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2 UNITED STATES DISTRICT COURT  
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
4 OAKLAND DIVISION  
5

6 JOSE TIJERO, AMANDA GODFREY,  
7 individually and on behalf of all others similarly  
8 situated,

8 Plaintiffs,

9 vs.

10 AARON BROTHERS, INC.,

11 Defendant.

Case No: C 10-1089 SBA

**ORDER GRANTING DEFENDANT'S  
MOTION TO DISMISS**

Dkt. 39

12  
13 Plaintiffs bring this putative wage and hour representative and class action against  
14 Defendant Aaron Brothers, Inc. ("Aaron Brothers" or "Defendant"). The parties are presently  
15 before the Court on Defendant's Motion to Dismiss Plaintiffs' First, Second, Third, Fourth,  
16 Fifth, Sixth, Eighth, Ninth and Tenth Claims under Federal Rule of Civil Procedure 12(b)(6).  
17 Dkt. 39. Having read and considered the papers filed in connection with this matter and being  
18 fully informed, the Court hereby GRANTS the motion for the reasons set forth below. The  
19 Court, in its discretion, finds this matter suitable for resolution without oral argument. See  
20 Fed.R.Civ.P. 78(b).

21 **I. BACKGROUND**

22 According to Plaintiffs' Second Amended Complaint ("SAC"), Plaintiffs are "present  
23 and/or former non-exempt hourly employees" of Defendant. SAC ¶ 3, Dkt. 38. Defendant is a  
24 retailer of arts and crafts goods that operates "in excess of 100 stores in the State of  
25 California." Id. ¶ 4.

26 Plaintiffs bring this action "as a representative class action to recover for unpaid wages,  
27 unpaid overtime compensation, unpaid and unlawfully withheld wages, un-reimbursed  
28 business-related expenses, meal period violations, rest break violations, liquidated damages,

1 restitution, as well as other statutory and civil penalties and damages owed to Plaintiffs and all  
2 other employees employed by, or formerly employed by [Defendant].” Id. ¶ 8. Plaintiffs  
3 describe the class as “consisting of all individuals who are or previously were employed by  
4 [Defendant] in California, in positions entitled ‘customer service representative,’ ‘framer,’  
5 ‘CSR’ or in any other similarly situated position” during an undefined “Liability Period.” Id.

6 Plaintiffs’ factual allegations are as follows. Plaintiffs allege that Defendant requires its  
7 employees to work in excess of eight hours per day, without compensating its employees at the  
8 premium rates of pay required by California law. Id. ¶ 9. Plaintiffs further allege that  
9 Defendant required its employees to work hours for which it did not compensate them at the  
10 minimum rate of pay for all hours worked when those wages were due. Id. ¶ 10. Moreover,  
11 Plaintiffs assert that Defendant failed to provide appropriate rest and meal periods as required  
12 by California law. Id. Lastly, Plaintiffs assert that Defendant failed to pay terminated  
13 employees all wages owed upon termination from employment. Id. ¶ 13.

14 Plaintiffs bring the following claims against Defendant: (1) unpaid wages under the  
15 California Labor Code; (2) unpaid overtime wages under the Fair Labor Standards Act  
16 (“FLSA”); (3) unpaid overtime wages under the California Labor Code; (4) failure to pay  
17 wages for compensable meal break periods in violation of the California Labor Code; (5)  
18 failure to pay wages for compensable rest break periods in violation of the California Labor  
19 Code; (6) failure to pay minimum wage/“off the clock” work in violation of the California  
20 Labor Code; (7) failure to pay compensation at the time of termination in violation of the  
21 California Labor Code; (8) failure to furnish itemized wage statements in violation of the  
22 California Labor Code; (9) unfair and unlawful business practices under California Business &  
23 Professions Code § 17200; and (10) representative action on behalf of all employees for  
24 violation of California Labor Code § 2699, Private Attorney General Act (“PAGA”).

25 Now, Defendant moves to dismiss each of Plaintiffs’ claims under Rule 12(b)(6), except  
26 for Plaintiffs’ Seventh Claim. Plaintiffs oppose Defendant’s motion and ask that they be  
27 granted leave to amend their SAC should Defendant’s motion be granted. Pls.’ Opp. at 10,  
28 Dkt. 43.

1 **II. LEGAL STANDARD**

2 A Rule 12(b)(6) dismissal for failure to state a claim can be based on either: (1) the lack  
3 of a cognizable legal theory; or (2) insufficient facts to support a cognizable legal claim.  
4 Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990). In considering a Rule  
5 12(b)(6) motion, the court is to “accept all factual allegations in the complaint as true and  
6 construe the pleadings in the light most favorable to the nonmoving party.” Outdoor Media  
7 Group, Inc. v. City of Beaumont, 506 F.3d 895, 899-900 (9th Cir. 2007). The plaintiff’s  
8 factual allegations “must be enough to raise a right to relief above the speculative level.” Bell  
9 Atl. Corp. v. Twombly, 550 U.S. 544, 556 (2007). A complaint that raises only “the mere  
10 possibility of misconduct” does not establish that the plaintiff is entitled to relief. Ashcroft v.  
11 Iqbal, 129 S.Ct. 1937, 1950 (2009). “[A] plaintiff’s obligation to provide the ‘grounds’ of his  
12 ‘entitlement to relief’ requires more than labels and conclusions, and a formulaic recitation of  
13 the elements of a cause of action will not do.” Twombly, 550 U.S. at 555. “If a complaint is  
14 dismissed for failure to state a claim, leave to amend should be granted unless the court  
15 determines that the allegation of other facts consistent with the challenged pleading could not  
16 possibly cure the deficiency.” Schreiber Distributing Co. v. Serv-Well Furniture Co., Inc., 806  
17 F.2d 1393, 1401 (9th Cir. 1986).

18 **III. ANALYSIS**

19 **A. FIRST CLAIM FOR UNPAID WAGES**

20 Defendant argues that Plaintiffs’ First Claim for unpaid wages should be dismissed  
21 because Plaintiffs fail to allege any facts supporting this claim. In their SAC, Plaintiffs allege  
22 the following in connection with this claim:

23 Aaron Brothers failed to pay Plaintiffs, and other similarly situated class  
24 members, all their wages due. Additionally, Aaron Brothers failed to provide  
25 Plaintiffs with accurate time records and earnings statements as required by  
26 Labor Code section 226 ... Aaron Brothers has a policy and practice of not  
27 recording all time worked by its hourly employees. Aaron Brothers’ policy and  
28 practice systematically reduced the daily time recorded by its hourly employees  
... Aaron Brothers paid Plaintiffs based upon the recorded time which  
systematically reduced the actual time worked, resulting in a failure to pay  
wages for time worked.

1 SAC ¶¶ 43-45.

2           However, Plaintiffs have failed to plead sufficient “factual content” to allow the Court  
3 to make a reasonable inference that Defendant is liable for the claims alleged by Plaintiffs. See  
4 Iqbal, 129 S.Ct. at 1940 (“where the well-pleaded facts do not permit the court to infer more  
5 than the mere possibility of misconduct, the complaint has alleged – but it has not ‘show[ n]’ –  
6 ‘that the pleader is entitled to relief’”). These bare allegations fail to state when or how  
7 Defendant failed to pay the required wages. See e.g., Anderson v. Blockbuster Inc., 2010 WL  
8 1797249, \*3 (E. D. Cal. 2010) (granting motion to dismiss an unpaid wage claim where  
9 “Plaintiff asserts nothing more than that ‘Defendants willfully failed to pay Plaintiff and class  
10 members all wages due to them, within any time period permissible by [California law].’”).  
11 Nor does the SAC provide facts regarding Defendant’s alleged policy or practice of reducing  
12 employees’ time recorded, such as what means Defendant used to implement this policy or  
13 practice. See e.g., Villegas v. J.P. Morgan Chase & Co., 2009 WL 605833, \*1 (N.D. Cal.  
14 2009) (Armstrong, J.) (granting motion to dismiss plaintiff’s record-keeping claim because it  
15 “merely recite[d] the elements of Labor Code § 226(a) by generally alleging that ‘Defendants  
16 failed to keep accurate records of Plaintiff’s and the class members rates of pay, rates of  
17 overtime pay, net wages earned, daily or weekly overtime pay, commissions earned and/or  
18 vacation earned.’”). Without more, such legal conclusions do not suffice. Moreover, Plaintiffs  
19 have provided no meaningful response to Defendant’s motion as to this claim in their  
20 opposition, other than to generally assert that their allegations comply with Federal Rule of  
21 Civil Procedure 8(a). See Pls.’ Opp. at 7.

22           Therefore, Defendant’s motion to dismiss Plaintiffs’ First Claim for unpaid wages is  
23 GRANTED.

24           **B.       SECOND AND THIRD CLAIMS FOR OVERTIME VIOLATIONS**

25           In their Second and Third Claims, Plaintiffs allege that Defendant failed to pay overtime  
26 wages, in violation of the FLSA and the California Labor Code, respectively. However, the  
27 SAC fails to allege any facts regarding alleged overtime violations. Regarding the alleged  
28 FLSA violation, the SAC summarily states: “During the Liability Period, Plaintiffs and all

1 similarly situated Employees were regularly required to work in excess of forty (40) hours per  
2 week, but were not paid for such overtime work.” SAC ¶ 49. The SAC’s allegations regarding  
3 California overtime violations are similarly bare: “During the Liability Period, Plaintiffs were  
4 regularly required to work in excess of forty (40) hours per week and/or eight (8) hours per  
5 day, but were not paid for such premium pay as required by California law.” Id. ¶ 55. Both  
6 claims also state that “Aaron Brothers have made it difficult to account for the unpaid overtime  
7 wages earned by Plaintiffs during the applicable Liability Period because they did not make,  
8 keep, and preserve the correct hours worked by such employees ....” Id. ¶¶ 51, 58. These  
9 allegations are nearly identical to those dismissed by the court in Anderson, where the  
10 plaintiff’s overtime claim alleged that “Plaintiff and class members consistently worked in  
11 excess of eight hours in a day, in excess of 12 hours in a day and/or in excess of 40 hours in a  
12 week ... [and] Defendants willfully failed to pay all overtime.” Anderson, 2010 WL 1797249  
13 at \*2 (finding plaintiff’s allegations to be “conclusory” and devoid of “factual content”); see  
14 also Villegas, 2009 WL 605833, \*4 (finding plaintiff’s allegations that “she did not receive  
15 properly computed overtime” did not state a claim “because it is not much more information  
16 than an allegation that she was not paid for overtime work in general”). Similarly here, other  
17 than a general assertion that Plaintiffs “were not paid” for overtime work, Plaintiffs have failed  
18 to allege any facts to support their overtime claims. In their opposition, Plaintiffs again fail to  
19 provide a meaningful response in support of these claims.

20 For these reasons, Defendant’s Motion to Dismiss Plaintiffs’ Second and Third Claims  
21 for overtime violations is GRANTED.

22 **C. FOURTH CLAIM FOR MEAL BREAK VIOLATIONS AND FIFTH CLAIM FOR REST**  
23 **BREAK VIOLATIONS**

24 California employers are required to provide a meal break for each work shift exceeding  
25 five hours and to authorize and permit a rest break for each work shift that is at least three and  
26 one-half hours. See Cal. Lab. Code § 512(a) (“[a]n employer may not employ an employee for  
27 a work period of more than five hours per day without providing the employee with a meal  
28 period of not less than 30 minutes ....”); 8 Cal. Code Regs. § 11070(12)(A) (“Every employer

1 shall authorize and permit all employees to take rest periods ... [t]he authorized rest period  
2 time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time  
3 per four (4) hours or major fraction thereof. However, a rest period need not be authorized for  
4 employees whose total daily work time is less than three and one-half (3 1/2) hours.”).

5 Here, in support of their Fourth Claim for meal break violations, Plaintiffs make only  
6 boilerplate allegations that recite the statutory language of Section 512(a): “Aaron Brothers  
7 failed to provide Plaintiffs and all other meal period class members with uninterrupted meal  
8 periods of not less than thirty (30) minutes ... and failed to pay Plaintiffs and meal period class  
9 members for those meal periods not provided,” and “Plaintiffs regularly worked in excess of  
10 five (5) hours per day without being afforded a proper meal break of at least 30-minutes in  
11 duration.” SAC ¶¶ 63-64. Likewise, Plaintiffs’ rest break allegations simply restate the  
12 statutory language: “Aaron Brothers failed to provide Plaintiffs and all other rest period class  
13 members uninterrupted rest periods of not less than ten (10) minutes when and as required, in  
14 violation of California law ....” *Id.* ¶ 69.

15 In their opposition, Plaintiffs simply repeat the allegations set forth in their SAC and  
16 assert that these allegations are sufficient under Rule 8(a). However, “[i]t is not enough to  
17 simply parrot the statutory language for each purported claim.” *Anderson*, 2010 WL 1797249,  
18 at \*3; *see also Twombly*, 550 U.S. at 555 (to survive a motion to dismiss, “a formulaic  
19 recitation of the elements of a cause of action will not do”). In this case, Plaintiffs fail to  
20 provide in their SAC factual allegations stated with any specificity to support their meal break  
21 and rest break claims.

22 In short, the SAC fails to include any facts to support a plausible claim that Defendant  
23 failed to provide Plaintiffs with meal and rest breaks. Therefore, Defendant’s Motion to  
24 Dismiss Plaintiffs’ Fourth and Fifth Claims is GRANTED.

25 **D. SIXTH CLAIM FOR FAILURE TO PAY MINIMUM WAGE AND OFF THE CLOCK**  
26 **WORK**

27 Plaintiffs’ Sixth claim for minimum wage and off-the-clock violations is based on the  
28 following allegations:

1 Aaron Brothers had, and continue to have, a policy and practice of failing to  
2 compensate Plaintiffs, for all hours worked, and were paid at wage rates that  
3 were less than the California minimum wage ... Plaintiffs' time spent  
4 performing mandatory duties were not recorded and not inclusive of the rate paid  
5 and constitutes time worked "off-the-clock" for which Plaintiffs, received no  
6 compensation ... Additionally, Aaron Brothers failed to provide Plaintiffs, with  
7 accurate time records and earnings statements.

8 SAC ¶¶ 73-74.

9 Just like Plaintiffs' First Claim for unpaid wages, the Sixth Claim "fails to state when or  
10 how Defendant failed to pay the required wages." See Anderson, 2010 WL 1797249, at \*3.  
11 For instance, Plaintiffs fail to state facts regarding the alleged "mandatory duties" for which  
12 Plaintiffs worked "off-the clock" and received no compensation. Nor do Plaintiffs provide any  
13 facts regarding Defendant's alleged policy or practice of failing to compensate Plaintiffs for all  
14 hours worked. Again, Plaintiffs' allegations amount to nothing more than legal conclusions.  
15 Therefore, Defendant's Motion to Dismiss Plaintiffs' Sixth Claim is GRANTED.

16 **E. EIGHTH CLAIM FOR INACCURATE WAGE STATEMENTS**

17 In their Eighth Claim, Plaintiffs allege that Defendant "failed to provide Plaintiffs with  
18 accurate time record and earnings statements as required by Labor Code section 226,  
19 subdivision (a)," and that Defendant "had, and continue[s] to have, a policy and practice of  
20 knowingly and intentionally failing to furnish Plaintiffs, at the time of each payment of wages,  
21 an itemized statement in writing showing all of the information required by Labor Code section  
22 226, subdivision (a), including, but not limited to, the total hours actually worked." SAC ¶¶  
23 85-86. Moreover, Plaintiffs aver that they have "suffered injury" and are therefore entitled to  
24 statutory penalties under Labor Code § 226(e), which provides that "[a]n employee suffering  
25 injury as a result of a knowing and intentional failure by an employer to comply with  
26 subdivision (a) is entitled to recover [penalties]." SAC ¶ 87.

27 To the extent that this claim is merely derivative of Plaintiffs' claims seeking overtime,  
28 unpaid wages, and meal and rest break penalties, Plaintiffs' Eighth Claim is deficient for the  
same reasons as the underlying claims. Additionally, this claim fails for the independent  
reason that it, too, fails to meet the minimum pleading requirements, as it merely recites the

1 elements of Section 226(a). In particular, Plaintiffs fail to allege any facts regarding how  
2 Defendant's failure was knowing and intentional, as required by Section 226(e). Nor have  
3 Plaintiffs alleged facts regarding the alleged injury they suffered as a result of Defendant's  
4 failure. As such, Defendant's Motion to Dismiss Plaintiffs' Eighth Claim is GRANTED.

5 **F. NINTH CLAIM UNDER CAL. BUS. & PROF. CODE § 17200**

6 Plaintiffs' Ninth Claim alleges that Defendant violated California's Unfair Competition  
7 Law ("UCL"), California Business & Professions Code § 17200, and is entirely dependent on  
8 Defendant's alleged violations of the FLSA and California labor laws. SAC ¶¶ 89-96. The  
9 UCL prohibits any "unlawful, unfair or fraudulent business act or practice." Cal. Bus. & Prof.  
10 Code § 17200. It incorporates other laws and treats violations of those laws as unlawful  
11 business practices independently actionable under state law. Chabner v. United Omaha Life  
12 Ins. Co., 225 F.3d 1042, 1048 (9th Cir. 2000). The Court's analysis regarding the viability of  
13 Plaintiffs' underlying claims is set forth above in the sections discussing Plaintiffs' First  
14 through Sixth and Eighth Claims. As such, Plaintiffs' UCL claim is DISMISSED insofar as it  
15 relies on these claims, which the Court finds insufficiently pled.

16 **G. TENTH CLAIM UNDER PAGA**

17 Plaintiffs' Tenth Claim is brought under PAGA. PAGA enables a plaintiff to recover  
18 the civil penalty that the Labor and Workforce Development Agency would otherwise assess  
19 and collect for violations of the Labor Code. See Cal. Lab. Code § 2699. As discussed above,  
20 Plaintiffs have not sufficiently pled their First through Sixth and Eighth Claims. Accordingly,  
21 their PAGA claim is DISMISSED to the extent that it is based these claims. See Sullivan v.  
22 Kelly Serv., Inc., 2008 WL 4891051, at \*5 (N. D. Cal. 2008) (granting summary judgment on  
23 Section 2699 claim where underlying Labor Code claims failed).

24 **IV. CONCLUSION**

25 For the reasons stated above,

26 IT IS HEREBY ORDERED THAT:

27 1. Defendant's Motion to Dismiss Plaintiffs' First, Second, Third, Fourth, Fifth,  
28 Sixth, and Eighth Claims is GRANTED; these claims are dismissed with leave to amend.

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2. Defendant's Motion to Dismiss Plaintiffs' Ninth and Tenth Claims is GRANTED to the extent these claims are based on claims that the Court has deemed insufficiently pled; these claims are dismissed with leave to amend.

3. Plaintiffs shall have twenty-one (21) days from the date this Order is filed to file a third amended complaint. If Plaintiffs timely amend their pleading, Defendant shall respond consistent with the Federal Rules of Civil Procedure.

4. This Order terminates Docket 39.

IT IS SO ORDERED.

Dated: March 31, 2011

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge