

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ADAM SHAW, et al.,
Plaintiffs,

v.

WIZARDS OF THE COAST, LLC,
Defendant.

Case No. [5:16-cv-01924-EJD](#)

**ORDER GRANTING MOTION TO
DISMISS WITH LEAVE TO AMEND**

Re: Dkt. No. 75

Defendant Wizards of the Coast (“Defendant”) moves to dismiss the Second Amended Complaint (“Complaint”) for failure to state a claim pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. The Complaint includes a total of ten causes of action predicated on alleged violations of the Fair Labor Standards Act (“FLSA”), California Labor Code, and the California Business & Professions Code. Defendant contends that the Complaint fails to allege that any of the nineteen Plaintiffs were employed by or otherwise performed work for Defendant in the state of California, and such omission is fatal to the second through tenth causes of action brought under California law. See, e.g., O’Connor v. Uber Technologies, Inc., 58 F. Supp. 3d 989, 1004-07 (N.D. Cal. 2014) (under California law, a presumption exists against the extraterritorial application of state law). Defendant also contends that only one of the nineteen Plaintiffs alleges that he performed work for Defendant in the United States, and therefore the FLSA claim must be dismissed. See 29 U.S.C. § 213(f) (FLSA not applicable to employment in foreign countries and certain U.S. territories); Truman v. DeWolff, Boberg & Assocs., Inc., No. 07-1702, 2009 WL 2015126, at *1 (W.D. Pa. July 7, 2009) (“The FLSA expressly exempts from its overtime requirements work performed by an employee outside of the United States.”). Finally, Defendant

Case No.: [5:16-cv-01924-EJD](#)

ORDER GRANTING MOTION TO DISMISS WITH LEAVE TO AMEND

1 contends that the Complaint fails to satisfy Rule 8 of the Federal Rules of Civil Procedure because
2 each of the nineteen Plaintiffs attempt to maintain all ten causes of action against Defendant
3 through conclusory allegations that refer to “Plaintiffs” collectively without specific allegations
4 plausibly stating a claim for relief as to each of them.


5 In response, Plaintiffs request leave to amend the Complaint pursuant to Rule 15 of the
6 Federal Rules of Civil Procedure to include specific allegations regarding the location of work
7 performed on Defendant’s behalf by each named Plaintiff. Plaintiffs represent that they
8 “do not intend to add new parties or claims, but merely to satisfy pleading standards for the
9 currently plead claims.” Dkt. No. 76, p.3.

10 Based upon the foregoing, Defendant’s motion to dismiss is GRANTED with leave to
11 amend. Plaintiffs shall file and serve an amended complaint no later than September 28, 2018.

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO ORDERED.

Dated: September 6, 2018



EDWARD J. DAVILA
United States District Judge