

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

McElroy v. Vitalant

McElroy · No. 25-cv-02996-RS · Decided December 11, 2025

SUMMARY

The United States District Court for the Northern District of California partially grants and partially denies Vitalant’s motion to dismiss Kim McElroy’s Second Amended Complaint and denies the motion to strike class allegations. The court holds that McElroy plausibly pleads a representative PAGA claim based on alleged failure to pay wages in cash on demand under California Labor Code section 212(a), while dismissing other claims with varying opportunities to amend. The court dismisses the unfair competition claim without leave to amend based on inadequate equitable remedies and lack of standing for prospective injunctive relief.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Richard Seeborg, Chief United States District Judge
JURISDICTION	United States District Court for the Northern District of California
DECIDED	December 11, 2025
DOCKET	25-cv-02996-RS
DISPOSITION	other
PROCEDURAL POSTURE	Defendant moved under Federal Rule of Civil Procedure 12(b)(6) to dismiss the Second Amended Complaint and under Rule 12(f) to strike class action allegations. The court had previously granted judgment on the pleadings against the First Amended Complaint with leave to amend.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court accepts well-pleaded allegations as true and asks whether the complaint states a claim for relief that is plausible on its face. Conclusory statements and formulaic recitations are insufficient. On a Rule 12(f) motion, allegations are construed liberally in the plaintiff's favor, and striking is disfavored unless the material clearly has no possible bearing on the litigation.
PRECEDENTIAL VALUE	persuasive

TOPICS

wage and hour motions to dismiss class actions standing civil procedure

PRACTICE AREAS

employment law civil procedure wage and hour class actions remedies

QUESTIONS PRESENTED

1. Whether the Second Amended Complaint plausibly alleged meal- and rest-break violations based on COVID-related preshift tasks.
2. Whether the complaint plausibly alleged minimum-wage and overtime violations under the pleading standard applied in *Landers v. Quality Communication, Inc.*
3. Whether the unamended claims for waiting time, vacation wages, and business-expense indemnification should be dismissed without further leave to amend.
4. Whether California Labor Code section 212(a) provides a private right of action for an individual or class claim.
5. Whether McElroy plausibly alleged a PAGA claim based on an alleged violation of section 212(a).
6. Whether the derivative wage-statement, final-pay, and PAGA claims could proceed to the extent their predicate claims were amendable.
7. Whether the unfair-competition claim could proceed despite the availability of legal remedies and McElroy's status as a former employee.
8. Whether the class allegations should be stricken at the pleading stage under Rule 12(f).

HOLDINGS

1. The Second Amended Complaint did not plausibly allege meal- or rest-break violations because it failed to identify a specific instance of denial, the frequency of the alleged violations, or the person who required the preshift COVID-related work or prevented a timely break.
2. The Second Amended Complaint failed to plausibly allege that McElroy worked more than 40 hours in a particular workweek or otherwise earned less than the legally required wage because of uncompensated COVID-related tasks.
3. The claims for waiting time to be assigned work, vacation wages, and business-expense indemnification were dismissed without leave to amend because McElroy did not amend them after being given an opportunity to substantiate the alleged unlawful policies.
4. California Labor Code section 212(a) does not provide a private right of action for an individual or class damages claim.
5. McElroy plausibly alleged a representative PAGA claim based on Vitalant's alleged violation of section 212(a), because she alleged that the pay card charged a fee to access wages and section 225.5 provides a civil penalty for violating section 212.

6. The wage-statement, timely-final-pay, and PAGA claims were dismissed with leave to amend to the extent they depended on claims that remained amendable, but were dismissed without leave to amend to the extent they depended on claims dismissed without leave to amend.
7. The unfair-competition claim was dismissed without leave to amend because McElroy had an adequate remedy at law for restitution and, as a former employee, lacked standing to seek prospective injunctive relief based on future workplace violations.
8. The motion to strike the class allegations was denied because, although the allegations were thin, it was not absolutely clear at the pleading stage that no circumstances could support class treatment.

KEY QUOTATIONS

“The amendments to the complaint push only one substantive claim across the line of plausibility: her claim for failure to pay all wages due in cash on demand (claim nine).” (at 1)

“Under Landers, she must aver facts that make plausible that she worked more than forty hours in a particular workweek.” (at 6)

“Therefore, McElroy can maintain a PAGA action premised on a well-pleaded violation of section 212(a).” (at 7)

“At this stage, it is not absolutely clear that the class device cannot succeed.” (at 13)

FACTUAL BACKGROUND

Kim McElroy was a former employee of Vitalant, a nonprofit blood donation organization. She alleged that Vitalant required employees to perform COVID-related preshift tasks, including symptom screening, temperature checks, questionnaires, hotline calls, and vaccinations, without adequately compensating them or providing legally required meal and rest breaks. She also alleged that Vitalant paid employees through pay cards that charged fees to access wages. McElroy asserted individual, class, and PAGA claims based on California wage-and-hour statutes and sought damages and equitable relief.

PROCEDURAL HISTORY

McElroy filed an employment-related putative class action in California state court against her former employer, Vitalant, asserting eleven California wage-and-hour and related claims. Vitalant removed under the Class Action Fairness Act, and the court previously granted judgment on the pleadings with leave to amend. After McElroy filed her Second Amended Complaint, Vitalant moved to dismiss and to strike the class allegations. The court granted the motion to dismiss in part, denied it in part, and denied the motion to strike; it permitted amendment of specified claims within 21 days.

DISPOSITION

other

CASES CITED

- *Astiana v. Ben & Jerry's Homemade, Inc.*, 2011 WL 211796, at *14 (N.D. Cal. May 26, 2011)
- *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)
- *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009)
- *Chavez*, 683 F.3d at 1108
- *Tietzworth v. Sears*, 720 F. Supp. 2d 1123, 1145-46 (N.D. Cal. 2010)
- *Ambriz v. Coca Cola Co.*, 2013 WL 5947010, at *3-*4 (N.D. Cal. Nov. 5, 2013)
- *Perez v. DNC Parks & Resorts at Asilomar, Inc.*, 2022 WL 411422, at *5 (E.D. Cal. Feb. 10, 2022)
- *Perez v. Island Hospital Management III, LLC*, 2019 WL 3064113, at *3 (C.D. Cal. Feb. 8, 2019)
- *Landers v. Quality Communication, Inc.*, 771 F.3d 638, 639-45 (9th Cir. 2014)
- *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 407 (2010)
- *Saunders v. Ameriprise Fin. Servs., Inc.*, 2019 WL 4344296, at *5 (C.D. Cal. Mar. 19, 2019)
- *Vikco Ins. Servs., Inc. v. Ohio Indem. Co.*, 70 Cal. App. 4th 55, 62 (1999)
- *Gunawan v. Howroyd-Wright Emp. Agency*, 997 F. Supp. 2d 1058, 1068 (C.D. Cal. 2014)
- *Sonner v. Premier Nutrition Corp.*, 971 F.3d 834, 837 (9th Cir. 2020)
- *Mort v. United States*, 86 F.3d 890, 892 (9th Cir. 1996)
- *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 381 (1992)
- *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 988 (9th Cir. 2011)
- *Hill v. Pacific Maritime Association*, 2025 WL 1282628, at *5 (N.D. Cal. May 2, 2025)
- *Gutzalenko v. City of Richmond*, 723 F. Supp. 3d 748, 755 (N.D. Cal. 2024)
- *In re Nexus 69 Prod. Liab. Litig.*, 296 F. Supp. 3d 888, 960-64 (N.D. Cal. 2018)

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