

United States District Court  
For the Northern District of California

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

GLENN HILL,  
Plaintiff,  
v.  
R+L CARRIERS, INC.; R+L CARRIERS  
SHARED SERVICES, LLC,  
Defendants.

No. C 09-01907 CW  
ORDER GRANTING  
DEFENDANT R+L  
CARRIERS, INC.'S  
MOTION TO DISMISS  
(Docket No. 24)

Defendant R+L Carriers, Inc. moves to dismiss Plaintiff Glenn Hill's claims against it for lack of personal jurisdiction. Defendant R+L Carriers Shared Services, LLC (Shared Services) does not join the motion. Plaintiff opposes the motion. The motion was taken under submission on the papers. Having considered all of the papers filed by the parties, the Court GRANTS R+L Carriers, Inc.'s motion.

BACKGROUND

This action arises out of Plaintiff's allegations that R+L Carriers, Inc. and Shared Services violated the Fair Labor Standards Act and various California wage and hour laws. He claims that, among other things, Defendants erroneously classified him as exempt from overtime pay, failed to provide meal and rest breaks

1 and did not maintain proper timekeeping records. He seeks to  
2 recover various compensatory and statutory damages on behalf of  
3 himself and a class of persons similarly situated.

4 R+L Carriers, Inc. is a privately-held entity incorporated and  
5 headquartered in Wilmington, Ohio. It is owned by Ralph L.  
6 Roberts; Mary D. Roberts; Ralph L. Roberts, II; Roby L. Roberts;  
7 and Michelle Carpenter. Brake Decl. ¶ 2. R+L Carriers, Inc. is a  
8 holding company and does not itself engage in any motor carrier  
9 operations. Brake Decl. ¶ 2. It is not registered to do business  
10 in California, nor does it have a registered agent for service of  
11 process in the state. Brake Decl. ¶ 5.

12 Shared Services is headquartered in Wilmington, Ohio. It is a  
13 privately-held limited liability company owned by R+L Carriers,  
14 Inc.; R+L Transfer, Inc.; Gator Freightways, Inc.; Greenwood Motor  
15 Lines, Inc.; Paramount Transportation Systems, Inc.; and RLR  
16 Investments, LLC. The company provides "operations and  
17 administrative employees" to the aforementioned entities, except  
18 for R+L Carriers, Inc. and RLR Investments. Brake Decl. ¶ 3.  
19 Shared Services is registered to do business in California and does  
20 not dispute the Court's jurisdiction over it.

21 R+L Carriers, Inc. owns 2.67 percent of Shared Services.  
22 Brake Decl. ¶ 3. Some of R+L Carriers, Inc.'s owners serve on  
23 Shared Services' board of directors and as Shared Services'  
24 officers. Nelson Decl., Ex. 8. R+L Carriers, Inc. owns a  
25 registered service mark for "R+L Carriers," which it permits Shared  
26 Services to use. Brake Repl. Decl. ¶ 2. Shared Services employees  
27 receive an employee handbook, entitled "R+L Carriers Employee  
28 Handbook," which states,

1 Our truck line is known to our customers as R+L CARRIERS.  
2 However, R+L CARRIERS is not your employer. You are  
3 employed by R+L CARRIERS SHARED SERVICES, LLC. For  
4 purposes of this handbook only, the terms "company",  
5 "employer" and R+L as used in this handbook refer to R+L  
6 Carriers Shared Services, LLC.

7 Brake Decl., Ex. A at 5.

#### 8 LEGAL STANDARD

9 Under Rule 12(b)(2) of the Federal Rules of Civil Procedure, a  
10 defendant may move to dismiss for lack of personal jurisdiction.  
11 The plaintiff then bears the burden of demonstrating that the Court  
12 has jurisdiction. Schwarzenegger v. Fred Martin Motor Co., 374  
13 F.3d 797, 800 (9th Cir. 2004). The plaintiff "need only  
14 demonstrate facts that if true would support jurisdiction over the  
15 defendant." Ballard v. Savage, 65 F.3d 1495, 1498 (9th Cir. 1995).  
16 Uncontroverted allegations in the complaint must be taken as true.  
17 AT&T v. Compagnie Bruxelles Lambert, 94 F.3d 586, 588 (9th Cir.  
18 1996). However, the court may not assume the truth of such  
19 allegations if they are contradicted by affidavit. Data Disc, Inc.  
20 v. Systems Technology Associates, Inc., 557 F.2d 1280, 1284 (9th  
21 Cir. 1977). If the plaintiff also submits admissible evidence,  
22 conflicts in the evidence must be resolved in the plaintiff's  
23 favor. AT&T, 94 F.3d at 588.

24 There are two independent limitations on a court's power to  
25 exercise personal jurisdiction over a non-resident defendant: the  
26 applicable state personal jurisdiction rule and constitutional  
27 principles of due process. Sher v. Johnson, 911 F.2d 1357, 1361  
28 (9th Cir. 1990); Data Disc, Inc, 557 F.2d at 1286. California's  
jurisdictional statute is co-extensive with federal due process  
requirements; therefore, jurisdictional inquiries under state law

1 and federal due process standards merge into one analysis. Rano v.  
2 Sipa Press, Inc., 987 F.2d 580, 587 (9th Cir. 1993).

3 The exercise of jurisdiction over a non-resident defendant  
4 violates the protections created by the due process clause unless  
5 the defendant has "minimum contacts" with the forum state so that  
6 the exercise of jurisdiction "does not offend traditional notions  
7 of fair play and substantial justice." International Shoe Co. v.  
8 Washington, 326 U.S. 310, 316 (1945).

9 DISCUSSION

10 I. Specific Jurisdiction

11 Plaintiff asserts that the Court has specific jurisdiction  
12 over R+L Carriers, Inc. because it purposefully directs its actions  
13 to California.<sup>1</sup> To provide the Court with specific jurisdiction,

14 (1) the non-resident defendant must purposefully direct  
15 his activities or consummate some transaction with the  
16 forum or resident thereof; . . . (2) the claim must be  
17 one which arises out of or relates to the defendant's  
18 forum-related activities; and (3) the exercise of  
19 jurisdiction must comport with fair play and substantial  
20 justice, i.e. it must be reasonable.

21 Rutsky, 328 F.3d at 1129 (quoting Core-Vent Corp. v. Nobel Indus.  
22 AB, 11 F.3d 1482, 1485 (9th Cir. 1993)). For a defendant's conduct  
23 to demonstrate purposeful direction, the defendant must "allegedly  
24 have (1) committed an intentional act, (2) expressly aimed at the  
25 forum state, (3) causing harm that the defendant knows is likely to  
26 be suffered in the forum state." Schwarzenegger, 374 F.3d at 803  
27 (quoting Dole Food Co., Inc. v. Watts, 303 F.3d 1104, 1111 (9th

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28 <sup>1</sup> In this section of his brief, Plaintiff's only case citation  
is to Harris Rutsky & Co. Insurance Services, Inc. v. Bell &  
Clements, Limited, 328 F.3d 1122 (9th Cir. 2003). Because Rutsky  
addresses specific jurisdiction, see 328 F.3d at 1129, the Court  
construes Plaintiff's brief to assert that the Court has specific  
jurisdiction over R+L Carriers, Inc.

1 Cir. 2002)).

2 Plaintiff alleges that R+L Carriers, Inc. purposefully directs  
3 its activities at California because it seeks employees to work in  
4 the state and represents that it does business in the state. He  
5 points to two pages from a website, which indicate that "R+L  
6 Carriers" has various terminals throughout California and that it  
7 has job opportunities in Los Angeles. Nelson Decl., Exs. 2-3.

8 Plaintiff's references to two web pages do not establish that  
9 R+L Carriers, Inc. purposefully directs its activities at  
10 California in a way that justifies specific jurisdiction. Indeed,  
11 Defendant provides evidence challenging Plaintiff's assertion that  
12 these web pages indicate R+L Carriers, Inc.'s activities in this  
13 state; as stated above, Defendant maintains that Shared Services is  
14 operating in California under the "R+L Carriers" brand. The web  
15 pages do not provide a reasonable inference that R+L Carriers,  
16 Inc.'s conducts business in California. Thus, Plaintiff fails to  
17 meet his burden of establishing specific jurisdiction over R+L  
18 Carriers, Inc.

19 II. Agency Jurisdiction

20 Plaintiff also asserts that personal jurisdiction is proper  
21 because Shared Services' contacts with California, which are not  
22 disputed, can be imputed to R+L Carriers, Inc.

23 When agency is found between a parent and a subsidiary, the  
24 subsidiary's contacts may be imputed to the parent for the purposes  
25 of personal jurisdiction. Bauman v. DaimlerChrysler Corp., 579  
26 F.3d 1088, 1094 (9th Cir. 2009). To determine whether agency  
27 jurisdiction exists, a court must undertake a two-step analysis:

28 First, the parent must exert control that is so

1 pervasive and continual that the subsidiary may  
2 be considered an agent or instrumentality of  
3 the parent, notwithstanding the maintenance of  
4 corporate formalities. Control must be over  
5 and above that to be expected as an incident of  
6 ownership. Second, the agent-subsubsidiary must  
7 also be sufficiently important to the parent  
8 corporation that if it did not have a  
9 representative, the parent corporation would  
10 undertake to perform substantially similar  
11 services.

12 Id. at 1095 (citing Rutsky, 328 F.3d at 1135).

13 In Bauman, the plaintiffs asserted that agency jurisdiction  
14 was justified over DaimlerChrysler AG (DCAG) because of its  
15 relationship with Mercedes Benz USA (MBUSA). MBUSA was a wholly-  
16 owned subsidiary of DaimlerChrysler North America, which, in turn,  
17 was a subsidiary of DCAG. Bauman, 579 F.3d at 1092. A "General  
18 Distributor Agreement" between DCAG and MBUSA required MBUSA, among  
19 other things, to provide detailed information to DCAG and comply  
20 with general marketing standards. Id. at 1092, 1096. The  
21 agreement was terminable by either party on a showing of good  
22 cause. Id. at 1092. These terms were insufficient to demonstrate  
23 "pervasive and continual" control by DCAG. Id. at 1096. Instead,  
24 the court characterized these requirements as "monitoring and  
25 articulation of general policies," which did not constitute  
26 sufficient control. Id. (citation and quotation marks omitted).

27 Plaintiff has not justified the exercise of jurisdiction based  
28 on an agency relationship. As an initial matter, Plaintiff did not  
argue, nor do the facts suggest, that R+L Carriers, Inc. and Shared  
Services have a parent-subsubsidiary relationship. On the contrary,  
R+L Carriers, Inc. only owns 2.67 percent of Shared Services.  
Plaintiff did not dispute this assertion.

Even if a parent-subsubsidiary relationship existed, Plaintiff

1 would nonetheless fail Bauman's two-step analysis. First, his  
2 pleadings do not suggest that R+L Carriers, Inc. exerts pervasive  
3 and continual control over Shared Services. Although there is  
4 overlap between R+L Carriers' owners and Shared Services' directors  
5 and officers, it "is entirely appropriate for directors of a parent  
6 corporation to serve as directors of its subsidiary, and that fact  
7 alone may not serve to expose the parent corporation to liability."  
8 Bauman, 579 F.3d at 1095. Further, as Bauman demonstrates, mere  
9 ownership does not constitute control. "Control must be over and  
10 above that to be expected as an incident of ownership." Id. at  
11 1095.

12 Nor has Plaintiff shown that Shared Services is sufficiently  
13 important to R+L Carriers, Inc. Under Bauman, Plaintiff must have  
14 plead facts to suggest that, in the absence of Shared Services, R+L  
15 Carriers, Inc. would undertake to "provide operations and  
16 administrative" support to the various relevant trucking entities.  
17 See Brake Decl. ¶ 3. He did not do so. R+L Carriers, Inc. is a  
18 holding company, which does not engage in any motor carrier  
19 operations. Brake Decl. ¶ 2. Plaintiff does not provide contrary  
20 evidence.

21 Accordingly, Plaintiff does not justify the Court's exercise  
22 of jurisdiction on an agency theory.<sup>2</sup>

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23  
24 <sup>2</sup> Plaintiff did not argue that R+L Carriers, Inc. is liable as  
25 an alter ego of Shared Services. If Plaintiff can show at some  
26 future point -- even after judgment -- that Shared Services is  
27 under-capitalized and that failing to pierce the corporate veil  
28 would amount to a fraud on the creditors, he may move to amend to  
add R+L Carriers, Inc. as a defendant for the purpose of satisfying  
a judgment. See Katzir's Floor & Home Design, Inc. v. M-MLS.com,  
394 F.3d 1143, 1148 (9th Cir. 2004) (stating that Federal Rule of

(continued...)

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CONCLUSION

For the foregoing reasons, R+L Carriers, Inc.'s motion to dismiss is GRANTED. (Docket No. 24.) Defendant Shared Services' motion for summary judgment and Plaintiff's motion for conditional collective action certification and authorization of a Hoffman-LaRoche opt-in notice are scheduled for hearing on December 17, 2009.

IT IS SO ORDERED.

Dated: December 7, 2009



CLAUDIA WILKEN  
United States District Judge

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<sup>2</sup>(...continued)  
Civil Procedure 69(a), in conjunction with California Code of Civil Procedure § 187, grants courts authority to "amend a judgment to add additional judgment debtors"); NEC Elecs., Inc. v. Hurt, 208 Cal. App. 3d 772 (1989). In the alternative, Plaintiff could sue both entities in Ohio where both are subject to jurisdiction.