

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA**

McElroy v. Vitalant

McElroy · No. 25-cv-02996-RS · Decided September 29, 2025

OPINION

1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 NORTHERN DISTRICT OF
CALIFORNIA 9 KIM J. MCELROY, 10 Case No. 25-cv-02996-RS Plaintiff, 11 v. ORDER
GRANTING DEFENDANT’S 12 MOTION FOR JUDGMENT ON THE VITALANT,
PLEADINGS WITH LEAVE TO 13 AMEND Defendant. 14 15 Kim McElroy, on behalf of
herself and a putative class of similarly situated individuals, 16 sued Vitalant for various violations
of the California Labor Code and the California Business and 17 Professions Code.

Vitalant moves for judgment on the pleadings under Federal Rule of Civil 18 Procedure 12(c) or,
in the alternative, to strike under Rule 12(f) and Rule 23(d)(1)(D). Because the 19 complaint fails
to allege facts sufficient to make any of the asserted violations plausible, Vitalant’s 20 motion for
judgment on the pleadings is granted with leave to amend, and its motion to strike is 21 denied as
moot.

Pursuant to Civil Local Rule 7-1(b), the motion is suitable for disposition without 22 oral
argument, and the hearing set for October 2, 2025, is vacated. 23 I. BACKGROUND 24 Kim
McElroy is a former employee of Vitalant, a nonprofit blood donation organization. 25 On behalf
of herself and others similarly situated, McElroy sued Vitalant in California state court, 26
asserting eleven causes of action under various California wage and hour laws.

See Dkt. 1, Ex. E 27 (FAC). After answering McElroy’s amended complaint, Vitalant removed the
case to federal 1 moves for a judgment on the pleadings or, in the alternative, to strike. See Dkt.
19. 2 II. DISCUSSION 3 A. Legal Standard 4 “After pleadings are closed—but early enough not
to delay trial—a party may move for 5 judgment on the pleadings.” Fed. R. Civ.

P. 12(c). Judgment on the pleadings is warranted when 6 the alleged facts, taken as true and
construed in the light most favorable to the non-moving party, 7 entitle the moving party to a
judgment as a matter of law. See *Hoeft v. Tucson Unified Sch. Dist.*, 8 967 F.2d 1298, 1301 n.2
(9th Cir. 1992). 9 The legal standard governing a motion for judgment on the pleadings under
Rule 12(c) is 10 substantially identical to that governing a motion to dismiss under Rule 12(b)(6).

See *Chavez v. 11 United States*, 683 F.3d 1102, 1108 (9th Cir. 2012). Therefore, the question is
whether the 12 complaint alleges sufficient facts which, if accepted as true, “state a claim to relief

that is plausible 13 on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Conclusory statements or 14 formulaic recitations of the elements of a claim are not sufficient.

See *Chavez*, 683 F.3d at 1108. 15 Rather, “[a] claim has facial plausibility when the plaintiff pleads factual content that allows the 16 court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” 17 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Assessing facial plausibility is a context-sensitive 18 task that requires judicial experience and common sense.

Id. at 679. 19 B. Discussion 20 i. Claims One and Two: Failure to Provide Meal and Rest Periods 21 McElroy alleges that Vitalant violated California law by requiring her and the putative 22 class members to work more than five hours per day without providing a 30-minute meal period 23 and to work more than four hours without permitting a ten-minute rest period.

See California 24 Labor Code §§ 226.7, 512(a). Specifically, McElroy alleges that Vitalant had a “common policy 25 and practice” of denying her and the putative class members the opportunity to take meal and rest 26 breaks “due to understaffing, heavy workloads, and uncompensated pre-shift duties,” which 27 included Covid-19 testing and vaccinations and required communications with supervisors.

See 1 FAC ¶¶ 20, 24. 2 McElroy’s complaint is devoid of any detail that would make plausible her claim that 3 Vitalant systematically denied her and the putative class members meal and rest breaks. Aside 4 from vague references to “understaffing” and “heavy workloads,” the complaint fails to explain 5 what precisely impeded her ability to take meal and rest breaks.

McElroy does not identify a 6 single, specific instance in which she was denied a meal or rest break, nor does she detail how 7 often she was denied meal and rest breaks, who denied her the breaks, or what she was required to 8 do during the time she should have been given off.

As courts routinely find, this dearth of detail 9 precludes an inference, at this stage, that Vitalant required McElroy to work when she should have 10 been eating or resting. See, e.g., *Miranda v. Am. Nat’l Red Cross*, 2022 WL 22860766, at *2 (N.D. 11 Cal. Sept. 7, 2022) (granting motion to dismiss where “the First Amended Complaint lacks 12 sufficient facts describing any interruptions to support a reasonable inference that Defendant 13 required Plaintiff to perform work during her breaks”); *Suarez v. Bank of Am.*

Corp., 2018 WL 14 2431473, at *6 (N.D. Cal. May 30, 2018) (granting motion to dismiss meal and rest break claims 15 where plaintiff “d[id] not identify who interrupted [her] breaks” and “d[id] not offer any details as 16 to what these interruptions entail[ed], nor d[id] she describe what kind of work or tasks she 17 performed during her breaks”). 18 McElroy’s reliance on *Huynh v. Jabil Inc.*, 2023 WL 1802417 (N.D.

Cal. Feb. 7, 2023), is 19 misplaced. There, the plaintiff survived a motion to dismiss on his meal and rest break claims by 20 alleging “with specificity how [his employer] actively impeded his ability to take his meal breaks: 21 [his] supervisors (i) requested work from him during purported breaks and (ii) failed to schedule a 22 second break for him and putative class members on shifts expending longer than ten hours.” Id., 23 at *5.

As explained, McElroy has not alleged anything “with specificity.” Id. Thus, unlike in 24 *Huynh*, McElroy has not done enough to create an inference that Vitalant failed to compensate her 25 for meal and rest periods. 26 ii. Claim Three: Failure to Pay Hourly and Overtime Wages 27 McElroy alleges that Vitalant violated California law by requiring that she and the putative 1 class members perform certain off-the-clock tasks without compensation.

In particular, she alleges 2 that Vitalant required its employees to undergo Covid-19 testing and vaccinations, prepare for 3 their shifts by communicating with supervisors, assist Shift Team Leaders with various work- 4 related tasks, attend weekly training sessions, and submit to physical examinations on the 5 weekends to comply with Department of Transportation licensing requirements—all without pay.

6 FAC ¶ 20. According to the complaint, these extra responsibilities caused McElroy and the 7 putative class members to work more than eight hours per day and forty hours per week. See id., 8 ¶ 21. 9 These allegations are insufficient to state a claim for failure to pay overtime. While the 10 complaint identifies off-the-clock work that could nudge the number of hours worked over the 11 overtime threshold, the allegation that it did so is entirely conclusory.

See FAC ¶ 21 (“This 12 uncompensated time caused Plaintiff and Class members to work in excess of eight (8), ten (10), 13 and/or twelve (12) hours a day and/or forty (40) hours a week.”). While wage and hour plaintiffs 14 need not allege the number of hours worked with “‘mathematical precision’... they should be 15 able to allege facts demonstrating that there was at least one workweek in which they worked in 16 excess of forty hours and were not paid overtime wages.” *Landers v. Quality Comms.*

Inc., 771 17 F.3d 638, 646 (9th Cir. 2014) (quoting *Dejesus v. HF Management Servs., LLC*, 726 F.3d 85, 90 18 (2d Cir. 2013)). By failing to offer any detail regarding the extra work—such as how often it was 19 required and how long it took—or any detail regarding her standard work schedule, McElroy has 20 not done enough to permit an inference that she ever worked more than forty hours in a workweek 21 without being appropriately compensated.

Therefore, her claim for overtime wages cannot 22 proceed. 23 Her claim for nonpayment of minimum hourly wages fares no better. Under *Landers*, 24 McElroy must plead facts supporting an inference that there was at least one workweek in which 25 she was not compensated for work she performed. See 771 F.3d at 646. While the complaint 26 identifies certain tasks that she

allegedly had to perform, it fails to provide any detail about when 27 or for how long she was required to perform those tasks.

See *Rubalcaba v. R&L Carriers Shared 1 Servs., L.L.C.*, 2024 WL 1772863, at *10 (N.D. Cal. Apr. 23, 2024) (dismissing minimum wage 2 claim because “Plaintiff [did] not allege anything about his role or roles while employed by 3 Defendant, let alone any specific instances of incorrectly tabulated wages”).

On that point, this 4 case resembles *Ramirez v. HV Glob. Mgmt. Corp.*, 2022 WL 2132916 (N.D. Cal. June 14, 2022). 5 There, the plaintiff alleged that his employer failed to compensate him for the additional hours he 6 spent “providing customer service” to clients. *Id.*, at *3.

The court determined that “providing 7 customer service” was “a far too generic allegation (1) to establish that there was at least one 8 workweek in which [the plaintiff] was not compensated for [regular hours worked] or (2) to 9 provide sufficient detail about the length and frequency of unpaid work.” *Id.* So too here. McElroy 10 identifies some broad categories of work that she allegedly had to perform, but she provides no 11 detail about the length, frequency, or nature of that work that would permit an inference that 12 Vitalant violated the law.

13 iii. McElroy’s Remaining Non-Derivative Claims 14 McElroy’s fourth cause of action alleges that Vitalant violated California law by failing to 15 pay McElroy and the putative class members for time they spent on the job waiting to be assigned 16 work. FAC ¶ 84. This allegation is entirely conclusory. McElroy does not identify a single 17 instance of her or anyone else being called to report without being put to work.

This failure 18 appears to stem from a misunderstanding of her pleading burden. It may be, as McElroy argues, 19 that she need only allege that Vitalant had an illegal policy that she was subject to, but she 20 nonetheless needs substantiate that allegation with specific facts that make the existence of that 21 policy and its application to her plausible instead of just possible.

She cannot do that by simply 22 saying that the policy exists. 23 McElroy’s other non-derivative claims suffer from the same defect. Her fifth cause of 24 action—failure to pay vacation wages—alleges the implementation of an illegal policy without 25 alleging any facts that would substantiate the existence of that policy. See FAC ¶ 34 (“Defendants 26 also had a common policy and practice of systematically failing to pay Plaintiff and Class 27 Members the requisite and accrued vacation time in accordance with California law.”).

1 McElroy’s eighth cause of action alleges that Vitalant failed to indemnify her for certain 2 business expenses such as medical scrubs, personal protective gear, and necessary medical 3 examinations. See FAC ¶ 112.

Here too, McElroy fails to identify a single instance in which she incurred those expenses at Vitalant's direction. In that regard, this case resembles *Franke v. Anderson Merchandisers LLC*, 2017 WL 3224656, at *7 (C.D. Cal. July 28, 2017). There, plaintiff's claim that her employer failed to reimburse her for certain expenses—including use of a personal phone for business purposes, use of a personal vehicle for business purposes, and the expense of complying with the employer's dress code—was dismissed because the plaintiff “fail[ed] to provide a single instance when such a cost was incurred.” *Id.* Lacking “facts regarding the nature of [the plaintiff's] position—or of the expenses,” the court there could not “reasonably infer these expenses were necessary for business purposes.” *Id.* A comparable deficiency here produces a comparable result: McElroy's pleadings are insufficient to create an inference that she incurred expenses for which Vitalant failed to provide reimbursement.

McElroy's final non-derivative cause of action alleges that Vitalant violated California law by paying her and the putative class members with “pay cards” that were usable only for a fee. FAC ¶ 117. However, McElroy has not alleged that she was ever denied the opportunity to access her wages for free. See *Christie v. Tuesday Morning, Inc.*, 2015 WL 12762065, at *4 (C.D.

Cal. 18 Mar. 2, 2015) (dismissing identical claim for that reason). She, therefore, has not plausibly alleged a violation of the California Labor Code. iv. Derivative Claims: Claims Six, Seven, Ten, and Eleven McElroy brings four causes of action that depend on her insufficiently pled substantive claims.

First, claim six alleges that Vitalant failed to provide her and the putative class members with accurate written wage statements. FAC ¶ 95. The parties agree that claim is derivative of the substantive failure-to-pay claims; that is, an employer cannot be held liable for failure to itemize wages that it was never obligated to pay. See *Naranjo v. Spectrum Sec. Servs., Inc.*, 547 P.3d 980, 26 990–91 (Cal.

2024). Because those failure-to-pay claims (claims one through three) are insufficiently pled, the claim for failure to provide accurate written wage statements fails as well. 1 Second, claim seven alleges that Vitalant failed to pay all final wages in a timely manner. 2 FAC ¶ 104–05.

The parties agree that this claim is also derivative of the substantive failure-to-pay 3 claims. There can be no failure to pay wages on time if there was no failure to pay them in the first 4 place. See *Frausto v. Bank of Am., Nat'l Ass'n*, 2018 WL 3659251, at *6 (N.D. Cal. Aug. 2, 2018). 5 Because the substantive failure-to-pay claims are insufficiently pled, the claim for failure to timely 6 pay all wages owed fails as well.

7 Third, claim ten alleges that Vitalant engaged in “unfair competition” under the California 8 Business and Professions Code. FAC ¶ 128. The parties agree that this claim is derivative of 9 McElroy's other allegations, too.1 *Puentes v. Wells Fargo Home Mortg., Inc.*, 160 Cal. App. 4th

10 638, 644 (2008) (“By proscribing ‘any unlawful’ business practice, section 17200 borrows 11 violations of other laws and treats them as unlawful practices that the unfair competition law 12 makes independently actionable.” (internal quotation marks omitted)).

Because the other legal 13 violations that McElroy asserts do not survive Vitalant’s motion for judgment on the pleadings, 14 the claim for unfair competition does not either. 15 Finally, McElroy seeks to prosecute a representative civil action against Vitalant for the 16 various wage and hour violations alleged under the Private Attorneys General Act (PAGA), Lab.

17 Code §§ 2698, et seq. However, McElroy cannot maintain a representative action under PAGA if 18 the predicate claims are insufficiently pled. See *Guerra v. OS Rest. Servs., LLC*, 2024 WL 19 3995329, at *4 (N.D. Cal. Aug. 28, 2024) (treating PAGA claim as derivative of the substantive 20 wage and hour claims). 21 III. CONCLUSION 22 For the foregoing reasons, Vitalant’s motion for judgment on the pleadings is granted.

23 McElroy is given leave to amend to cure the pleading deficiencies identified above. Vitalant’s 24 motion to strike is denied as moot. Any amended complaint must be filed within 21 days of the 25 26 1 Because McElroy’s unfair competition claim fails due to the deficiency of the underlying claims on which it relies, there is no need to address Vitalant’s argument that McElroy cannot assert an 27 unfair competition claim because she does not lack a legal remedy.

1 date of this order. 2 3 || ITISSO ORDERED. 4 5 Dated: September 29, 2025 6 RICHARD SEEBORG 7 Chief United States District Judge 8 9 10 11 12 13 © 15 16 = 17 Z 18 19 20 21 22 23 24 25 26 27 28 ORDER GRANTING MOTION FOR JUDGMENT ON THE PLEADINGS CASE No. 25-cv-02996-RS