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28***E-FILED 02-28-2011***

NOT FOR CITATION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

RICARDO VILLANUEVA and ROGELIO
 TOPETE,

No. C10-02342 HRL

Plaintiffs,

**ORDER (1) GRANTING DEFENDANTS'
 MOTION FOR JUDGMENT ON THE
 PLEADINGS; AND (2) DENYING
 PLAINTIFFS' MOTION TO CONTINUE
 HEARING**

v.

AKKAYA, INC., dba RISTORANTE DON
 GIOVANNI, JOHN AKKAYA, DOES 1-10,

[Re: Docket Nos. 23, 27]

Defendant.

Plaintiff Ricardo Villanueva¹ was employed by defendants on various occasions. According to defendants, his most recent period of employment with them was from November 29, 2007 through June 9, 2009 when defendants say plaintiff was fired because of repeated failures to appear for work.

On March 31, 2009, during his employment with defendants, Villanueva filed for bankruptcy. He was discharged from bankruptcy on June 30, 2009, i.e., some three weeks after defendants terminated his employment. And, on July 1, 2009, his bankruptcy case was closed. Villanueva filed the instant lawsuit on May 27, 2010, claiming unpaid overtime and other benefits and penalties incurred during a four-year period preceding the instant action.

¹ Defendants assert, and plaintiff does not deny, that Villanueva's legal name is Ricardo Villanueva Bautista. For simplicity, the court will refer to him as "Villanueva" here.

1 Defendants now move for judgment on the pleadings (or, alternatively, for summary
2 judgment) as to Villanueva. Specifically, defendants argue that Villanueva lacks standing to
3 pursue his claims because (a) the claims belong to the bankruptcy estate and (b) Villanueva
4 never disclosed the claims to the bankruptcy court.

5 Villanueva failed to oppose the motion, and the deadline for any opposition lapsed on
6 February 15, 2011. Instead, on February 22, 2011, Villanueva filed a motion (a) advising that
7 he has contacted the bankruptcy trustee's office; and (b) the trustee indicated that she may seek
8 to reopen Villanueava's bankruptcy case and to obtain counsel to pursue the instant litigation.
9 As such, Villanueva requests that the hearing on defendant's motion to dismiss be continued for
10 up to one month and that all briefing deadlines be re-set. Notably, however, Villanueva
11 concedes that his claims belong to the bankruptcy estate. (Docket No. 27 at 1). "Courts have
12 held that because an unsecured claim remains the property of the bankruptcy estate, the
13 debtor lacks standing to bring such claims after emerging from bankruptcy, and the claims must
14 be dismissed." Kunica v. St. Jean Financial, Inc., 233 B.R. 46, 53 (S.D.N.Y. 1999). And,
15 whether or not the trustee seeks to enter these proceedings remains to be seen.

16 Accordingly, defendants' motion is granted, and Villanueva's motion for a continuance
17 is denied. The March 8, 2011 motion hearing is vacated. Civ. L.R. 7-1(b). Villanueva's claims
18 are dismissed. The dismissal is without prejudice to the trustee to seek leave to pursue the
19 claims here.

20 SO ORDERED.

21 Dated: February 28, 2011



HOWARD R. LLOYD
UNITED STATES MAGISTRATE JUDGE

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5:10-cv-02342-HRL Notice has been electronically mailed to:
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Counsel are responsible for distributing copies of this document to co-counsel who have not registered for e-filing under the court's CM/ECF program.