

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

No. C 09-1907 CW

GLENN HILL, and all others similarly situated,

Plaintiff,

v.

R+L CARRIERS, INC.; R+L CARRIERS SHARED SERVICES, LLC,

Defendants.

ORDER GRANTING IN PART PLAINTIFF'S MOTION FOR LEAVE TO FILE A SECOND AMENDED COMPLAINT (Docket No. 196)

Plaintiff Glenn Hill moves for leave to file a second amended complaint. Defendant R+L Carriers Shared Services, LLC, opposes the motion in part. The motion was taken under submission on the papers. Having considered the papers submitted by the parties, the Court GRANTS Plaintiff's motion in part. Plaintiff is granted leave to amend his class definitions and add a new subclass. The Court reserves its decision as to whether Plaintiff may amend his complaint to add a claim under California's Private Attorneys General Act.

BACKGROUND

Because the Court's January 22, 2010 Order recites Plaintiff's allegations in sufficient detail, they will not be repeated here in

1 their entirety.

2 In sum, Plaintiff is a former employee of Defendant.  
3 Defendant terminated his employment on December 18, 2008.  
4 Plaintiff alleges that, during his employment, Defendant unlawfully  
5 mischaracterized him as exempt from overtime pay requirements. In  
6 addition, he alleges that Defendant failed to provide meal and rest  
7 breaks, and did not keep and provide adequate work and payroll  
8 records as required by law. He brings claims under the federal  
9 Fair Labor Standards Act (FLSA), California's wage-and-hour laws  
10 and California Business and Professions Code § 17200.

11 Plaintiff filed his lawsuit on May 1, 2009. On January 22,  
12 2010, the Court denied Defendant's motion for summary judgment and  
13 conditionally certified, pursuant to the FLSA, a nationwide  
14 subclass, defined as:

15 All persons who worked for any period of time in the  
16 United States, but outside of California, who were  
17 classified as Dispatchers (including "City Dispatchers"  
18 and any other position(s) who are either called, or  
19 work(ed) as, dispatchers) in the three years prior to the  
20 filing of this Complaint.

21 Compl. ¶ 27.

22 At the case management conference on June 8, 2010, Plaintiff  
23 indicated that he intended to move for leave to amend his complaint  
24 to add a claim under California's Private Attorneys General Act  
25 (PAGA), Cal. Lab. Code §§ 2699, et seq., and to amend his class  
26 definitions in light of evidence obtained through discovery.

27 On or about August 4, 2010, Plaintiff sent a letter to the  
28 California Labor and Workforce Development Agency (LWDA), notifying  
it of his claims against Defendant.

On September 2, 2010, Plaintiff filed the current motion.

DISCUSSION

1  
2 Federal Rule of Civil Procedure 15(a) provides that leave of  
3 the court allowing a party to amend its pleading "shall be freely  
4 given when justice so requires." Leave to amend lies within the  
5 sound discretion of the trial court, which discretion "must be  
6 guided by the underlying purpose of Rule 15 to facilitate decision  
7 on the merits, rather than on the pleadings or technicalities."  
8 United States v. Webb, 655 F.2d 977, 979 (9th Cir. 1981) (citations  
9 omitted). Thus, Rule 15's policy of favoring amendments to  
10 pleadings should be applied with "extreme liberality." Eminence  
11 Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003).

12 Courts consider five factors when assessing the propriety of a  
13 motion for leave to amend: undue delay, bad faith, futility of  
14 amendment, prejudice to the opposing party and whether the  
15 plaintiff has previously amended the complaint. Ahlmeyer v. Nev.  
16 Sys. of Higher Educ., 555 F.3d 1051, 1055 n.3 (9th Cir. 2009).  
17 Futility, on its own, can justify denying a motion to amend. Id.  
18 at 1055. An amendment that adds a cause of action is futile if it  
19 fails to state a claim upon which relief could be granted.  
20 Townsend v. Univ. of Alaska, 543 F.3d 478, 486 n.6 (9th Cir. 2009).

21 Defendant does not oppose Plaintiff's motion to the extent  
22 that he seeks leave to amend to modify the existing class  
23 definitions and add a new sub-class. According to Plaintiff, these  
24 changes only clarify facts he has already alleged and do not alter  
25 the substance of his case. Defendant, however, opposes the  
26 addition of the proposed PAGA claim, arguing that its inclusion  
27 would be futile because it is time-barred.

28 California Labor Code section 2699(a) provides,

1 Notwithstanding any other provision of law, any provision  
2 of this code that provides for a civil penalty to be  
3 assessed and collected by the Labor and Workforce  
4 Development Agency or any of its departments, divisions,  
5 commissions, boards, agencies, or employees, for a  
6 violation of this code, may, as an alternative, be  
7 recovered through a civil action brought by an aggrieved  
8 employee on behalf of himself or herself and other  
9 current or former employees pursuant to the procedures  
10 specified in Section 2699.3.

11 California Labor Code Section 2699.3 provides several conditions  
12 that must be satisfied before a PAGA claim is brought, including a  
13 requirement that the "aggrieved employee or representative" provide  
14 "written notice by certified mail to the Labor and Workforce  
15 Development Agency and the employer of the specific provisions of  
16 this code alleged to have been violated, including the facts and  
17 theories to support the alleged violation." Cal. Lab. Code  
18 § 2699.3(a)(1).

19 Plaintiff does not dispute that PAGA claims are subject to the  
20 one-year statute of limitations provided in California Civil Code  
21 section 340(a). See, e.g., Harris v. Vector Mktg. Corp., 2010 WL  
22 56179, \*3 (N.D. Cal.); Thomas v. Home Depot USA Inc., 527 F. Supp.  
23 2d 1003, 1008 (N.D. Cal. 2007); Moreno v. Autozone, Inc., 2007 WL  
24 1650942, at \*2 (N.D. Cal.). Because Plaintiff was discharged in  
25 December, 2008, his PAGA claim must have been brought by December,  
26 2009.

27 Plaintiff argues that his PAGA claim should relate back to May  
28 1, 2009, the date he filed his original pleading. However,  
Plaintiff did not notify the LWDA of this action until August,  
2010, well after the statute of limitations had run. Other courts  
in this district have rejected arguments that the relation-back  
doctrine applies, notwithstanding a plaintiff's failure to send the

1 required notice to the LWDA within the limitations period. See,  
2 e.g., Harris, 2010 WL 56179, at \*3; Baas v. Dollar Tree Stores,  
3 Inc., 2009 WL 1765759, at \*5 (N.D. Cal.). As the Moreno court  
4 stated,

5 [T]he PAGA notice is a condition precedent to filing  
6 suit. "A subsequent pleading which sets out the  
7 subsequent performance of a statutory condition precedent  
8 to suit cannot relate back to the time of the filing of  
9 the original complaint and thereby toll the running of  
10 the period of limitation, since the rule of relation back  
11 does not operate to assign the performance of a condition  
12 precedent to a date prior to its actual occurrence."

13 2007 WL 1650942, at \*4 (quoting Wilson v. Dep't of Pub. Works, 271  
14 Cal. App. 2d 665, 669 (1969)). These cases are persuasive, and  
15 Plaintiff offers no basis on which to distinguish them.  
16 Consequently, the relation-back doctrine does not apply in this  
17 case.

18 Plaintiff cites Amaral v. Cintas Corporation, 163 Cal. App.  
19 4th 1157 (2008), as authority that supports his position and  
20 conflicts with the line of federal cases cited above. There, the  
21 court held that it was not an abuse of discretion to allow the  
22 plaintiffs to amend their complaint to add a PAGA claim, even  
23 though PAGA had not yet been enacted at the time they filed their  
24 complaint. Id. at 1200. However, the court did not address the  
25 notice requirement contained in section 2699.3, let alone the  
26 implications of a notice sent outside the limitations period.  
27 Thus, Amaral does not justify relation-back in this case, nor is it  
28 inconsistent with the cases cited above. Accordingly, Plaintiff's  
proposed PAGA claim is time-barred.

In the alternative, Plaintiff argues that one of the FLSA opt-  
in Plaintiffs, Casey Baker, worked for Defendant in California

1 until January 29, 2010 and can bring the proposed PAGA claim in a  
2 representative capacity. However, Mr. Baker is not a named  
3 Plaintiff representing either the existing or the proposed  
4 California subclass. Plaintiff cites Labor Code section 2699(c),  
5 which merely provides the definition of an "aggrieved employee."  
6 That section does not enable an individual, who is only a putative  
7 class member, to bring a PAGA claim on behalf of a class. As a  
8 result, Mr. Baker's status as a putative class member in this  
9 lawsuit does not save the proposed PAGA claim.

10 Plaintiff's reply can be read to suggest that he wishes to  
11 move to join Mr. Baker as another named Plaintiff and class  
12 representative. The proposed amended pleading filed with  
13 Plaintiff's motion does not characterize Mr. Baker as such.  
14 However, it appears that, if Mr. Baker were so designated, an  
15 amendment to add a PAGA claim would not be futile. If that is  
16 Plaintiff's desire, he may lodge a proposed amended complaint  
17 including Mr. Baker as a named Plaintiff and class representative  
18 four days from the date of this Order. Because Defendant did not  
19 have an opportunity to respond to Plaintiff's argument, the Court  
20 grants it four additional days after the new proposed amended  
21 complaint is filed to file a surreply, not to exceed five pages,  
22 addressing the joinder of Mr. Baker as a named Plaintiff and class  
23 representative and the effect this would have on the proposed PAGA  
24 claim.

25 CONCLUSION

26 For the foregoing reasons, the Court GRANTS in part  
27 Plaintiff's Motion for Leave to File a Second Amended Complaint.  
28 (Docket No. 196.) Plaintiff is granted leave to amend his class

1 definitions and add a new subclass. The Court defers its decision  
2 as to whether Plaintiff may add a PAGA claim. If Plaintiff desires  
3 to add Mr. Baker as a named Plaintiff and class representative,  
4 Plaintiff shall, within four days of the date of this Order, file a  
5 proposed amended complaint including Mr. Baker as such. Four days  
6 thereafter, Defendant shall file a surreply, not to exceed five  
7 pages, concerning the addition of Mr. Baker as a named Plaintiff  
8 and class representative and its effect on the proposed PAGA claim.

9 The hearing on Plaintiff's motion is VACATED.

10 IT IS SO ORDERED.

11  
12 Dated: 10/8/2010



13 CLAUDIA WILKEN  
14 United States District Judge  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28