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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 SCHOULEE CONES, et al,  
12 Plaintiffs,  
13 v.  
14 PAREXEL INTERNATIONAL  
15 CORPORATION,  
16 Defendant.

Case No.: 3:16-cv-03084-L-BGS

**ORDER GRANTING IN PART AND  
DENYING IN PART DEFENDANTS'  
MOTION [Doc. 11] TO DISMISS**

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18 Pending before the Court is Defendant Parexel International Corporation LLC's  
19 ("Defendant") motion to dismiss portions of Plaintiffs'<sup>1</sup> First Amended Complaint. The  
20 Court decides the matter on the papers submitted and without oral argument. See Civ. L.  
21 R. 7.1(d.1). For the reasons stated below, the Court **GRANTS IN PART** and **DENIES**  
22 **IN PART** Defendant's Motion.  
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28 <sup>1</sup> This is a putative class/collective action. The named plaintiffs are Schoulee Cones and Dexter Pasis.

1 **I. BACKGROUND**

2 Plaintiffs in this action are former employees of Defendant. During their  
3 employment, Plaintiffs were classified as exempt salaried employees and worked in  
4 excess of eight hours a day and forty hours a week. Plaintiffs contend that their  
5 classification as exempt was improper. As a result of this misclassification, Plaintiffs  
6 allege they were wrongfully denied overtime pay, meal and rest periods, properly  
7 itemized wage statements, and prompt payment of all wages upon termination. Plaintiffs  
8 filed a First Amended Class Action Complaint on February 15, 2017 alleging violations  
9 of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201; California Labor Code  
10 Sections 201, 202, 203, 226, 226.7, 510, 512, and 1198; and California’s Unfair  
11 Competition Law (the “UCL”), Cal. Bus. & Prof. Code §17200 et seq. (FAC [Doc. 8].)  
12 Defendant now moves to dismiss portions of the FAC. (MTD [Doc. 11].) Plaintiffs  
13 Oppose. (Opp’n [Doc. 12].)  
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15 **II. LEGAL STANDARD**

16 The court must dismiss a cause of action for failure to state a claim upon which  
17 relief can be granted. Fed. R. Civ. P. 12(b)(6). A motion to dismiss under Rule 12(b)(6)  
18 tests the complaint’s sufficiency. *See N. Star Int’l v. Ariz. Corp. Comm’n.*, 720 F.2d 578,  
19 581 (9th Cir. 1983). The court must assume the truth of all factual allegations and  
20 “construe them in the light most favorable to [the nonmoving party].” *Gompper v. VISX,*  
21 *Inc.*, 298 F.3d 893, 895 (9th Cir. 2002); *see also Walleri v. Fed. Home Loan Bank of*  
22 *Seattle*, 83 F.2d 1575, 1580 (9th Cir. 1996).

23 As the Supreme Court explained, “[w]hile a complaint attacked by a Rule 12(b)(6)  
24 motion to dismiss does not need detailed factual allegations, a plaintiff’s obligation to  
25 provide the ‘grounds’ of his ‘entitlement to relief’ requires more than labels and  
26 conclusions, and a formulaic recitation of the elements of a cause of action will not do.”  
27 *Bell Atl. Corp. v. Twombly*, 127 S.Ct. 1955, 1964-65 (2007) (internal citations and  
28 quotation marks omitted). Instead, the allegation in the complaint “must be enough to

1 raise a right to relief above the speculative level.” *Id.* at 1965. A complaint may be  
2 dismissed as a matter of law either for lack of a cognizable legal theory or for insufficient  
3 facts under a cognizable theory. *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530,  
4 534 (9th Cir. 1984).

### 5 6 **III. PUNITIVE DAMAGES**

7 Defendant’s motion seeks dismissal of Plaintiffs’ prayer for punitive damages on  
8 the grounds that none of the claims alleged in the FAC can trigger a punitive damages  
9 award. The authority cited by Defendant does clearly establish that, in the context of  
10 statutory wage and hour claims under the FLSA and the California Labor Code, punitive  
11 damages are not available. *Brewer v. Premier Golf Properties*, 168 Cal. App. 4th 1243,  
12 1252 (2009) (punitive damages not available for violations of California Labor Code  
13 provisions that govern only where an employment contract exists); *Dittmar v. Costco*  
14 *Wholesale Corp.*, 2015 WL 7106636 at \*5 (S.D. Cal. 2015) (same); *Madrigal v. Tommy*  
15 *Bahama Grp., Inc.*, 2010 WL 4384235 at \*7–8 (C.D. Cal. 2010) (no punitive damages  
16 available for FLSA violations). Tellingly, Plaintiffs do not contest Defendant’s  
17 arguments that punitive damages are unavailable on the presently alleged claims. Rather,  
18 Plaintiffs’ opposition argues only that a Fed. R. Civ. P. 12(b)(6) motion is a procedurally  
19 improper method by which to attack a prayer for relief. This argument is unpersuasive  
20 because it flatly contradicts binding Ninth Circuit authority cited in Defendant’s original  
21 motion. *Whittlestone, Inc. v. Handi-Craft Co.*, 618 F.3d 970, 974 (9th Cir. 2014)  
22 (holding that a motion under Fed. R. Civ. P. 12(b)6 or 56 is the proper pre-trial  
23 mechanism to attack a prayer for relief contained in a complaint). Accordingly, the Court  
24 **GRANTS** Defendant’s motion as to the prayer for punitive damages.

### 25 26 **IV. CAL. LABOR CODE § 226 AND THE UCL**

27 Defendant seeks dismissal of Plaintiffs’ UCL claim to the extent it is predicated on  
28 Defendant’s alleged failure to provide properly itemized wage statements in violation of

1 Cal. Labor Code §226. The only remedies the UCL provides for private plaintiffs are  
2 restitution and injunctive relief. *Pineda v. Bank of America, N.A.*, 50 Cal. App. 4th 1389,  
3 1401 (2010) (citing Cal. Bus. & Prof. Code § 17203). “The object of restitution is to  
4 restore the status quo by returning to the plaintiff funds in which he or she has an  
5 ownership interest.” *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1149  
6 (2003). Thus, the California Supreme Court has held that Labor Code penalties for  
7 failure to pay wages are recoverable under the UCL because “[o]nce earned,... unpaid  
8 wages [become] property to which ... employees [are] entitled.” *Cortez v. Purolator Air*  
9 *Filtration Products Co.*, 23 Cal. 4th 163, 168 (2000). By contrast, the California  
10 Supreme Court has held that Labor Code penalties for the late payment of wages  
11 following termination are not recoverable under the UCL because such penalties do not  
12 serve to “restore the status quo by returning to the plaintiff funds in which he or she has  
13 an ownership interest.” *Pineda*, 50 Cal. 4th at 1401.

14 Labor Code penalties for failure to provide properly itemized wage statements are  
15 much more similar to penalties for the late payment of wages than they are to penalties  
16 for failure to pay wages at all. To wit, as with penalties for late payment of wages, a  
17 plaintiff has no vested interest in penalties for failure to provide properly itemized wage  
18 statements unless and until awarded by a relevant body. *See Pineda*, 50 Cal. 4th at 1402  
19 (an employee has no vested interest in penalties for late payment of wages unless and  
20 until a relevant body awards such penalties.) Because Plaintiffs therefore have no vested  
21 ownership interest in penalties for the late payment of wages, they cannot seek these  
22 penalties as restitution.

23 That said, the UCL also provides for injunctive relief. *Pineda*, 50 Cal. App. 4th at  
24 1401 (citing Cal. Bus. & Prof. Code § 17203). Further, Plaintiffs’ First Amended  
25 Complaint can be construed as including a request for an injunction requiring Defendant  
26 to issue Labor Code complaint wage statements. (FAC ¶ L.) Defendant presents no  
27 argument as to why Plaintiffs could not feasibly obtain such relief. Accordingly, the  
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1 Court **DENIES** Defendant's motion as to the inclusion of the wage statement violation in  
2 Plaintiffs' sixth claim for relief.

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4 **V. ATTORNEYS' FEES AND THE UCL**

5 Defendant also seeks dismissal of Plaintiffs' request under California Code of Civil  
6 Procedure § 1021.5 for attorneys' fees stemming from prosecution of the UCL claim.

7 §1021.5 provides that

8 Upon motion, a court may award attorneys' fees to a successful party against  
9 one or more opposing parties in any action which has resulted in the  
10 enforcement of an important right affecting the public interest if: (a) a  
11 significant benefit, whether pecuniary or nonpecuniary, has been conferred  
12 on the general public or a large class of persons, (b) the necessity and  
13 financial burden of private enforcement, or of enforcement by one public  
14 entity against another public entity, are such as to make the award  
15 appropriate, and (c) such fees should not in the interest of justice be paid out  
16 of the recovery, if any.

17 Cal. Civ. P. Code § 1021.5. Defendant argues that class action statutory employment  
18 litigation such as the present case cannot trigger § 1021.5 because the potential recovery  
19 provides adequate incentive for parties to bring this type of suit. Plaintiffs oppose,  
20 arguing that the issue of § 1021.5 attorney's fees is not ripe for consideration at the  
21 pleading stage.

22 The Court agrees with Plaintiffs that the issue of attorney's fees is not ripe for  
23 adjudication. To recover attorney's fees under § 1021.5, a plaintiff need not even include  
24 a prayer in any pleadings. *Snatchko v. Westfield LLC*, 187 Cal. App. 4th 469, 497 (2010).  
25 Rather, a plaintiff can raise the issue for the first time via a post judgment motion. *Id.*  
26 Furthermore, determining whether awarding attorneys' fees under § 1021.5 is appropriate  
27 requires a factor based analysis that seems impossible to properly undertake at the  
28 pleading stage. *See Madrigal v. Tommy Bahama Grp., Inc.*, 2010 WL 4384235 (C.D.  
Cal. 2010) (denying a motion to dismiss a prayer for attorneys' fees on materially  
identical facts). Accordingly, the Court **DENIES** Defendant's motion as to the prayer for  
§ 1021.5 attorneys' fees.

1 **VI. CONCLUSION & ORDER**

2 For the foregoing reasons, the Court **GRANTS IN PART** Defendant's motion to  
3 dismiss as follows:

- 4 • Plaintiff's prayer for punitive damages is dismissed.

5 **IT IS SO ORDERED.**

6 Dated: July 6, 2017

7   
8 Hon. M. James Lorenz  
9 United States District Judge

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