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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 NATHANIEL MORGAN, an individual;
12 MICHAEL BEVAN, an individual;
13 individually and on behalf of all others
14 similarly situated,

14 Plaintiffs,

15 v.

16 ROHR, INC., a corporation; HAMILTON
17 SUNDSTRAND, d/b/a COLLINS
18 AEROSPACE; UNITED
19 TECHNOLOGIES CORPORATION,

19 Defendants.

Case No.: 20-cv-574-GPC-AHG

**ORDER GRANTING DEFENDANTS'
MOTION FOR JUDGMENT ON THE
PLEADINGS AND VACATING
HEARING**

[ECF No. 160]

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21 Plaintiffs' action is a years' long dispute involving Defendants' alleged violations
22 of California labor law. Currently pending before the Court is Defendants' Motion for
23 Judgment on the Pleadings. ECF No. 160. Plaintiffs filed an Opposition, (ECF No. 170),
24 and Defendants filed a Reply in support, (ECF No. 177). Defendants seek dismissal of
25 Plaintiffs' eighth claim for relief pursuant to California's Unfair Competition Law
26 ("UCL"). For the reasons below, the Court **GRANTS** Defendants' Motion. The Court
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1 **DISMISSES** Plaintiffs’ UCL claim subject to refiling in a court of competent
2 jurisdiction.

3 **FACTUAL BACKGROUND**

4 Plaintiffs Nathaniel Morgan and Michael Bevan¹ brought this class action on
5 behalf of themselves and other individuals employed by Defendants Rohr, Inc.; Hamilton
6 Sundstrand d/b/a UTC Aerospace Systems d/b/a Collins Aerospace; and United
7 Technologies Corporation (collectively “Defendants”) as non-exempt employees in the
8 State of California from March 27, 2015 to March 31, 2022 to seek recovery of unpaid
9 compensation. ECF No. 33, Second Amended Complaint (“SAC”) at 2-3, 8.² Plaintiffs
10 allege Defendants engaged in illegal labor and payroll policies and practices, which
11 resulted in “failing to pay overtime premiums; failing to provide rest and meal periods;
12 failing to provide accurate itemized statements for each pay period; failing to properly
13 compensate Plaintiffs and Class Members for necessary expenditures incurred in the
14 discharge of their duties; and requiring, permitting or suffering the employees to work off
15 the clock” SAC at 7. Plaintiffs allege violations of the California Labor Code, the
16 applicable Industrial Welfare Commission (“IWC”) Wage Order, and the California
17 Business and Professions Code. SAC at 8-9.

18 Plaintiffs allege that all Defendants are the alter egos of one another and joint
19 employers of all employees, as Plaintiffs claim is demonstrated by their employment
20 records. SAC at 6-7. Defendants exist to “provide[] a broad range of high-technology
21 products and services to the global aerospace and building systems industries.” SAC at 5.
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25 ¹ Plaintiff Michael Bevan was added as a second class representative in the Second
26 Amended Complaint. *See* ECF No. 33 (“Second Amended Complaint” or “SAC”).

27 ² Page citations refer to CM/ECF pagination.

1 During the relevant time period, Defendants had two facilities in California, one in
2 Riverside and the other in Chula Vista. SAC at 5.

3 Filed on June 19, 2020, Plaintiffs' Second Amended Complaint alleges eight
4 causes of action: (1) failure to authorize and permit required meal periods (Cal. Labor
5 Code §§ 226.7, 510, 512, 1194, 1197; IWC Wage Order No. 9-2001, § 11); (2) failure to
6 authorize and permit required rest periods (Cal. Labor Code §§ 226.7, 512; IWC Wage
7 Order No. 9-2001, § 12); (3) failure to pay overtime wages (Cal. Labor Code §§ 510,
8 1194, 1198; IWC Wage Order No. 9-2001, § 3); (4) failure to pay minimum wages (Cal.
9 Labor Code §§ 1194, 1197; IWC Wage Order No. 9-2001, § 4); (5) failure to pay all
10 wages due to discharged and quitting employees (Cal. Labor Code §§ 201, 202, 203); (6)
11 failure to furnish accurate itemized wage statements (Cal. Labor Code § 226; IWC Wage
12 Order No. 9-2001, § 7); (7) failure to indemnify employees for necessary expenditures
13 incurred in discharge of duties (Cal. Labor Code § 2802); and (8) unfair and unlawful
14 business practices (Cal. Bus. & Prof. Code §§ 17200 et. seq.). SAC at 9-24.

15 **PROCEDURAL BACKGROUND**

16 On March 27, 2019, Plaintiff Morgan filed this action in Solano County Superior
17 Court. ECF No. 1 at 6. On May 6, 2019, Defendants removed to the Eastern District of
18 California pursuant to the Class Action Fairness Act, 28 U.S.C. §1332(d) ("CAFA"). *See*
19 ECF No. 1. On March 26, 2020, the action was transferred to this Court in the Southern
20 District of California. ECF No. 23.

21 Plaintiffs filed a Second Amended Complaint in this action on June 19, 2020, and
22 this remains the operative complaint. ECF No. 33. On December 1, 2021, the Court
23 denied Plaintiffs' request to file a Third Amended Complaint adding an additional named
24 plaintiff and class representative after finding that Plaintiffs had not exercised diligence,
25 in part because they waited too long to file the motion requesting leave to file the
26 proposed amended complaint. *See* ECF No. 99 at 8-10.

1 On March 31, 2022, the Court granted in part Plaintiffs' Motion for Class
2 Certification. ECF No. 105. In their Motion, Plaintiffs sought to certify the following
3 classes and subclasses:

4 1. Minimum Wage Class: all persons employed by Defendants as non-
5 exempt employees at Defendants' facilities during the Class Period.

6 a. Shaved Time Subclass: all persons employed by Defendants as
7 unionized, non-exempt employees at Defendants' facilities in
8 Riverside and Chula Vista from March 27, 2015 through October
9 13, 2019 who were not paid by Defendants for all time recorded
10 as worked on at least one shift.

11 b. Automatic Deduction Subclass: all persons employed by
12 Defendants as unionized, non-exempt employees at Defendants'
13 facilities in Riverside and Chula Vista from March 27, 2015
14 through October 13, 2019 who worked at least one shift over five
15 hours long in which there was no recorded meal break of at least
16 30 minutes.

17 c. Rounded Meal Break Subclass: all persons employed by
18 Defendants as unionized, non-exempt employees at Defendants'
19 facilities in Riverside and Chula Vista from October 13, 2019
20 through the date of class certification who worked at least one shift
21 over five hours in which the employee's rounded meal time was
22 greater than the employee's recorded meal break time.

23 d. Off-the-clock Subclass: all persons employed by Defendants as
24 unionized, non-exempt employees at Defendants' facilities in
25 Riverside and Chula Vista during the Class Period.

26 2. Overtime Class: all persons employed by Defendants as non-exempt
27 employees at Defendants' facilities in Riverside and Chula Vista during
28 the Class Period who worked at least one shift over eight hours long.

a. Shaved Time Subclass: all persons employed by Defendants as
non- exempt, unionized employees at Defendants' facilities in
Riverside and Chula Vista from March 27, 2015 through October
13, 2019 who were not paid by Defendants for all time recorded
as worked on at least one shift which was over eight hours long.

b. Automatic Deduction Subclass: all persons employed by
Defendants as unionized, non-exempt employees at Defendants'
facilities in Riverside and Chula Vista from March 27, 2015
through October 13, 2019 who worked at least one shift over eight

1 hours long in which there was no recorded meal break of at least
2 30 minutes.

3 c. Rounded Meal Break Subclass: all persons employed as
4 unionized, non-exempt employees at Defendants' facilities in
5 Riverside and Chula Vista from October 14, 2019 through the date
6 of class certification who worked at least one shift over eight hours
7 long in which the employee's rounded meal time was greater than
8 the employee's recorded meal break time.

9 d. Regular Rate Subclass: all persons employed by Defendants as
10 non-exempt employees at Defendants' Riverside and Chula Vista
11 facilities during the Class Period who worked at least one shift
12 over eight hours long and also earned at least one other form of
13 non-discretionary remuneration (such as shift differentials, shift
14 premiums, special awards, and other bonuses) during the same pay
15 period.

16 e. Off-the-clock Subclass: all persons employed by Defendants as
17 non-exempt employees at Defendants' Riverside and Chula Vista
18 facilities during the Class Period who worked at least one shift
19 over eight hours long.

20 3. Rest Break Class: all persons employed by Defendants as non-
21 exempt employees at Defendants' facilities in Riverside and Chula
22 Vista during the Class Period who worked at least one shift over five
23 hours long.

24 4. Meal Period Class: all persons employed by Defendants as non-
25 exempt employees at their facilities in Riverside and Chula Vista during
26 the Class Period who worked at least one shift over five hours long.

27 a. First Meal Break Subclass (Union Employees): all persons
28 employed by Defendants as unionized, non-exempt employees at
Defendants' facilities in Riverside and Chula Vista during the
Class Period who worked at least one shift over five hours long.

b. First Meal Break Subclass (Non-Union Employees): all persons
employed by Defendants as non-unionized, non-exempt
employees at Defendants' facilities in Riverside and Chula Vista
during the Class Period who worked at least one shift over five
hours long.

c. Second Meal Period Subclass: all persons employed by
Defendants as nonexempt employees at Defendants' facilities in
Riverside and Chula Vista during the Class Period who worked at
least one shift over ten hours long.

1 5. Wage Statement Class: all persons employed by Defendants at
2 Defendants' facilities in Riverside and Chula Vista as non-exempt
3 employees during the Class Period, who received at least one wage
statement from Defendants.

4 ECF No. 105 (order granting in part class certification) at 7-8.

5 The Court granted class certification only for union employees and only for the
6 following classes and subclasses: the Meal Period Class; the Overtime Class; and the
7 Minimum Wage Class, as well as the related subclasses under the automatic deduction of
8 meal break, rounded meal break, first meal break and second meal break, and wage
9 statement claims. ECF No. 105 at 45-46. The Court further certified for union employees
10 the derivative claims relating to Defendant's failure to provide accurate and itemized
11 wage statements and unfair and unlawful business practices under California law. *Id.*

12 **LEGAL STANDARD**

13 **I. Federal Rule of Civil Procedure 12(c)**

14 Federal Rule of Civil Procedure ("Rule") 12(c) states that "a party may move for
15 judgment on the pleadings" once the pleadings are closed "but early enough not to delay
16 trial." Fed. R. Civ. P. 12(c). The standard to determine a Rule 12(c) motion is the same as
17 the standard for a Rule 12(b)(6) motion to dismiss. *Upper Deck Co. v. Panini Am., Inc.*,
18 553 F. Supp. 3d 956, 960-961 (S.D. Cal. 2021) (citing *Cafasso, U.S. ex rel. v. Gen.*
19 *Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1053 n.4 (9th Cir. 2011)). A court must accept all
20 factual allegations in the complaint as true and construe them in the light most favorable
21 to the non-moving party. *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009) (citing
22 *Turner v. Cook*, 362 F.3d 1219, 1225 (9th Cir. 2004)). A court should grant judgment on
23 the pleadings "when there is no issue of material fact in dispute, and the moving party is
24 entitled to judgment as a matter of law." *Id.* (citing *Heliotrope Gen., Inc. v. Ford Motor*
25 *Co.*, 189 F.3d 971, 978 (9th Cir. 1999)).

1 California wage and hour laws constitute a business practice because Defendant’s
2 aforementioned acts and omissions were done repeatedly over a significant period of time
3”). All of Plaintiffs’ claims constitute monetary harm, which “are ‘exactly’ the type
4 of claim ‘for which legal remedies are appropriate.’” *Fan v. Home Depot U.S.A., Inc.*,
5 2022 WL 16964099, at *3 (E.D. Cal. Nov. 16, 2022) (quoting *Sharma v. Volkswagen AG*,
6 524 F. Supp. 3d 891, 908 (N.D. Cal. 2021)).

7 Plaintiffs’ Opposition does not address this point, and appears to concede that as
8 presently pled, their eighth cause of action fails as a matter of law. *See* ECF No. 170.
9 Plaintiffs respond that prior to dismissing the UCL claim, they should be granted leave to
10 amend their Second Amended Complaint to seek injunctive relief. ECF No. 170 at 4.
11 Accordingly, this Court lacks jurisdiction over Plaintiffs’ claim under the UCL, and
12 **GRANTS** Defendant’s Motion for Judgment on the Pleadings.

13 **II. Leave to Amend**

14 In an effort to salvage their UCL claim, Plaintiffs request leave to amend their
15 Second Amended Complaint to include prospective injunctive relief. ECF No. 170 at 4.
16 As stated, because Plaintiffs’ deadline to amend has expired, they must meet the “good
17 cause” standard under Rule 16. *See* ECF No. 44 (scheduling order); ECF No. 99 at 8
18 (finding the October 2, 2020 deadline to file an amended complaint was the operative
19 deadline). Because Rule 16’s “good cause” standard primarily considers a party’s
20 diligence, the Court first must determine whether Plaintiffs have acted diligently.

21 Four years have passed since Plaintiffs initially filed their lawsuit. Because
22 California state courts do not have Article III standing requirements prohibiting former
23 employees from obtaining injunctive relief, Plaintiffs had the ability to sue for injunctive
24 relief in the lawsuit initially filed in Solano County Superior Court. *See Harris v. City of*
25 *Santa Monica*, 56 Cal. 4th 203, 234 (Cal. 2013) (stating terminated employees may be
26 awarded injunctive relief). Further, the Second Amended Complaint was filed in this
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1 Court in June 2020, and named Michael Bevan, a current employee of Defendants, as a
2 plaintiff. *See* SAC at 3. At this point, Plaintiffs could have added a claim for injunctive
3 relief in federal court. *See Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 988 (9th Cir.
4 2011) (“As the Supreme Court explained, only current employees have standing to seek
5 injunctive relief.”). Plaintiffs even requested leave to file a Third Amended Complaint,
6 which this Court denied after finding Plaintiffs had not been diligent in seeking
7 amendment, but still did not include a request for injunctive relief. *See* ECF No. 74
8 (Motion to File Third Amended Complaint); ECF No. 99 (Order Denying Leave to File
9 Third Amended Complaint).

10 In sum, the Court finds this multi-year delay constitutes a lack of diligence on
11 behalf of Plaintiffs and does not support a finding of good cause under Rule 16. Plaintiffs
12 provide no new facts that would allow this Court to find their delay in seeking
13 amendment was justified. “A district court does not ‘abuse its discretion in denying a
14 motion to amend a complaint . . . when the movant presented no new facts but only new
15 theories and provided no satisfactory explanation for his failure to fully develop his
16 contentions originally.” *Allen v. City of Beverly Hills*, 911 F.2d 367, 374 (9th Cir. 1990)
17 (quoting *Vincent v. Trend Western Tech. Corp.*, 828 F.2d 563, 570-71 (9th Cir. 1987)). In
18 addition, “a motion for summary judgment [is] pending and [the] disposition of the case
19 would be unduly delayed by granting the motion for leave to amend.” *M/V Am. Queen v.*
20 *San Diego Marine Const. Corp.*, 708 F.2d 1483, 1492 (9th Cir. 1983). Thus, the Court
21 **DENIES** Plaintiffs’ request for leave to amend.

22 **III. Remand**

23 In the alternative, Plaintiffs request that their UCL claim be remanded to state
24 court. ECF No. 170 at 6. Plaintiffs cite to *Moriarty v. American General Life Insurance*
25 *Co.*, 2022 WL 2959560 (S.D. Cal. July 26, 2022), to support this proposition. However,
26 *Guzman v. Polaris Industries Inc.*, 49 F.4th 1308 (9th Cir. 2022), decided two months
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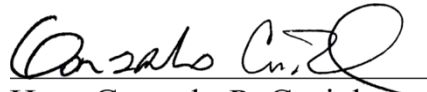
1 after *Moriarty* states that the proper remedy is for the district to dismiss the “UCL claim
2 without prejudice to refiling the same claim in state court.” 49 F.4th 1308, 1314 (9th Cir.
3 2022). Thus, this Court declines to remand Plaintiffs’ UCL claims and instead
4 **DISMISSES** the UCL claim **without prejudice**, subject to refiling in a court of
5 competent jurisdiction.

6 **CONCLUSION**

7 For the reasons above, the Court **GRANTS** Defendants’ Motion for Judgment on
8 the Pleadings and **DISMISSES** Plaintiffs’ eighth cause of action without prejudice.
9 Because the UCL allows a four-year statute of limitations and the California Labor Code
10 has a shorter, three-year statute of limitations, this ruling will necessarily affect the class
11 definition by reducing the class period accordingly. The class period now runs from
12 **March 27, 2016 to March 31, 2022.**

13 **IT IS SO ORDERED.**

14 Dated: July 7, 2023

15 
16 Hon. Gonzalo P. Curiel
17 United States District Judge
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