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E-FILED 08-03-2010

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CARLA PINHEIRO, individually and on behalf
of all similarly situated individuals,

No. C10-02246 HRL

Plaintiff,

**ORDER GRANTING DEFENDANT
AEROTEK, INC.'S MOTION TO
DISMISS SEVENTH AND EIGHTH
CLAIMS FOR RELIEF WITHOUT
LEAVE TO AMEND**

v.

ACXIOM INFORMATION SECURITY
SERVICES, INC.; AEROTEK, INC.; QUEST
DIAGNOSTICS CLINICAL LABORATORIES,
INC; DOES 1-100, inclusive,

[Re: Docket No. 11]

Defendants.

_____ /

BACKGROUND

According to the complaint, filed on behalf of a putative class, plaintiff Carla Pinheiro was an employee of defendant Aerotek, Inc. (Aerotek), an employment agency. She further alleges that she was assigned to work as a temporary customer service representative for defendant Quest Diagnostics Clinical Laboratories, Inc. (Quest). The gravamen of Pinheiro's complaint as to Aerotek is that Aerotek wrongfully terminated her employment (Sixth Claim for Relief) and failed to timely pay her final wages in violation of California Labor Code sections 201-203 (Seventh Claim for Relief). Plaintiff also asserts a claim against Aerotek under California Bus. & Prof. Code section 17200 (Eighth Claim for Relief) based upon the alleged failure to timely pay her final wages.

1 Aerotek does not challenge the wrongful termination claim here. However, pursuant to
2 Fed. R. Civ. P. 12(b)(6), it moves to dismiss Pinheiro’s seventh and eighth claims for relief
3 concerning the alleged failure to timely pay her final wages. Pinheiro opposes the motion.
4 Pursuant to 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73, all parties have expressly consented that
5 all proceedings in this matter may be heard and finally adjudicated by the undersigned. The
6 court finds the matter appropriate for determination without oral argument. *See* CIV. L.R. 7-
7 1(b). Upon consideration of the moving and responding papers this court grants the motion.

8 LEGAL STANDARD

9 A motion to dismiss for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6) tests
10 the legal sufficiency of the claims in the complaint. “Dismissal can be based on the lack of a
11 cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal
12 theory.” *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). In ruling on
13 such a motion, a court generally does not consider any matters outside the complaint. However,
14 documents which properly are the subject of judicial notice may be considered along with the
15 complaint when deciding a Fed. R. Civ. P. 12(b)(6) motion for failure to state a claim for relief.
16 *See MGIC Indem. Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir. 1986).

17 In such a motion, all material allegations in the complaint must be taken as true and
18 construed in the light most favorable to the claimant. *See Balistreri*, 901 F.2d at 699. However,
19 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
20 statements, do not suffice.” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009). Moreover, “the
21 court is not required to accept legal conclusions cast in the form of factual allegations if those
22 conclusions cannot reasonably be drawn from the facts alleged.” *Clegg v. Cult Awareness*
23 *Network*, 18 F.3d 752, 754-55 (9th Cir. 1994).

24 Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the
25 claim showing that the pleader is entitled to relief.” This means that the “[f]actual allegations
26 must be enough to raise a right to relief above the speculative level.” *Bell Atlantic Corp. v.*
27 *Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007) (citations omitted); *see*
28 *also Iqbal*, 129 S. Ct. at 1950 (“[O]nly a complaint that states a plausible claim for relief

1 survives a motion to dismiss.”). However, a complaint attacked by a Rule 12(b)(6) motion to
2 dismiss does not need detailed factual allegations and “heightened fact pleading of specifics” is
3 not required to survive a motion to dismiss. *Bell Atlantic Corp.*, 550 U.S. at 570. Rather, the
4 complaint need only give “enough facts to state a claim to relief that is plausible on its face.”
5 *Id.*

6 DISCUSSION

7 Preliminarily, plaintiff advises that the issues presented by the instant motion currently
8 are pending before the California Supreme Court. *See Pineda v. Bank of America*, 207 P.3d 1
9 (2009). Nevertheless, for the reasons stated below, this court finds that, based upon the law as
10 it currently stands, plaintiff’s seventh and eighth claims for relief as to Aerotek should be
11 dismissed.

12 A. Seventh Claim for Relief (Cal. Labor Code §§ 201-203)

13 Pinheiro alleges that Aerotek terminated her employment on April 11, 2008.
14 (Complaint ¶ 25). Although Aerotek disputes the date of plaintiff’s termination, everyone
15 agrees that plaintiff received her final paycheck from Aerotek one week later on April 18, 2008.
16 (*Id.* ¶ 98). Pinheiro does not sue for underlying wages because all of her wages admittedly have
17 been paid. Instead, she seeks only waiting time penalties under Cal. Labor Code § 203 for the
18 failure to timely pay her final wages upon the termination of her employment in violation of
19 Cal. Labor Code § 201. Even assuming that the payment of plaintiff’s final wages was
20 untimely, Aerotek argues that Pinheiro’s claim is time-barred because the instant lawsuit was
21 not filed until April 7, 2010, about one year too late.

22 At issue here is whether Pinheiro’s claim for waiting time penalties is subject to a one-
23 year statute of limitations (Aerotek’s view) or to a three-year limitations period (Pinheiro’s
24 position). This court agrees that the one-year statute of limitations under Cal. Code Civ. Proc. §
25 340(a) applies, and plaintiff’s seventh claim for relief therefore is time-barred. *See McCoy v.*
26 *Super. Ct.*, 157 Cal. App.4th 225, 68 Cal. Rptr.3d 483 (2008) (holding that in action seeking
27 only waiting time penalties, and not wages, the one-year statute of limitations under Cal. Code
28 Civ. Proc. § 340(a) applies). *Cf. Ross v. U.S. Bank Nat’l Ass’n*, Case No. C07-02951SI, 2008

1 WL 4447713 *4 (N.D. Cal., Sept. 30, 2008) (concluding that the three-year statute of
2 limitations period under Cal. Labor Code § 203 applied where plaintiff sought unpaid wages, as
3 well as waiting time penalties). Plaintiff's cited authority, *Cortez v. Purolator Air Filtration*
4 *Products Co.*, 23 Cal.4th 163, 999 P.2d 706, 96 Cal. Rptr.2d 518 (2000), in which the plaintiff
5 sought both unpaid wages and waiting time penalties, does not compel a contrary conclusion.

6 Accordingly, defendant's motion to dismiss this claim is granted without leave to
7 amend.

8 B. Eighth Claim for Relief (Cal. Bus. & Prof. Code § 17200)

9 With respect to Aerotek, Pinheiro's claim under California's Unfair Competition Law
10 (UCL) is premised entirely upon the alleged failure to timely pay her final wages. (Complaint,
11 ¶¶ 107, 109). Accordingly, her claim for waiting time penalties and her UCL claim stand, and
12 in this case fall, together. *See Landayan v. Washington Mutual Bank*, Case No. C09-
13 00916RMW, 2009 WL 3047238 *3 (N.D. Cal., Sept. 18, 2009). In any event, remedies under
14 California Labor Code § 203 are penalties, and not restitution, and therefore cannot be
15 recovered under the UCL. *In re Wal-Mart Stores, Inc. Wage & Hour Litig.*, 505 F. Supp.2d
16 609, 619 (N.D. Cal. 2007); *Tomlinson v. Indymac Bank, F.S.B.*, 359 F. Supp.2d 891, 895 (C.D.
17 Cal. 2005).

18 This claim will also be dismissed as to Aerotek without leave to amend. *See Hodgers-*
19 *Durgin v. De La Vina*, 199 F.3d 1037, 1045 (9th Cir. 1999) ("Unless the named plaintiffs are
20 themselves entitled to seek injunctive relief, they may not represent a class seeking that
21 relief.").

22 ORDER

23 Based on the foregoing, Aerotek's Fed. R. Civ. P. 12(b)(6) motion to dismiss the
24 seventh and eighth claims for relief is granted without leave to amend.

25 SO ORDERED.

26 Dated: August 3, 2010

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HOWARD R. LLOYD
UNITED STATES MAGISTRATE JUDGE

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5:10-cv-02246-HRL Notice has been electronically mailed to:

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