

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

YVETTE GALVEZ, individually and on behalf)
of all others similarly situated,)
)
Plaintiff,)
)
v.)
)
ULTA SALON, COSMETICS &)
FRAGRANCE, INC. and DOES 1 through 50,)
inclusive,)
)
Defendants.)

Case No.: 5:14-CV-00110-EJD

**ORDER STAYING CLAIMS ONE
THROUGH FOUR; DENYING
DEFENDANT’S MOTION TO
DISMISS**

[Re: Docket No. 18]

Presently before the court is Defendant Ulta Salon, Cosmetics & Fragrance, Inc.’s (“Ulta”) Motion to Dismiss. Mot. to Dismiss, Docket Item No. 18. The court held a hearing on this matter and conducted a Case Management Conference on July 25, 2014. Having reviewed the parties’ briefing, reviewed the case management issues presented, and heard the parties’ arguments, the court hereby STAYS claims One through Four as well as any element of claims Five through Seven that depend on Ulta’s exit check policy, and DENIES Ulta’s Motion to Dismiss without prejudice as to those claims. The court also DENIES Ulta’s Motion to Dismiss as to the portions of claims five through seven that do not rely on the exit check policy.

1 **I. Background**

2 **a. This Case**

3 This wage and hour case concerns the impact that certain Ulta employment policies had on
4 Ulta’s retail store hourly employees’ compensation. Plaintiff Yvette Galvez primarily claims that
5 Ulta imposed an “exit check” policy on all employees, which required her to clock out upon the
6 end of her shift or start of her meal or rest break, but then delayed her from actually being released
7 from work because she had to wait to be checked out by a manager or supervisor. First Am. Class
8 Action Compl. (“FAC”) ¶ 33, Docket Item No. 15. Ms. Galvez alleges that she was not
9 compensated for the time spent on these exit checks in violation of California Labor Code §§ 203,
10 226.7, 510, 1194, 1197, and 2698. In addition to the exit checks, Ms. Galvez complains that Ulta
11 also committed other Labor Code violations by failing to timely pay all wages due upon her
12 separation by issuing ATM cards, which impose certain fees, as the form of her final payment and
13 by failing to keep accurate records of employees’ hours and gross pay. FAC ¶¶ 56, 60, Dkt. No.
14 15.

15 Ms. Galvez filed this purported class action on behalf of herself and those similarly situated
16 on December 4, 2013 in Santa Clara County Superior Court. See Not. of Removal Ex. A, Docket
17 Item No. 1. Through this action, Ms. Galvez seeks to represent a class of all Ulta retail employees
18 who worked in California during the period of December 4, 2009 to present and the following
19 subclasses:

- 20 (1) all employees who received an ATM card as their final form of payment;
21 (2) all current employees who have received at least one itemized wage statement; and
22 (3) all former employees who received an itemized wage statement along with their final
23 wages.

24 FAC ¶ 17, Dkt. No. 15. Ulta removed the case to this district pursuant to The Class Action
25 Fairness Act of 2005 on January 8, 2014 and filed a Motion to Dismiss on January 15, 2014. See
26 Not. of Removal ¶ 1, Dkt. No. 1; Mot. to Dismiss, Docket Item No. 14. Ms. Galvez amended her
27 complaint as of right, filing the FAC on January 29, 2014; as a result Ulta withdrew its initial
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1 Motion to Dismiss. See FAC, Dkt. No. 15; Not. of Withdrawal, Docket Item No. 17. Ulta then
2 filed the instant Motion to Dismiss the FAC on February 18, 2014. Dkt. No. 18.

3 **b. The Central District Case**

4 The parties informed the court through their Joint Case Management Statement that a
5 similar class action involving exit checks is currently pending against Ulta in the Central District of
6 California. See Joint Case Management Statement, Docket Item No. 29; see also Sarah Moore v.
7 Ulta Salon, Cosmetics & Fragrance, Inc., Case No. 12-CV-3224 (C.D. Cal). In that case Plaintiff
8 Moore, on behalf of herself and a purported class of all California hourly Ulta employees who
9 worked shifts over three and one-half hours, seeks to recover for unpaid and improperly calculated
10 overtime, unpaid hours worked, improper meal and rest break policies, falsification of hours
11 worked, failure to provide meal periods, and other improper payroll practices and policies. See
12 First Am. Class Action Compl. ¶¶ 15-16, Case No. 12-CV-3224 (C.D. Cal.), Dkt. No. 26. Moore
13 bases all of these claims, at least in part, on the same exit check policy at issue in this case. See id.
14 ¶¶ 19(a)-(j), 38-39, 46, 48, 55-58, 70-72, 77-79, 89, 95.

15 The Moore case is substantially more advanced than the case in this court. Moore filed the
16 case in state court on March 2, 2012. Case No. 12-CV-3224 (C.D. Cal), Dkt. No. 1. It was
17 removed to the Central District on April 12, 2012, and the parties completed briefing on Moore's
18 Motion for Class Certification on November 7, 2013. Id. Docket Item No. 78. Judge Fernando M.
19 Olguin took that motion under submission and the parties are awaiting that court's decision.

20 In the interim, Judge Olguin issued an order on July 7, 2014, requesting supplemental
21 briefing on two issues: (1) whether and how the U.S. Supreme Court's grant of certiorari in
22 Integrity Staffing Solutions, Inc. v. Busk, which presents the issue of whether an employee's time
23 spent going through an employer's security check is compensable, affects the pending Motion for
24 Class Certification, and (2) whether the case should be stayed pending issuance of the Supreme
25 Court's decision, which is anticipated in the spring of 2015. See Case No. 12-CV-3224 (C.D. Cal),
26 Dkt. No. 97; Integrity Staffing Solutions, Inc. v. Busk, 713 F.3d 525 (9th Cir. 2013), cert. granted,
27 134 S. Ct. 1490 (Mar. 3, 2014). In response to these questions, Moore asserted that the Busk case
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1 deals with security check claims brought under a different law—the Federal Labor Standards
2 Act—and that her case, which is limited to claims under the California Labor Code and California
3 Wage Orders, need not be stayed. Ulta, in turn, contended that the Supreme Court’s decision could
4 offer persuasive guidance on the security check issue and advocated for a stay of litigation. Judge
5 Olguin has yet to issue a decision on these issues.

6 **II. Discussion**

7 **a. Case Management Issues**

8 At the outset, this court notes that the presence of the more senior Moore case in the Central
9 District presents an impediment to the expeditious resolution of the instant litigation. The parties
10 agree that if the Central District grants Moore’s Motion for Class Certification, the certified class
11 would subsume the purported exit check class in this case, leaving only the ATM card and itemized
12 wage statement subclasses. At the same time, if the Central District denies Moore’s motion, its
13 reasoning for doing so will likely be particularly persuasive to this court, again jeopardizing the
14 existence of an exit check class in this case and potentially leaving only the ATM card and
15 itemized wage statement subclasses. See Smith v. Bayer, 131 S. Ct. 2368, 2382 (2011) (expressing
16 the Court’s expectation that federal district courts will apply principles of comity to each other’s
17 class certification decisions when addressing a common dispute). Given the uncertainty
18 surrounding the future of the proposed exit check class in this case, the court finds it efficient to
19 stay Ms. Galvez’s claims relevant to that class in order to allow these external issues to develop
20 more fully. Accordingly, claims One through Four are hereby STAYED because they directly
21 address the exit check policy. Additionally, to the extent any remaining of the additional claims
22 are premised on Ulta’s exit check policy, the exit check portions of those claims are also STAYED.

23 **b. Defendant’s Motion to Dismiss**

24 The court now turns to Defendant’s Motion to Dismiss. Having stayed claims One through
25 Four and any exit check portions of the remaining claims, the court DENIES Defendant’s Motion
26 to Dismiss without prejudice as to those claims.
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1 Of the remaining claims, Defendant has not moved to dismiss the sixth cause of action,
2 which concerns the itemized wage statements. See Mot. to Dismiss at 8-9, Dkt. No. 18. Thus, the
3 court need only consider Defendant’s Motion as to the fifth cause of action for waiting time
4 penalties and seventh cause of action for unfair competition, which itself is premised on Ms.
5 Galvez’s other causes of action. See Opp’n at 9, Dkt. No. 19 (admitting that the unfair competition
6 claim is based on the other Labor Code violation claims).

7 **i. Legal Standard**

8 Federal Rule of Civil Procedure 8(a) requires a plaintiff to plead each claim in the
9 complaint with sufficient specificity to “give the defendant fair notice of what the ... claim is and
10 the grounds upon which it rests.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (internal
11 quotations omitted). A complaint which falls short of the Rule 8(a) standard may be dismissed if it
12 fails to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). Dismissal under
13 Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim is “proper only where there is
14 no cognizable legal theory or an absence of sufficient facts alleged to support a cognizable legal
15 theory.” Shroyer v. New Cingular Wireless Servs., Inc., 606 F.3d 658, 664 (9th Cir. 2010) (quoting
16 Navarro v. Block, 250 F.3d 729, 732 (9th Cir. 2001)). In considering whether the complaint is
17 sufficient to state a claim, the court must accept as true all of the factual allegations contained in
18 the complaint. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). While a complaint need not contain
19 detailed factual allegations, it “must contain sufficient factual matter, accepted as true, to ‘state a
20 claim to relief that is plausible on its face.’” Id. (quoting Twombly, 550 U.S. at 570).

21 **ii. Application**

22 Ms. Galvez premises her fifth cause of action for waiting time penalties on her allegation
23 that Ulta required her and other employees to accept wages, including final wages, in the form of
24 an ATM card. FAC ¶ 56, Dkt. No. 15. Because these ATM cards required fees for usage in some
25 instances, Ms. Galvez alleges that Ulta denied employees access to all funds on the cards in
26 violation of Labor Code §§ 201-204. Id. ¶¶ 56-57. Ulta contends that Ms. Galvez’s claim, which
27 encompasses employees who were required to accept wage payments in the form of ATM cards
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1 during the entirety of their employment, contrasts with her proposed ATM card subclass, which is
2 limited to employees who received ATM cards as their final form of payment, and that this
3 discrepancy requires dismissal of Ms. Galvez’s claim. See Mot. to Dismiss at 8, Dkt. No. 18;
4 compare FAC ¶ 17(b) with ¶ 56, Dkt. No. 15.

5 The court disagrees with Ulta that the distinction between the proposed subclass and the
6 waiting time penalties claim necessarily requires this claim to be dismissed. Ms. Galvez defines
7 the primary class in this case as “all current and former non-exempt retail store employees of [Ulta]
8 who worked in California during the period from December 4, 2009 to the present.” FAC ¶ 17(a),
9 Dkt. No. 15. This broad definition would likely capture those employees not specifically covered
10 by the more narrowly-defined ATM card subclass, i.e. those employees who were allegedly forced
11 to accept their wages in the form of an ATM card throughout their employment and not just at the
12 time of their dismissal. While the discrepancy between the claim and the subclass is ripe to be
13 explored further in a motion for class certification, it does not present the type of “contradictory
14 allegations” cited by Ulta as requiring dismissal at this stage of the litigation. See Def. Reply at 4,
15 Docket Item No. 21 (citing Canal Ins. Co. v. Dara Transport, No. 09-CV-02104-SKO, 2010 WL
16 2650692, at *4 (E.D. Cal. July 1, 2010) (considering directly contradictory statements that the
17 defendant both did and did not own the relevant tractor and trailer) and Lyshorn v. JP Morgan
18 Chase Bank, NA, No. 12-CV-05490-JSW, 2013 WL 2606519, at *3 (N.D. Cal. June 11, 2013)
19 (considering, inter alia, directly contradictory statements that a promissory note and deed of trust
20 both were and were not validly transferred to certain parties and that the plaintiffs did make trial
21 modification payments but did not know they had a trial modification plan)).

22 Nor is the court compelled by Ulta’s argument that further specificity is required on this
23 claim. Ms. Galvez has included straightforward allegations: Ulta employees were required to
24 accept payment of their wages in the form of an ATM card that carried fees; these fees precluded
25 the employees from fully accessing their funds. FAC ¶¶ 56-57, Dkt. No. 15. Such allegations are
26 sufficient to put Ulta on fair notice of the substance of Ms. Galvez’s waiting time penalties claim to
27 the satisfaction of Federal Rule of Civil Procedure 8. See Twombly, 550 U.S. at 555. And having
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1 found that Ms. Galvez has stated a claim for violation of Labor Code §§ 201-204, the court also
2 finds that Ms. Galvez has stated a claim for unfair competition under Business & Professions Code
3 § 17200. See Cortez v. Purolator Air Filtration Prods. Co., 23 Cal. 4th 163, 178 (2000)
4 (recognizing that “any business act or practice that violates the Labor Code through failure to pay
5 wages is, by definition . . . an unfair business practice” in violation of the UCL).

6 **III. Conclusion**

7 For the foregoing reasons, the court hereby STAYS claims One through Four in their
8 entirety and claims Five through Seven only to the extent they are premised on Ulta’s exit check
9 policy, at least until the District Court issues a decision on the submitted Motion for Class
10 Certification in Moore. Within ten days of the filing of that decision, the parties shall file a Joint
11 Notice informing the court of such development and shall request that a Case Management
12 Conference be scheduled.

13 The court DENIES WITHOUT PREJUDICE Ulta’s Motion to Dismiss as to the stayed
14 claims. Ulta may move again to dismiss these claims once the stay has been dissolved.

15 The court further DENIES Ulta’s Motion to Dismiss as to the fifth cause of action and
16 DENIES Ulta’s Motion to Dismiss as to the seventh cause of action to the extent it depends on the
17 fifth or sixth causes of action. Litigation may proceed on the portions of the fifth, sixth, and
18 seventh claims that are premised on allegations other than Ulta’s exit check policy.

19 On or before **September 8, 2014**, the parties shall submit an Updated Joint Case
20 Management Statement which contains, inter alia, a proposed schedule for this action in light of
21 this ruling.

22 **IT IS SO ORDERED**

23 Dated: August 29, 2014

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25 EDWARD J. DAVILA
26 United States District Judge
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