UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

KENT HASSELL,

Plaintiff,

v.

UBER TECHNOLOGIES, INC.,

Defendant.

Case No. 20-cv-04062-PJH

ORDER GRANTING MOTION TO DISMISS

Re: Dkt. No. 21

Before the court is defendant Uber Eats' ("defendant") motion to dismiss and strike class allegations (Dkt. 21). Having read the parties' papers and carefully considered their arguments and the relevant legal authority, and good cause appearing, the court hereby **GRANTS** defendant's motion to dismiss and **DENIES** as moot its alternative request to strike.

BACKGROUND

Defendant, a division of Uber Technologies, Inc., provides food delivery services through its "Uber Eats" mobile phone application. Dkt. 1 (Compl.) ¶¶ 2, 12. Plaintiff Kent Hassell ("plaintiff") has worked as an Uber Eats driver since January 2020. Id. ¶ 6. He seeks to certify a class comprising "all UberEats drivers who have worked in California." Id. ¶ 36. At core, plaintiff alleges that, since the California Supreme Court's decision in Dynamex Operations West v. Superior Court, 4 Cal. 5th 903 (2018) and the California state legislature's passage of Assembly Bill 5 ("A.B. 5"), previously codified at California Labor Code § 2750.3,[1] defendant has misclassified him and putative class members as

[1] The court notes that California Labor Code § 2750.3 was repealed effective September

"independent contractors" rather than employees. Based on that misclassification, plaintiff alleges claims for the following:

- Violation of California Labor Code § 2802 and Wage Order 9-2001 premised on defendant's failure to reimburse drivers "for expenses they paid," including "gas, insurance, car maintenance, and phone and data charges." Id. ¶¶ 49-50.
- Violation of §§ 1197, 1194, 1182.12, 1194.2, 1197.1, 1199, as well as Wage Order 9-2001 premised on defendant's failure "to ensure its delivery drivers receive minimum wage for all hours worked." Id. ¶¶ 51-52.
- Violation of §§ 1194, 1198, 510, and 554, as well as Wage Order 9-2001 premised on defendant's failure "to pay its employees the appropriate overtime premium for overtime hours worked as required by California law." Id. ¶¶ 53-54.
- Violation of § 226(a) and Wage Order 9-2001 premised on defendant's failure to provide accurate wage statements. Id. ¶¶ 55-56.
- Violation of California Business & Professions Code § 17200, *et. seq.*, premised on defendant's willful misclassification of its drivers' employment statuses, as well as other unspecified "other conduct." Id. ¶¶ 57-60.
- Declaratory judgment under Title 28 U.S.C. §§ 2201-02 "declaring that, as a result of its misclassification," defendant "violated the California Labor Code and Wage Orders" and declaring that it "must comply with the Labor Code and Wage Orders." Id. ¶¶ 45-48.

On August 4, 2020, defendant filed the instant motion. Dkt. 21. In it, defendant makes two alternative requests. Id. at 2. Primarily, defendant asks that the court dismiss this action for failure to state a claim. Id. Alternatively, defendant asks that the court strike the complaint's class allegations. Id. Defendant asserts that those allegations are futile because the "vast majority" of persons who fall within the class definition are bound

DISCUSSION

A. Legal Standard

A motion to dismiss under Rule 12(b)(6) tests for the legal sufficiency of the claims alleged in the complaint. Ileto v. Glock, 349 F.3d 1191, 1199-1200 (9th Cir. 2003). Rule 8 requires that a complaint include a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Under Rule 12(b)(6), dismissal "is proper when the complaint either (1) lacks a cognizable legal theory or (2) fails to allege sufficient facts to support a cognizable legal theory." Somers v. Apple, Inc., 729 F.3d 953, 959 (9th Cir. 2013). While the court is to accept as true all the factual allegations in the complaint, legally conclusory statements, not supported by actual factual allegations, need not be accepted. Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009). The complaint must proffer sufficient facts to state a claim for relief that is plausible on its face. Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 558-59 (2007).

As a general matter, the court should limit its Rule 12(b)(6) analysis to the contents of the complaint, although it may consider documents "whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the plaintiff's pleading." Knievel v. ESPN, 393 F.3d 1068, 1076 (9th Cir. 2005); Sanders v. Brown, 504 F.3d 903, 910 (9th Cir. 2007) ("[A] court can consider a document on which the complaint relies if the document is central to the plaintiff's claim, and no party questions the authenticity of the document"). The court may also consider matters that are properly the subject of judicial notice, Lee v. City of L.A., 250 F.3d 668, 688–89 (9th Cir. 2001), exhibits attached to the complaint, Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc., 896 F.2d 1542, 1555 n.19 (9th Cir. 1989), and documents referenced extensively in the complaint and documents that form the basis of the plaintiff's claims, No. 84 Emp'r-Teamster Jt. Counsel Pension Tr. Fund v. Am. W. Holding Corp., 320 F.3d 920, 925 n.2 (9th Cir. 2003).

B. Motion to Dismiss

support of his claims. Dkt. 21 at 14-28. It is important to note that, when challenging plaintiff's claims, defendant does ***not*** argue that plaintiff does not qualify as an employee within the meaning of Dynamex or California Labor Code § 2750.3. Dkt. 21 at 11 ("Uber disputes that it misclassified Hassell and other similarly situated individuals as independent contractors. But setting aside Hassell's contention that delivery people should instead be classified as employees, Hassell's Complaint nonetheless fails to allege sufficient factual allegations to state a plausible claim for relief as to any of the Complaint's six counts."). Given that omission, the court will assume, for purposes of this motion, that plaintiff qualifies as an employee.

1. Plaintiff Fails to State a Claim for Failure to Reimburse Expenses

In relevant part, California Labor Code § 2802 requires an employer to "indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties . . ." Cal. Lab. Code § 2802(a).

To substantiate his claim for failure to reimburse, plaintiff generally alleges that:

> [defendant] does not reimburse delivery drivers for any expenses they incur while working for Uber Eats, including, but not limited to, the cost of maintaining their vehicles, gas, insurance, and phone and data expenses for running the Uber Eats Application. Delivery drivers incur these costs as a necessary expenditure to work for Uber Eats, which California law requires employers to reimburse. Compl. ¶ 27.

This claim fails for two reasons. First, plaintiff fails to allege that he, in particular, incurred any expense when making deliveries or that defendant failed to reimburse him for any such expenses. Absent such allegations, plaintiff cannot show that he suffered an injury-in-fact that would permit him standing to pursue the subject claim.

The court understands plaintiff's argument in his opposition that "it goes without saying that [plaintiff], himself, incurred these expenses." Dkt. 22 at 13 n.2. But plaintiff's argument is just that—argument. It does not substitute for the verified facts he is required to allege to state a cognizable claim.

Second, plaintiff fails to allege that the expenses he incurred were necessary to or

class members generally incur when driving for defendant, his complaint lacks any details about the nature or amount of expenses he incurred when completing the deliveries for defendant. Indeed, as defendant also points out, plaintiff fails to even allege whether he used an automobile or some other vehicle (e.g., a bicycle) to make deliveries.

While plaintiff attempts to dismiss these deficiencies as factual matters that may be reasonably inferred from the complaint, the court disagrees. The above-referenced details are important to assess whether the subject expenses are reimbursable as necessary to and in consequence of his job duties. For example, plaintiff alleges that drivers incur expenses for "maintaining their vehicles," "insurance," and "phone and data expenses for running the Uber Eats Application." Compl. ¶ 27. These allegations do not provide any basis to infer that, independent of their use of the Uber Eats App, drivers would ***not*** maintain their vehicle, pay for insurance, or purchase a smart phone with a data plan.

Absent allegations establishing that the subject expenses are legally reimbursable, this claim does not cross the line from the possible to the plausible. In re Century Aluminum Co. Sec. Litig., 729 F.3d 1104, 1108 (9th Cir. 2013) ("When faced with two possible explanations, only one of which can be true and only one of which results in liability, plaintiffs cannot offer allegations that are 'merely consistent with' their favored explanation but are also consistent with the alternative explanation.... Something more is needed, such as facts tending to exclude the possibility that the alternative explanation is true . . . in order to render plaintiffs' allegations plausible within the meaning of Iqbal and Twombly."). Accordingly, the court dismisses the claim for failure to reimburse expenses.

2. Plaintiff Fails to State a Claim for Failure to Pay Overtime or Minimum Wage

In relevant part, California Labor Code § 1194 provides the following:

> Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full

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