—wages, hours, or working  
6 conditions—is sufficient to impute employer liability under California wage and hour law.”  
7 Torres v. Air to Ground Servs., Inc., 300 F.R.D. 386, 395 (C.D. Cal. 2014) (explaining that an  
8 entity that controls one aspect of the employment relationship, such as “supervis[ing] the work,”  
9 may be held liable as an employer). In fact, the California Supreme Court explained in Martinez  
10 that “one of the reasons the IWC defined ‘employer’ in terms of exercising control was to reach  
11 situations in which multiple entities control different aspects of the employment relationship.”  
12 Martinez, 49 Cal. 4th at 76. The court went on to explain that such fragmented control “occurs,  
13 for example, when one entity (such as a temporary employment agency) hires and pays a worker,  
14 and another entity supervises the work.” Id. (emphasis added). The court concluded that this  
15 “[s]upervision of the work, in the specific sense of exercising control over how services are  
16 performed, is properly viewed as one of the ‘working conditions’ mentioned in the wage order.”  
17 Id. Finally, the court noted that “[t]o read the wage order in this way makes it consistent with  
18 other areas of the law, in which control over how services are performed is an important, perhaps  
19 even the principal, test for the existence of an employment relationship.” Id. Therefore, to the  
20 extent United suggests that something more than supervision is required, such as “hiring and firing  
21 power,” the Court rejects that interpretation based on the California Supreme Court’s clear  
22 statement on the matter. ECF No. 20 at 21.<sup>6</sup>

23 Even when the pleading burden is properly understood, however, Haralson fails to meet it.  
24 He asks this Court to infer United’s control over his working conditions by reference to a single

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26 <sup>6</sup> United also suggests that it cannot be considered an employer unless it had “the power to control  
27 wages.” ECF No. 20 at 21, n. 2. But it misreads Futrell v. PayDay California, Inc. to support that  
28 argument. See 190 Cal. App. 4th 1419, 1431-33 (2010). The only reason the Futrell court  
required the plaintiff to show that the defendant had “exercised control over his wages” is because  
there was no evidence in the record that the defendant had controlled the plaintiff’s hours or  
working conditions. See id.

1 conclusory allegation in the complaint that “Plaintiff was supervised and/or managed by United  
2 employees.” ECF No. 1-2 ¶ 8. This allegation simply does not include sufficient factual content  
3 for this Court to reasonably infer that United supervised Haralson and thus exercised control over  
4 some aspect of the Plaintiff’s working conditions. The Court therefore grants United’s motion to  
5 dismiss in this respect.

6 **2. Meal and Rest Break Claims**

7 Under Section 512(a) of the California Labor Code, an employer must provide an  
8 employee with a thirty-minute meal period for every five hours of work. See Cal. Lab. Code §  
9 512(a). To satisfy its obligation to provide meal periods, an employer must “relieve[] its  
10 employees of all duty, relinquish[] control over their activities and permit[] them a reasonable  
11 opportunity to take an uninterrupted 30-minute break,” without “imped[ing] or discourag[ing]  
12 them from doing so.” See Brinker Rest. Corp. v. Superior Court, 53 Cal. 4th 1004, 1040–41  
13 (2012). Once the employer has relieved the employee, it is not required to police meal breaks to  
14 ensure that the employee is not performing work. See id. (“Bona fide relief from duty and the  
15 relinquishing of control satisfies the employer’s obligations.”). “[S]ection 512 requires a first  
16 meal period no later than the end of an employee’s fifth hour of work, and a second meal period  
17 no later than the end of an employee’s 10th hour of work.” Id.

18 In addition, an employer in the transportation industry must permit all employees to take  
19 ten minutes of rest time for every four hours of work. Wage Order No. 9, Cal. Code Regs. Tit. 8,  
20 § 11090, ¶ 12. However, the employer is not required to provide a rest period for an employee  
21 who works less than three and one-half hours a day. Id. If an employer fails to provide a rest  
22 period, the employer must pay the employee one hour of pay for each workday that the rest period  
23 was not provided. Id.

24 Haralson alleges that the Defendants maintained a policy or practice of requiring Plaintiff  
25 and putative class members “to be relieved”—i.e. “released by a manager or supervisor”—before  
26 they could take their meal and rest periods. ECF No. 1-2 ¶¶ 28-30, 48-49. As a result of this  
27 policy, Haralson alleges, he and other putative class members “had no control over their ability” to  
28 take those breaks or the timing of those breaks. Id. Haralson alleges that this policy resulted in

1 the Defendants’ failure to provide uninterrupted meal periods, failure to provide rest periods, and  
2 the provision of “late meal periods” (i.e., “failed to provide . . . [the] first meal period before the  
3 fifth hour of the shift and the second meal period before the tenth hour of the shift”). Id. ¶¶ 33, 34,  
4 48. Haralson further alleges that the Defendants failed to provide a second meal period during  
5 shifts of ten hours or more. Id. ¶¶ 36-40.

6 United first argues that Haralson’s complaint is deficient because it fails to allege that he  
7 worked any shift that was long enough to trigger meal and rest break obligations. ECF No. 20 at  
8 23. The Court agrees. Haralson alleges that Defendants had a policy or practice of not providing  
9 a first meal break for “each five (5) hour work period,” not providing a second meal break “for  
10 shifts of ten (1) or more hours,” and not providing rest periods “for each four (4) hour work  
11 period.” Although these general allegations suggest that the Defendants may be liable for the  
12 misconduct alleged in the abstract, they do not suggest that Haralson is plausibly entitled to relief  
13 for the allegedly illegal conduct. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Nowhere in the  
14 complaint does Haralson provide any factual information to suggest that he personally worked any  
15 shift that was long enough to trigger meal and rest break obligations. Cf. Ambriz v. Coca Cola  
16 Co., No. 13-CV-03539-JST, 2013 WL 5947010, at \*3 (N.D. Cal. Nov. 5, 2013) (finding that the  
17 plaintiff had alleged that he worked sufficient hours to be entitled to meal breaks because the  
18 complaint referred to days in which the plaintiff had worked five hours or more). Of course,  
19 Haralson is not required to plead his schedule in specific detail at the pleading stage, but he must  
20 at the very least make a plausible claim that he is entitled to relief because of the Defendants’  
21 misconduct. See Ambriz, No. 13-CV-03539-JST, 2013 WL 5947010, at \*4 (summarizing cases);  
22 Ovieda v. Sodexo Operations, LLC, No. CV 12-1750-GHK SSX, 2012 WL 1627237, at \*2 (C.D.  
23 Cal. May 7, 2012) (granting motion to dismiss rest period claim because “Plaintiff fails to allege  
24 that she even once worked a shift long enough to obligate Defendant to provide her with a rest  
25 period” and “the [complaint] never once alleges the length of any shift worked by Plaintiff to show  
26 that Defendants’ various obligations under the Labor Code were triggered”). The Court therefore  
27 grants the motion to dismiss this claim on the ground that Haralson has not adequately alleged that  
28 he worked sufficient hours to have been entitled to a meal or rest break.

1 United also argues that the mere fact that Haralson had to be “relieved” to take a break  
2 does not mean that he was not offered a break in compliance with California law. ECF No. 20 at  
3 23. The Court finds it plausible that the Defendants’ release policy resulted in late, interrupted, or  
4 missed meal and rest breaks. Haralson generally alleges that the Defendants’ release policy  
5 impeded him and other class members from taking breaks. These allegations, if true, plausibly  
6 state a claim upon which relief can be granted. See Ambriz, No. 13-CV-03539-JST, 2013 WL  
7 5947010, at \*4–5 (holding that the plaintiff had plausibly stated a rest break claim under  
8 California law where the plaintiff alleged that “Defendant did not provide him with a net rest  
9 period of ten minutes per four hour work period, that Defendant maintained a policy of not  
10 providing him and members of the Rest Break Subclass with net rest periods of at least ten  
11 minutes per four hour work period, and that Defendant failed to pay premium wages when the rest  
12 breaks were not provided”). As this Court has previously noted, the “Plaintiff is not required to  
13 allege the non-existence of something, such as rest periods, with any greater specificity than he  
14 has done here.” Id.

### 15 3. Failure to Pay Hourly and Overtime Wages

16 Under California law, an employer must pay employees the minimum wage for all hours  
17 worked. See Cal. Lab. Code § 1197; Cal. Code Regs. tit. 8, § 11090. In addition, employers must  
18 pay overtime pay (one and one-half times the regular rate of pay) for any work in excess of eight  
19 hours in one workday and forty hours in any workweek. See Cal. Lab. Code § 510.

20 Haralson alleges that Defendants automatically deducted one hour from his timecard every  
21 work day for a meal period, regardless of whether or not he was actually provided with a meal  
22 period. ECF No. 1-2 ¶¶ 67-71. As a result, he argues, he was not paid for all hours worked,  
23 including overtime hours. Id. Haralson further alleges that Defendants “directed, permitted, or  
24 otherwise encouraged” Plaintiff and putative class members to continue to perform work off-the-  
25 clock after a supervisor had already signed them out of their shift. See id. ¶¶ 72-75.

26 United argues that Haralson’s hourly and overtime wage claim fails because it is derivative  
27 of his meal break claim, which fails because of the pleading deficiency noted above. ECF No. 20  
28 at 26. Although part of Haralson’s hourly and overtime wage claim is rooted in his meal break

1 claim, Haralson makes additional allegations regarding hourly and overtime wages that are  
2 independent of his meal break claim—namely, his allegation that the Defendants directed him to  
3 work off-the-clock after he was signed out of his shift. This part of Haralson’s hourly and  
4 overtime wage claim is therefore unaffected by the deficiency in Haralson’s meal break claim  
5 noted above.

6 However, Haralson’s hourly and overtime wage claim suffers from a different deficiency:  
7 it does not meet the pleading requirements established by the Ninth Circuit in Landers v. Quality  
8 Communications, Inc., 771 F.3d 638 (9th Cir. 2014). ECF No. 20 at 25-26. “[I]n order to survive  
9 a motion to dismiss, a plaintiff asserting a claim to overtime payments must allege that she worked  
10 more than forty hours in a given workweek without being compensated for the overtime hours  
11 worked during that workweek.” Landers v. Quality Commc’ns, Inc., 771 F.3d 638, 644–46 (9th  
12 Cir. 2014) (holding that the plaintiff failed to plausibly state a claim because her complaint did not  
13 provide “any detail regarding a given workweek when [the plaintiff] worked in excess of forty  
14 hours and was not paid overtime for that given workweek and/or was not paid minimum wages”),  
15 as amended (Jan. 26, 2015), cert. denied, 135 S. Ct. 1845 (2015). For example, “[a] plaintiff may  
16 establish a plausible claim by estimating the length of her average workweek during the applicable  
17 period and the average rate at which she was paid, the amount of overtime wages she believes she  
18 is owed, or any other facts that will permit the court to find plausibility.” Id. This does not mean  
19 that a plaintiff needs to allege the amount of overtime compensation with “mathematical  
20 precision” or provide “detailed factual allegations regarding the number of overtime hours  
21 worked.” Id. “After all, most (if not all) of the detailed information concerning a plaintiff-  
22 employee’s compensation and schedule is in the control of the defendants.” Id.

23 As in Landers, Haralson’s complaint fails to provide any factual information regarding  
24 whether he worked more than forty hours in any given workweek such that he was entitled to  
25 overtime wages. Haralson cites almost exclusively to pre-Landers case law to try to evade its  
26 requirements. See ECF No. 21 at 19. And the only post-Landers case that Haralson relies on—  
27 Johnson v. Q.E.D. Envntl. Sys. Inc.—is distinguishable. ECF No. 21 at 23. The complaint in that  
28 case included factual information about the plaintiff’s work schedule, for example that he

1 “regularly worked from 6:45 am to 3:15 pm, Mondays through Fridays, and worked longer hours  
2 ‘at least once every two weeks.’” Johnson v. Q.E.D. Envtl. Sys. Inc., No. 16-CV-01454-WHO,  
3 2016 WL 4658963, at \*1 (N.D. Cal. Sept. 7, 2016). The court concluded that this allegation  
4 satisfied Landers’ requirement that the plaintiff “provide ‘sufficient detail about the length and  
5 frequency of [their] unpaid work to support a reasonable inference that [they] worked more than  
6 forty hours in a given week.’” Id. at \*4 (quoting Landers, 771 F.3d at 645).

7 At the very least, Haralson must provide some information about his work schedule from  
8 which this Court could reasonably infer that he was deprived of overtime wages in violation of  
9 California law. The Court therefore grants the Defendants’ motion to dismiss in this regard.

10 **4. Derivative Inaccurate Wage Statement and Unfair Competition Claims**

11 Haralson does not dispute that his inaccurate wage statement and unfair competition claims  
12 are entirely dependent on the success of his meal break, rest period, and hourly and overtime wage  
13 claims. ECF No. 21 at 20-21. Haralson alleges that Defendants’ wage statements were inaccurate  
14 because they did not reflect time worked off-the-clock, meal and rest period premiums, hourly and  
15 overtime wages, and hours worked during meal periods. ECF No. 1-2 ¶¶ 78-88. Haralson’s unfair  
16 competition claim similarly depends on the success of his wage and hour claims. See id. ¶ 110.

17 Because Haralson failed to adequately plead the underlying wage and hour claims as  
18 explained above, his derivative claims for inaccurate wage statements and unfair competition also  
19 fail. See White v. Starbucks Corp., 497 F. Supp. 2d 1080, 1089–90 (N.D. Cal. 2007); Ingels v.  
20 Westwood One Broad. Servs., Inc., 129 Cal. App. 4th 1050, 1055, 1060 (2005) (“If the Unruh Act  
21 claim is dismissed, then there is no ‘unlawful’ act upon which to base[] the derivative Unfair  
22 Competition claim.”) (internal quotation marks and citations omitted).

23 **5. Waiting Time Penalty Claim**

24 Waiting time penalties are only available to those employees who have been discharged or  
25 who have quit. See Cal. Lab. Code § 203; Porch v. Masterfoods, USA, Inc., 685 F. Supp. 2d  
26 1058, 1075 (C.D. Cal. 2008), aff’d, 364 F. App’x 365 (9th Cir. 2010) (“[W]aiting time penalties  
27 are only available when an employee is discharged or quits a position.”). Haralson’s complaint  
28 does not allege that he resigned or was terminated. To the contrary, he alleges that he continues to

1 work for the Defendants. ECF No. 1-2 ¶ 5. Haralson’s waiting time penalty claim therefore fails  
2 as a matter of law and is dismissed. See Carceioly v. Khalaf, No. C11-04200 HRL, 2012 WL  
3 832616, at \*2 (N.D. Cal. Mar. 12, 2012) (dismissing waiting time penalty claim where plaintiff  
4 failed to allege that he was terminated or that he had resigned).

5 **6. Class Action Allegations**

6 Finally, United argues that Haralson’s class action allegations do not plausibly meet the  
7 Rule 23 standard. ECF No. 20 at 28-31. However, “compliance with Rule 23 is not to be tested  
8 by a motion to dismiss for failure to state a claim.” Gillibeau v. City of Richmond, 417 F.2d 426,  
9 432 (9th Cir. 1969). And it is premature to assess compliance with Rule 23 at this early stage  
10 where there defendant has yet to file an answer and discovery has not yet begun. See Alexander v.  
11 Am. Exp. Co., No. 8:11-CV-00843, 2011 WL 6046928, at \*2 (C.D. Cal. Nov. 10, 2011); In re  
12 Wal-Mart Stores, Inc. Wage & Hour Litig., 505 F. Supp. 2d 609, 615–16 (N.D. Cal. 2007). “[A]  
13 motion for class certification is a more appropriate vehicle.” Thorpe v. Abbott Labs., Inc., 534 F.  
14 Supp. 2d 1120, 1125 (N.D. Cal. 2008). The Court therefore denies the Defendants’ motion to  
15 dismiss in this regard.

16 **CONCLUSION**

17 The Court grants in part and denies in part Defendants’ motion to dismiss with leave to  
18 amend any dismissed claims. Any amended pleading must be filed within 21 days of this order.  
19 The amended complaint should cure the specific deficiencies noted in this Order. Failure to file an  
20 amended pleading will result in dismissal with prejudice.

21 The Case Management Conference currently scheduled for December 21, 2016 is  
22 continued to February 22, 2017 at 2:00 p.m. An updated Joint Case Management Statement is due  
23 by February 13, 2017 at 5:00 p.m.

24 IT IS SO ORDERED.

25 Dated: December 12, 2016

26  
27   
28 JON S. TIGAR  
United States District Judge