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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HAROLD ROBINSON, JR. on behalf of
himself and all others similarly situated,

Plaintiff,

v.

OPEN TOP SIGHTSEEING SAN
FRANCISCO LLC; and DOES 1-20

Defendants.

CASE NO. 4:14-CV-00852-PJH
ORDER GRANTING OPEN TOP
SIGHTSEEING SAN FRANCISCO
LLC'S MOTION TO DISMISS
PURSUANT TO FRCP 12(b)(6)

Having considered Defendant Open Top Sightseeing San Francisco LLC's Motion To Dismiss, any opposition and reply thereto, the Court hereby GRANTS the Motion and orders that:

- 1) Plaintiff's first cause of action under the Fair Labor Standards Act is dismissed, with leave to amend, on the grounds that Plaintiff has failed to sufficiently plead the interstate commerce element under Section 206 and 207; and
- 2) Plaintiff's first cause of action under the Fair Labor Standards Act is dismissed, with leave to amend, as to all of the Plaintiffs' claims that did not accrue in the two years preceding the filing of Plaintiff's complaint in this action, on the grounds that Plaintiff has failed to sufficiently plead allegations relating to Open Top's "willful" violation of the FLSA, for the purpose of extending the statute of limitations in the case under 29 U.S.C. Section 255(a).
- 3) Plaintiff's amended complaint shall contain more than conclusory allegations with respect to the interstate commerce and wilfulness elements of the first cause of action; the

1 amended complaint shall set forth sufficient facts demonstrating: 1) the manner in which
2 plaintiff's activities were connected to interstate commerce during his employment and/or the
3 manner in which Open Top's activities are connected to interstate commerce under FLSA
4 Sections 206, 207 and, to the extent applicable, Section 203(1)(A); and 2) Open Top's
5 knowledge and/or reckless disregard of its alleged violation(s) of the FLSA under Section
6 255(a).
7

8 Plaintiff shall have until **May 21, 2014** to file a second amended complaint ("SAC") in
9 accordance with this order, and defendants shall have until **June 11, 2014** to answer or
10 otherwise respond to the SAC. No new claims or parties may be added without leave of court
11 or the agreement of all parties. If defendants' response to the SAC is another motion to dismiss,
12 it should be noticed in accordance with the local rules, but the court is unlikely to hold any
13 further hearings on the pleadings.
14

15 **IT IS SO ORDERED.**

16 Dated: April 23, 2014



17 HONORABLE PHYLLIS J. HAMILTON
18 UNITED STATES DISTRICT COURT
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