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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MIGUEL A. CRUZ, and JOHN D. HANSEN,)	Case No. 07-2050 SC
individually and on behalf of all)	
others similarly situated,)	
Plaintiffs,)	ORDER GRANTING
v.)	DEFENDANT'S MOTION TO
DOLLAR TREE STORES, INC.,)	DISMISS PLAINTIFFS'
Defendant.)	<u>FRAUD CLAIM</u>
_____)	

I. INTRODUCTION

On April 11, 2007, Plaintiffs Miguel Cruz, John Hansen, and all others similarly situated ("Plaintiffs") filed a complaint against Defendant Dollar Tree Stores, Inc. ("Defendant" or "Dollar Tree"). See Docket No. 1. Presently before the Court is Defendant's motion to dismiss the Seventh Cause of Action, a claim for fraud and deceit. See Docket No. 5; Compl. ¶¶ 75-85. Plaintiffs opposed the motion and Defendant filed a reply. See Docket Nos. 16, 18.

For the reasons discussed herein, the Court GRANTS Defendant's motion to dismiss Plaintiffs' Seventh Cause of Action for fraud and deceit.

II. BACKGROUND

According to the Complaint, Plaintiffs are former Store Managers at Dollar Tree who allege that they were improperly

1 classified as exempt and therefore denied wages for overtime.
2 Compl., ¶¶ 2-4. The Seventh Cause of Action alleges that
3 Defendant committed fraud and deceit because the company and its
4 agents knew that Plaintiffs should be classified as "non-exempt"
5 employees, but classified them as "exempt" in order to avoid
6 paying overtime. Id. at ¶¶ 75-85. Plaintiffs allege that
7 Defendant knew its statements were false and made them to induce
8 Plaintiffs to work extra hours for free. Id.

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10 **III. LEGAL STANDARD**

11 Under Federal Rule of Civil Procedure 12(b)(6), a motion to
12 dismiss can be granted if the plaintiff fails "to state a claim
13 upon which relief can be granted." Fed. R. Civ. P. 12(b)(6).
14 When evaluating a motion to dismiss, the court accepts the facts
15 as stated by the nonmoving party and draws all inferences in its
16 favor. See Everest & Jennings, Inc. v. Am. Motorists Ins. Co., 23
17 F.3d 226, 228 (9th Cir. 1994). Furthermore, courts must assume
18 that all general allegations "embrace whatever specific facts
19 might be necessary to support them." Peloza v. Capistrano Unified
20 Sch. Dist., 37 F.3d 517, 521 (9th Cir. 1994). At the pleading
21 stage, the plaintiff "need only show that the facts alleged, if
22 proved, would confer standing upon him." Warren v. Fox Family
23 Worldwide, Inc., 328 F.3d 1136, 1140 (9th Cir. 2003). If a
24 complaint is dismissed for failure to state a claim, "leave to
25 amend should be granted unless the court determines that the
26 allegation of other facts consistent with the challenged pleading
27 could not possibly cure the deficiency." Schreiber Distrib. Co.

1 v. Serv-Well Furniture Co., 806 F.2d 1393, 1401 (9th Cir. 1986).

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3 **IV. DISCUSSION**

4 "To survive a motion to dismiss for failure to state a claim
5 under Rule 12(b)(6), a complaint generally must satisfy only the
6 minimal notice pleading requirements of [Federal] Rule [of Civil
7 Procedure] 8(a)(2)." Porter v. Jones, 319 F.3d 483, 494 (9th Cir.
8 2003). However, where a complaint includes allegations of fraud,
9 Federal Rule of Civil Procedure 9(b) requires more specificity
10 including an account of the "time, place, and specific content of
11 the false representations as well as the identities of the parties
12 to the misrepresentations." Edwards v. Marin Park, Inc., 356 F.3d
13 1058, 1066 (9th Cir. 2004) (citation omitted). "To comply with
14 Rule 9(b), allegations of fraud must be specific enough to give
15 defendants notice of the particular misconduct which is alleged to
16 constitute the fraud charged so that they can defend against the
17 charge and not just deny that they have done anything wrong."
18 Bly-Magee v. California, 236 F.3d 1014, 1019 (9th Cir. 2001)
19 (citation and quotation omitted).

20 In their Complaint, Plaintiffs' Seventh Cause of Action is
21 for fraud and deceit. See Compl., ¶¶ 75-85. This fraud claim
22 must meet the heightened pleading requirements of Rule 9(b). See
23 Edwards v. Marin Park, Inc., 356 F.3d at 1066. This requires
24 Plaintiffs to give a specific account of the fraud so that Dollar
25 Tree can defend against the charge with more than a blanket
26 denial. Under the Rule 9(b) standard, Plaintiffs' Complaint fails
27 to give sufficient detail with respect to the time, place,

1 content, and identities of the parties engaged in the fraud.
2 Plaintiffs' argue that the fraud was perpetrated during the entire
3 class period, at every Dollar Tree store in California, through a
4 corporate policy and practice, and by the entire corporation. See
5 Compl.; Opp'n, 8-9. These allegations are too vague to allow
6 Defendant to respond constructively. To satisfy Rule 9(b),
7 Plaintiffs should identify specific oral statements or written
8 documents indicative of fraud, including specific information on
9 the timing of the incidents and employees involved.

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11 **V. CONCLUSION**

12 For the reasons discussed herein, Defendant's Motion to
13 Dismiss is GRANTED and Plaintiffs' Seventh Cause of Action for
14 fraud and deceit is DISMISSED without prejudice. Plaintiffs have
15 30 days from the date of this Order to file an amended complaint.

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17 IT IS SO ORDERED.

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19 Dated: June 29, 2007



20 UNITED STATES DISTRICT JUDGE
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