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United States District Court
For the Northern District of California

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 THE SEVENTH
Defendant.)	CAUSE OF ACTION IN
_____)	PLAINTIFFS' FIRST
	<u>AMENDED COMPLAINT</u>

I. INTRODUCTION

This matter comes before the Court on Defendant's Motion to Dismiss the Seventh Cause of Action of Plaintiffs' First Amended Complaint. Docket No. 25.

On April 11, 2007, Plaintiffs Miguel Cruz, John Hansen, and all others similarly situated ("Plaintiffs") filed a complaint ("Complaint") against Defendant Dollar Tree Stores, Inc. ("Defendant" or "Dollar Tree"). See Compl., Docket No. 1. On May 9, 2007, Defendant filed a motion to dismiss the Seventh Cause of Action of the Complaint. Mot. to Dismiss, Docket No. 5. Count VII alleged fraud by Defendant. Mot. to Dismiss ¶ 76. Defendant argued that Plaintiff had failed to satisfy Federal Rule of Civil Procedure 9(b), which requires a heightened standard of pleading for claims involving fraud. See Fed. R. Civ. P. 9(b).

On June 29, 2007, this Court issued an order granting

1 Defendant's motion to dismiss Count VII of the Complaint. Docket
2 No. 19. The dismissal was without prejudice and Plaintiffs
3 subsequently filed an amended complaint ("First Amended
4 Complaint"). Docket No. 23.

5 Defendant then filed this motion to dismiss Count VII of the
6 First Amended Complaint. Docket No. 25, Mot. to Dismiss.¹
7 Plaintiffs opposed the motion and Defendant filed a reply. See
8 Docket Nos. 35, 36. After reviewing the parties' submissions, the
9 Court GRANTS the motion and DISMISSES the Seventh Cause of Action
10 with prejudice.

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12 **II. BACKGROUND**

13 According to the First Amended Complaint, Plaintiffs are
14 former Store Managers at Dollar Tree who allege that they were
15 improperly classified as exempt and therefore denied wages for
16 overtime. First Am. Compl. ¶¶ 2-4. The Seventh Cause of Action
17 alleges that Defendant committed fraud by "inducing Plaintiffs and
18 members of their Class to work in excess of eight (8) hours per
19 day and forty (40) hours per week without expectation on their
20 part that they were entitled to receive compensation for overtime
21 worked." Id. at ¶ 83.

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26 ¹All further references to a motion to dismiss are to the
27 motion to dismiss the Seventh Cause of Action of the First Amended
28 Complaint.

1 **III. LEGAL STANDARD**

2 Federal Rule of Civil Procedure 12(b)(6) states that a motion
3 to dismiss may be granted if the plaintiff fails "to state a claim
4 upon which relief can be granted." Fed. R. Civ. P. 12(b)(6).
5 When evaluating a motion to dismiss, the court accepts the facts
6 as stated by the nonmoving party and draws all inferences in its
7 favor. Everest & Jennings, Inc. v. Am. Motorists Ins. Co., 23
8 F.3d 226, 228 (9th Cir. 1994). In addition, courts must assume
9 that all general allegations "embrace whatever specific facts
10 might be necessary to support them." Peloza v. Capistrano Unified
11 Sch. Dist., 37 F.3d 517, 521 (9th Cir. 1994). At the pleading
12 stage, the plaintiff "need only show that the facts alleged, if
13 proved, would confer standing upon him." Warren v. Fox Family
14 Worldwide, Inc., 328 F.3d 1136, 1140 (9th Cir. 2003).

15 Although "a complaint generally must satisfy only the minimal
16 notice pleading requirements," Porter v. Jones, 319 F.3d 483, 494
17 (9th Cir. 2003), where a complaint includes allegations of fraud,
18 Federal Rule of Civil Procedure 9(b) requires greater specificity,
19 including an account of the "time, place, and specific content of
20 the false representations as well as the identities of the parties
21 to the misrepresentations." Edwards v. Marin Park, Inc., 356 F.3d
22 1058, 1066 (9th Cir. 2004) (citation omitted). "To comply with
23 Rule 9(b), allegations of fraud must be specific enough to give
24 defendants notice of the particular misconduct which is alleged to
25 constitute the fraud charged so that they can defend against the
26 charge and not just deny that they have done anything wrong."
27 Bly-Magee v. California, 236 F.3d 1014, 1019 (9th Cir. 2001)

1 (citation and quotation omitted).

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3 **IV. DISCUSSION**

4 Defendant has moved for dismissal of the Seventh Cause of
5 Action based on two distinct theories. The Court addresses each
6 in turn.

7 **A. Failure To State A Claim**

8 Defendant argues that Plaintiffs' Seventh Cause of Action for
9 fraud and deceit should be dismissed pursuant to Rule 12(b)(6) for
10 failure to state a claim. Plaintiffs' Seventh Cause of Action
11 alleges that Defendant fraudulently "induc[ed] Plaintiffs . . .
12 to work [overtime] . . . without any expectation . . . that they
13 were entitled to receive compensation for overtime worked."

14 First. Am. Compl. ¶ 83. Defendant states that, as a matter of
15 law, it cannot be liable in fraud for misrepresenting California's
16 wage and hour laws to its employees. Mot. to Dismiss at 4.

17 "[A]s a general rule, . . . fraud cannot be predicated upon
18 misrepresentations as to matters of law.'" Miller v. Yokohama
19 Tire Corp., 358 F.3d 616, 621 (9th Cir. 2004) (citing Am. Jur. 2d
20 of Fraud and Deceit § 97 (2001)). Plaintiffs do not dispute this
21 but instead argue that the misstatement in the present case is one
22 of fact, not law. Opp'n at 15.

23 In Miller, the plaintiff sued his employer for failure to pay
24 overtime wages. Miller, 358 F.3d at 618. In a scenario similar
25 to the case at hand, the plaintiff in Miller alleged that his
26 employer misrepresented to him and other employees their
27 entitlement to overtime wages. Id. These misrepresentations and

1 the failure to pay overtime wages, according to the plaintiff,
2 "constituted a fraudulent scheme." Id. at 619.

3 On appeal, the Ninth Circuit held that the plaintiff's claims
4 for fraud were properly dismissed. Id. at 622. The Ninth Circuit
5 stated that the employer's statements regarding the plaintiff's
6 entitlement to overtime wages were misrepresentations of law. Id.
7 at 620. Because "fraud cannot be predicated upon
8 misrepresentations of law," id. at 621 (internal quotations
9 omitted), the fraud claims were dismissed. Id. at 622.

10 Plaintiffs in the case at bar argue that Miller is
11 distinguishable on two grounds. First, they state that the claims
12 in Miller were based on federal RICO violations while the fraud
13 claims in the present case are based on fraud under California
14 state law. Opp'n at 14-15. Miller, however, dealt specifically
15 with the issue of whether the plaintiff had satisfied the pleading
16 requirements for a fraud claim. Miller, 358 F.3d at 620.
17 Although the underlying claims in Miller alleged RICO violations,
18 the "threshold issue . . . [was whether] an employer's
19 misrepresentations of the law to an employee constitute[d]
20 actionable fraud." Id.

21 In addition, although the plaintiff's claim in Miller arose
22 under federal law, the Ninth Circuit explicitly stated that "we
23 must look to common law to determine whether Miller has stated a
24 claim of actionable fraud." Id. at 621. Plaintiffs in the
25 present case have presented no argument that common law fraud is
26 distinguishable from fraud under California state law. Thus,

1 their attempt to distinguish on this ground fails.²

2 Plaintiffs also seek to distinguish Miller by arguing that
3 the statements made by Defendant were misrepresentations of fact,
4 not law. Opp'n at 15. Notwithstanding the similarities between
5 the employer's statements in Miller and Dollar Tree's statements
6 in the present case, Plaintiffs argue that Defendant's statements
7 regarding entitlement to overtime pay were in fact
8 misrepresentations of fact because "it was the fact [that the
9 plaintiffs] were truly managers [that] was misrepresented." Id.
10 at 15 (emphasis deleted). In attempting to clarify this argument,
11 Plaintiffs state: "when an employer merely classifies someone as
12 a manager and then employs them to perform mostly non-managerial
13 tasks, a misrepresentation of the fact of the employee's status
14 has occurred" Id. at 16.

15 This attempt to distinguish Miller is not persuasive.
16 Plaintiffs fail to recognize that the central issue in the Seventh
17 Cause of Action revolves around the classification of the
18 employment status of Plaintiffs. This question is a question of
19 law. As the court in Miller stated, "[t]he [defendants']
20 statements [regarding entitlement to overtime wages] did not
21 include express or implied misrepresentations of fact." Miller,
22 358 F.3d at 621. It is difficult, if not impossible, to see how
23 the statements in the present case are materially different from
24 those in Miller.

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26 ²Although there are four recognized exceptions to the general
27 rule that misrepresentations of law may not give rise to a claim of
28 fraud, Miller, 358 F.3d at 621, none applies to the facts of this
case and Plaintiffs have not argued otherwise.

1 That the disputed statements in the present case are of law
2 and not fact is further supported by recent district court
3 decisions. See, e.g., Alba v. Papa John's USA, No. CV 05-7487,
4 2007 WL 953849, at *6 (C.D. Cal. Feb. 7, 2007) (stating
5 "Plaintiffs set forth several common questions of law . . . [the
6 first of which is] whether Defendants' policies mischaracterized
7 store managers as exempt employees under California law . . .");
8 see also Whiteway v. FedEx Kinko's Office & Print Servs., No. C
9 05-2320, 2006 WL 2642528, at *4 (N.D. Cal. Sept. 14, 2006)
10 (stating "Plaintiff identifies the following common questions of
11 law . . . [including] whether defendant Kinko's violated IWC Wage
12 Orders . . . by failing to pay overtime compensation to Store
13 Managers who worked in excess of forty hours per week and/or eight
14 hours per day . . ."). Given the similarity of the claims in
15 Miller, Alba and Whiteway with the claim in the present case, this
16 Court finds that the question of whether a certain class of
17 employees is exempt is a question of law. Therefore, Defendant's
18 Rule 12(b)(6) motion to dismiss the Seventh Cause of Action for
19 failure to state a claim is granted.

20 Defendant also mentions, briefly, that Count VII replicates
21 Count I of the First Amended Complaint, and should therefore be
22 dismissed. See Mot. to Dismiss at 3 (stating "[c]ount VII fails
23 because it replicates Count I . . .).³ Count I alleges that the

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25 ³ This argument is not discussed or explored beyond the above
26 cited language. In addition, this argument is made in the middle
27 of Defendant's Rule 12(b)(6) argument even though Rule 12(f) is the
28 relevant rule for redundant claims. Federal Rule of Civil
Procedure 12(f) states, in the relevant part: "Upon motion made by
a party . . . or upon the court's own initiative . . . the court

1 Defendant failed to pay overtime wages in violation of the
 2 California Labor Code. First Am. Compl. ¶¶ 25-32. Count VII, as
 3 noted above, alleges that Defendant engaged in fraud or deceit
 4 against the entire class. Id. at ¶ 76.

5 Although the two claims are similar and allege the same end
 6 result of withholding money that was owed to Plaintiffs, the
 7 claims differ in several ways and therefore are not redundant.
 8 Count I alleges that Defendant mis-classified Plaintiffs as
 9 managers in order to avoid paying overtime and other benefits.
 10 Id. at ¶ 28. Count VII, on the other hand, alleges that Defendant
 11 used fraud to "convince its managers of their exempt status." Id.
 12 at ¶ 82. Count I alleges a violation of the California Labor Code
 13 for failing to pay overtime and other benefits while Count VII
 14 alleges fraud in inducing Plaintiffs to accept their employment
 15 status. In addition, Count VII, unlike Count I, seeks punitive
 16 damages. Thus, while similar, the two counts are distinct and are
 17 not redundant.

18 **B. Failure to Plead With Sufficient Particularity**

19 As Plaintiffs' Seventh Cause of Action is for fraud and
 20 deceit, this claim must meet the heightened pleading requirements
 21 of Rule 9(b). See Edwards, 356 F.3d at 1066. This requires
 22 Plaintiffs to give a specific account of the fraud so that Dollar
 23 Tree can defend against the charge with more than a blanket
 24 denial.

25 It should be noted that the differences between Plaintiffs'

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 27 may order stricken from any pleading any . . . redundant . . .
 matter." Fed. R. Civ. P. 12(f).

1 original Complaint and First Amended Complaint are slight. One
2 change to the First Amended Complaint is the addition of specific
3 names of some of the employees of Dollar Tree who allegedly knew
4 of and helped create the employment practices which form the basis
5 of this lawsuit. See First Am. Compl. ¶ 78. The specific
6 identity of those who allegedly perpetrated the fraud is clearly
7 important in satisfying the heightened pleading requirement of
8 Rule 9(b). Inserting a list of names of upper-level Dollar Tree
9 Store employees, however, without further explanation of how these
10 people were complicit in the alleged fraud, does little to "give
11 defendants notice of the particular misconduct . . . so that they
12 can defend against the charge and not just deny that they have
13 done anything wrong." Semegen v. Weidner, 780 F.2d 727, 731 (9th
14 Cir. 1985). Although the addition of the names of the employees
15 does add specificity to the Seventh Cause of Action in the First
16 Amended Complaint, Plaintiffs have failed to draw any tighter
17 connection between these employees and the purported fraud than
18 was alleged in original Complaint.

19 The other noticeable difference between the original
20 Complaint and the First Amended Complaint involves a section,
21 added to the First Amended Complaint, discussing the role of
22 paychecks and wage statements in perpetuating the fraud. See
23 First Am. Compl. ¶¶ 81, 82. Specifically, Plaintiffs allege that
24 the pay checks and wage statements were inaccurate and were
25 designed to "reinforce [Plaintiffs'] incorrect understanding of
26 their status as exempt managers." Id. at ¶ 81. In addition,
27 Plaintiffs allege that Defendant knew that the pay checks and wage
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1 statements "were fraudulent representations that the managers were
2 exempt." Id. at ¶ 82. Finally, Plaintiffs allege that these pay
3 checks and wage statements "are also evidence of the broader
4 fraudulent scheme by Defendant to convince its managers of their
5 exempt status." Id.

6 Plaintiffs have still not satisfied the Rule 9(b) standard.
7 Alleging that every pay check and wage statement is evidence of
8 fraud is too conclusory and too vague to allow Defendant to
9 constructively respond. Accordingly, Plaintiffs have pleaded the
10 Seventh Cause of Action in their First Amended Complaint with
11 insufficient specificity. Therefore, Defendant's Motion to
12 Dismiss the Seventh Cause of Action based on Rule 9(b) is granted.

13 **C. Whether Leave to Amend Should Be Granted**

14 "In the absence of any apparent or declared reason - such as
15 undue delay . . . , repeated failure to cure deficiencies . . . -
16 the leave [to amend] sought should . . . be freely given."
17 Eminence Capital LCC v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th
18 Cir. 2003) (per curiam). When, however, "a district court has
19 already granted a plaintiff leave to amend, its discretion in
20 deciding subsequent motions to amend is particularly broad."
21 Chodos v. West Publ'g Co., 292 F.3d 992, 1003 (9th Cir. 2002)
22 (internal quotations and citations omitted). In the present case,
23 Plaintiffs have already been afforded one opportunity to amend
24 their Complaint on the very same issue which is now before the
25 Court for the second time and it is not clear how Plaintiffs would
26 benefit from another opportunity.

27 In addition, because Plaintiffs' Seventh Cause of Action for
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1 fraud is predicated on a misrepresentation of law, it cannot be
 2 saved by an additional amendment. See Eminence Capital LCC, 316
 3 F.3d at 1052 (holding that dismissal without leave to amend is
 4 improper unless the complaint could not be saved by any
 5 amendment). Because another opportunity to amend would likely be
 6 futile and result in undue delay, Count VII is dismissed without
 7 leave to amend. See Foman v. Davis, 371 U.S. 178, 182 (1962)
 8 (holding that district courts, in deciding whether to grant leave
 9 to amend, should look to several factors, including undue delay,
 10 "repeated failure to cure deficiencies by amendments previously
 11 allowed, . . . [or] futility of amendment . . .").

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13 **V. CONCLUSION**

14 For the reasons discussed herein, the Court GRANTS
 15 Defendant's Motion and DISMISSES Plaintiffs' Seventh Cause of
 16 Action with prejudice.

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21 IT IS SO ORDERED.

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23 Dated: September 18, 2007



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UNITED STATES DISTRICT JUDGE