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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

LISA BRABOY,

Plaintiff,

v.

STAPLES, INC., et al.,

Defendants.

No. C 09-4534 PJH

**ORDER GRANTING MOTION FOR  
JUDGMENT ON THE PLEADINGS**

Defendant’s motion for judgment on the pleadings came on for hearing on August 4, 2010 before this court. Plaintiff Lisa Braboy (“plaintiff”) appeared through her counsel, Linda Whitehead and Peter Hart. Defendants Staples Inc. (“Staples”) and Staples Contract and Commercial, Inc. (“SCCI”) (collectively “defendants”) appeared through their counsel, Rod Fliegel and Elizabeth Wilson. Having read all the papers submitted and carefully considered the relevant legal authority, the court hereby GRANTS the motion for judgment on the pleadings, as stated at the hearing, and summarized as follows.

1. As a preliminary matter, the parties have agreed that plaintiff does not plead, as part of her sixth claim for relief, a claim for fraudulent misrepresentation/omissions under Cal Bus. & Prof. Code § 17200. Thus, the only issue that remains for the court’s resolution here is whether plaintiff, a former employee of defendant(s), lacks standing to pursue class-wide injunctive relief as alleged in her sixth claim for relief.

2. Plaintiff’s third amended complaint seeks injunctive relief as a remedy for defendants’ allegedly wrongful actions in having misclassified/misrepresented documents, agreements, and communications with its employees – the misrepresentation being a failure to adequately state which defendant is the employees’ employer. See TAC, ¶¶

1 67(f), 70-72. However, as a former employee, plaintiff lacks standing to sue for injunctive  
2 relief affecting the documents, agreements, and communications between defendants and  
3 their employees either now or in the future. See Dukes v. Wal-Mart Stores, Inc., 603 F.3d  
4 571, 623 (9th Cir. 2010)(“those putative class members who were no longer Wal-Mart  
5 employees at the time [p]laintiffs' complaint was filed do not have standing to pursue  
6 injunctive or declaratory relief”)(citing Walsh v. Nev. Dep't of Human Res., 471 F.3d 1033,  
7 1037 (9th Cir.2006) (recognizing that former employees lack standing to seek injunctive  
8 relief because they “would not stand to benefit from an injunction requiring the  
9 anti-discriminatory policies [to cease] at [their] former place of work”).

10 To the extent that plaintiff furthermore argues that she seeks injunctive relief on  
11 behalf of all employees who may need to accurately state their employer in connection with  
12 current or future employment, plaintiff’s third amended complaint fails to include any  
13 allegations to this effect. Moreover, plaintiff’s argument is premised on alleged future  
14 injuries that are entirely speculative. As such, plaintiff cannot establish a likelihood of  
15 substantial and immediate irreparable injury, such that she has standing to seek injunctive  
16 relief. See Hodgers-Durgin v. de la Vina, 199 F.3d 1037, 1042 (9th Cir. 1999)(“The  
17 equitable remedy is unavailable absent a showing of irreparable injury, a requirement that  
18 cannot be met where there is no showing of any real or immediate threat that the plaintiff[s]  
19 will be wronged again - a ‘likelihood of substantial and immediate irreparable injury”).

20 Accordingly, defendant’s motion for judgment on the pleadings is GRANTED, with  
21 respect to plaintiff’s claim for prospective injunctive relief, as a remedy for unfair and/or  
22 unlawful conduct as alleged in paragraph 67(f). No leave to amend is granted, as plaintiff  
23 was unable to articulate the existence of any allegations that could conceivably cure the  
24 foregoing deficiencies.

25 3. To the extent defendants request early resolution of an additional legal issue  
26 purportedly going to the scope of future discovery and class certification – i.e., the ‘retail  
27 entity’ issue – the parties shall raise this issue in connection with briefing on the threshold  
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1 'employer' issue. The parties' motions on these threshold issues shall be limited as follows:  
2 neither the opening briefs, nor the opposition briefs, may exceed 15 pages in length. The  
3 reply briefs shall not exceed 10 pages in length. The motions will be heard on December  
4 15, 2010.

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**IT IS SO ORDERED.**

Dated: August 6, 2010



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PHYLLIS J. HAMILTON  
United States District Judge