

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Carolyn Kennard v. Cherry Hill Programs, Inc.

No. 3:25cv652-BTM-VET (S.D. Cal. Oct. 10, 2025) · No. 3:25cv652-BTM-VET · Decided October 10, 2025

SUMMARY

The United States District Court for the Southern District of California partially granted and partially denied Defendant Cherry Hill Programs, Inc.’s motion to dismiss Carolyn Kennard’s second amended wage-and-hour complaint. The court dismissed the sick-pay claim with leave to amend but allowed claims concerning cell-phone reimbursement, wage statements, waiting-time penalties, and other wage-and-hour violations to proceed. The court also allowed amendment to add an individual plaintiff but denied leave to add a FEHA claim without more specific factual allegations.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Barry Ted Moskowitz
JURISDICTION	United States District Court for the Southern District of California
DECIDED	October 10, 2025
DOCKET	3:25cv652-BTM-VET
DISPOSITION	other
PROCEDURAL POSTURE	Defendant moved under Federal Rule of Civil Procedure 12 to dismiss Plaintiff's second amended complaint, and Plaintiff moved under Rule 15 for leave to amend to add an individual plaintiff and a FEHA discrimination and retaliation claim.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court accepts well-pleaded factual allegations as true but disregards conclusory allegations and determines whether the complaint contains sufficient factual matter to state a plausible claim for relief. Leave to amend under Rule 15(a)(2) is freely granted when justice so requires, subject to considerations including bad faith, undue delay, prejudice, and futility.
PRECEDENTIAL VALUE	unpublished district court order

TOPICS

- motions to dismiss
- motion to amend
- wage and hour
- employment law
- civil procedure

PRACTICE AREAS

civil procedure

employment law

wage and hour

QUESTIONS PRESENTED

1. Whether the second amended complaint should be dismissed because it relied in part on allegations made on information and belief.
2. Whether the second amended complaint pleaded sufficient nonconclusory facts to state plausible wage-and-hour claims.
3. Whether the cell-phone-expense claim stated a plausible claim under California Labor Code section 2802(a).
4. Whether the sick-pay claim was adequately pleaded.
5. Whether the wage-statement and waiting-time claims were inadequately pleaded or improperly derivative of other claims.
6. Whether Plaintiff should receive leave to amend to add Deaune Boyd as an individual plaintiff and to add a FEHA discrimination and retaliation claim.

HOLDINGS

1. Neither Federal Rule of Civil Procedure 8 nor Rule 12 bars pleading based on information and belief, and Defendant failed to identify authority requiring a complaint to designate which allegations were based on personal knowledge and which were based on information and belief.
2. The second amended complaint generally contained enough factual matter to state plausible claims and provided fair notice of the claims and their factual bases.
3. The complaint plausibly alleged a claim for reimbursement of personal-cell-phone expenses under California Labor Code section 2802(a).
4. The sick-pay claim was inadequately pleaded and was dismissed with leave to amend.
5. The wage-statement and waiting-time claims were sufficiently alleged and were not subject to dismissal merely because Defendant characterized them as derivative claims.
6. Plaintiff was granted leave to amend to name Deaune Boyd as an individual plaintiff because futility was not clear.
7. Leave to add the proposed FEHA claim was denied because the proposed claim contained insufficient factual allegations and relied on conclusory assertions.

KEY QUOTATIONS

“A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” (1)

“Plaintiff is thus denied leave to amend to add a FEHA claim.” (4)

FACTUAL BACKGROUND

The second amended complaint alleged that Cherry Hill required Carolyn Kennard to work during meal and rest breaks, performed off-the-clock work, failed to provide accurate wage statements and a timely final paycheck, and failed to reimburse her for required use of a personal cell phone. It asserted nine California wage-and-hour causes of action, including claims for minimum wages, overtime, meal and rest periods, wage statements, expense reimbursement, waiting-time wages, and sick pay. Plaintiff also sought to add Deaune Boyd as an individual plaintiff and to assert discrimination and retaliation claims under FEHA.

PROCEDURAL HISTORY

Plaintiff filed a second amended complaint asserting nine California wage-and-hour claims and invoking jurisdiction under the Class Action Fairness Act. Defendant moved to dismiss, and Plaintiff moved for leave to amend. The district court granted the motion to dismiss in part and denied it in part, dismissed the sick-pay claim with leave to amend, allowed Plaintiff to add Deaune Boyd as an individual plaintiff, and denied leave to add the proposed FEHA claim while permitting a renewed amendment motion if supported by nonconclusory factual allegations.

DISPOSITION

other

CASES CITED

- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555-56 (2007)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000)
- Cook, Perkiss & Liehe, Inc. v. N. Cal. Collection Serv., 911 F.2d 242, 247 (9th Cir. 1990)
- Owens v. Kaiser Found. Health Plan, Inc., 244 F.3d 708, 712 (9th Cir. 2001)
- Bowen v. Target Corp., No. CV 16-2587 JGB, 2021 U.S. Dist. LEXIS 203250, *25 (C.D. Cal. June 24, 2021)
- Hernandez v. Wal-Mart Assocs., No. 21-cv-00166-FLA, 2025 U.S. Dist. LEXIS 95429, *7-10 (C.D. Cal. May 5, 2025)
- Townsend v. Univ. of Alaska, 543 F.3d 478, 485 (9th Cir. 2008)
- Cagno v. Supreme Mortg. Lending, Inc., No. 24-cv-04713-PHK, 2025 U.S. Dist. LEXIS 23873, *8 (N.D. Cal. 2025)

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