UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

PAUL HEINZMAN, on behalf of himself and all others similarly situated, **Plaintiffs,** **vs.** **HOME DEPOT U.S.A., INC. a Delaware Corporation, and DOES 1 through 10, inclusive,** **Defendants.**	**Case No.: SACV 10-01827-CJC(RNBx)** **ORDER GRANTING DEFENDANT'S MOTION TO DISMISS**

INTRODUCTION & BACKGROUND

In this case, Plaintiff Paul Heinzman alleges that Defendant Home Depot U.S.A., Inc. ("Home Depot") has violated California state law by failing to pay vacation wages, failing to timely pay wages due at termination, and failing to provide accurate itemized wage statements. Mr. Heinzman also contends that Home Depot is liable under California's Unfair Competition Law and Private Attorneys General Act. Before the

Court is Home Depot's motion to dismiss or strike Mr. Heinzman's third cause of action alleging that Home Depot violated California Labor Code § 226(a) by failing to provide wage statements that itemized "vacation hours the Associate Class Members accrued (earned) during the pay period." First Am. Compl. ("FAC") ¶ 3; *see also id.* ¶ 37 (alleging Home Depot failed "on each and every wage statement" to "itemize . . . the amount of vacation wages . . . earned during the pay period").[1] Home Depot further asks that Mr. Heinzman's unfair competition claim be dismissed or stricken to the extent that it relies on Mr. Heinzman's § 226(a) claim. Home Depot's motion to dismiss is GRANTED. Mr. Heinzman has failed to plead a § 226(a) violation that would plausibly entitle him to relief because § 226(a) did not require Home Depot to include earned vacation hours in the itemized wage statements that it provided to its employees.[2] Home Depot's motion to strike is DENIED AS MOOT.

ANALYSIS

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests the legal sufficiency of the claims asserted in the complaint. The issue on a motion to dismiss for failure to state a claim is not whether the claimant will ultimately prevail, but whether the claimant is entitled to offer evidence to support the claims asserted. *Gilligan v. Jamco Dev. Corp.*, 108 F.3d 246, 249 (9th Cir. 1997). When evaluating a Rule 12(b)(6) motion, the district court must accept all material allegations in the complaint as true and construe

[1] As these two citations illustrate, Mr. Heinzman's FAC contains allegations that are not consistent in their terminology because Mr. Heinzman refers to both "vacation hours" and "vacation wages." The Court interprets Mr. Heinzman's FAC and Opposition as asserting that § 226(a) requires an employer to itemize an employee's earned vacation hours for a given pay period in the wage statement for that pay period, even when the employee does not actually use any accrued vacation time or receive payment for that vacation time during that pay period. *See, e.g.*, Opp'n at 5 (Mr. Heinzman explaining that "this case is not about whether § 226(a) requires employers to itemize vacation wages 'paid,' just those that are '*earned*.'" (emphasis added)).

[2] Having read and considered the papers presented by the parties, the Court finds this matter appropriate for disposition without a hearing. *See* FED. R. CIV. P. 78; LOCAL RULE 7-15. Accordingly, the hearing set for January 24, 2010, at 1:30 p.m. is hereby vacated and off calendar.

them in the light most favorable to the non-moving party. *Mayo v. Gomez*, 32 F.3d 1382, 1384 (9th Cir. 1994). Rule 12(b)(6) is read in conjunction with Rule 8(a), which requires only a short and plain statement of the claim showing that the pleader is entitled to relief. Fed. R. Civ. P. 8(a)(2). Dismissal of a complaint for failure to state a claim is not proper where a plaintiff has alleged "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). In keeping with this liberal pleading standard, the district court should grant the plaintiff leave to amend if the complaint can possibly be cured by additional factual allegations. *Doe v. United States*, 58 F.3d 494, 497 (9th Cir. 1995).

The present dispute between the parties concerns whether California Labor Code § 226(a) requires employers to itemize earned vacation hours in wage statements. Section 226(a) mandates that employers provide their employees with "accurate itemized wage statement[s]" that must contain certain information including "gross wages earned." Cal. Lab. Code § 226(a). Home Depot contends that earned vacation hours is not one of the types of information that § 226(a) requires to be present in wage statements, and therefore Home Depot's wage statements could not have violated § 226(a) even if they did not itemized earned vacation hours, as Mr. Heinzman alleges. Accordingly, Home Depot argues that Mr. Heinzman's § 226(a) claim should be dismissed. In contrast, Mr. Heinzman contends that vacation hours earned each pay period should be considered "gross wages earned" within the meaning of § 226(a)(1), and Home Depot's failure to itemize earned vacation hours in each wage statement violated § 226(a).

The Court agrees with Home Depot that § 226(a) does not require employers to provide employees with wage statements that itemize earned vacation hours. This conclusion is based upon (1) the language of § 226(a), (2) the statutory scheme, and (3) the absence of authority supporting Mr. Heinzman's interpretation.

The analysis necessarily begins with the language of § 226(a). *See Doe v. Brown*, 177 Cal. App. 4th 408, 417 (2009). That statute requires employers to "semimonthly or at the time of each payment of wages, furnish each of his or her employees . . . an accurate itemized [wage] statement." Cal. Lab. Code § 226(a). The statute mandates that each wage statement contain very specific information. Specifically, the wage statement must include: (1) "gross wages earned," (2) "total hours worked" except for salaried and exempt employees, (3) "piece-rate units earned," (4) "all deductions," (5) "net wages earned," (6) "the inclusive dates of the period for which the employee is paid," (7) "the name of the employee" and "the last four digits of [the employee's] social security number or an employee identification number," (8) "the name and address of the legal entity that is the employer," and (9) "all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee." Significantly, none of § 226(a)'s enumerated requirements reference earned vacation hours. As a result, the plain text of the statute supports the conclusion that § 226(a) does not require an employer's wage statements to itemize earned vacation hours.

Second, the statutory scheme further supports this interpretation. As an initial matter, California Labor Code § 200 defines "wages" as "includ[ing] all amounts for labor[3] performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation." Cal. Lab. Code § 200(a). This definition does not, however, indicate that "wages" include earned vacation hours.

California Labor Code § 227.3 provides additional insight into the treatment of earned vacation hours within this statutory framework. Ordinarily when an employee is

[3] The same section defines "labor" as "includ[ing] labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment." Cal. Lab. Code § 200(b).

terminated, § 227.3 imposes an obligation on the employer to "pa[y] to [the employee] *as wages*" all unused, "vested vacation time" at the employee's "final rate." Cal. Lab. Code § 227.3 (emphasis added). This language is significant for at least two reasons. First, its express reference to earned vacation hours and how they should be treated at termination is evidence that § 226(a)'s omission of any requirement that earned vacation hours be itemized was intentional. *Brown v. Kelly Broad. Co.*, 48 Cal. 3d 711, 725 (1989) ("[W]hen the Legislature has carefully employed a term in one place and has excluded it in another, it should not be implied where excluded. . . . [T]he Legislature could have used the same clear language [in subdivision 3] as in subdivisions 4 and 5." (internal quotation marks omitted)). *Azusa Land Partners v. Dep't of Indus. Relations*, 191 Cal. App. 4th 1, 2010 WL 5158551, at *7 (2010) ("We are not at liberty to insert into the statute a term the Legislature chose to omit. Its absence cannot be assumed to be without meaning."); *see also Doe*, 177 Cal. App. 4th at 417–18 (courts should presume that the Legislature was aware of existing, related laws and attempt to harmonize related statutes). Second, by permitting a terminated employee to transform his unused vacation hours into "wages," as that term is used in this statutory scheme, § 227.3 is, in fact, *distinguishing* earned vacation hours *from* wages in a manner relevant to properly interpreting § 226(a). Earned vacation hours only become "wages" once this triggering event—termination—occurs. *See Church v. Jamison*, 143 Cal. App. 4th 1568, 1576 (2006) ("[T]ermination of employment is the event that converts the employer's obligation to allow an employee to take vacation from work into the monetary obligation to pay that employee for unused vested vacation time." (footnote omitted)). Indeed, after an employer paid "wages" to an employee in lieu of that terminated employee's unused vacation hours, § 226(a) would *then* require the employer to itemize those "wages" in the wage statement issued for that pay period—but the wage statement would still not have to itemize earned vacation hours. Given this relationship between §§ 226(a) and 227.3, there is even less reason to read a requirement into § 226(a)(1) that employers must itemize earned vacation hours in each wage statement.

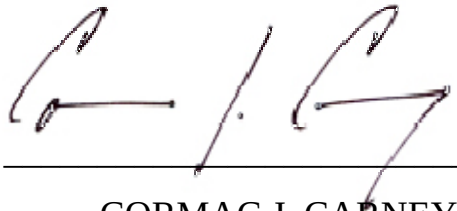
Similarly, the operation of California Labor Code § 227.5 further suggests that § 226(a) does not require itemization of earned vacation hours. When an employer provides a vacation plan, § 227.5 requires that employer to furnish its employees with an annual statement of "payments" made pursuant to a "vacation plan" if those employees submit written requests. Cal. Lab. Code § 227.5. With this statute, the Legislature has provided employees with a means of determining to what extent they have received payment for earned vacation hours prior to their termination, which would trigger § 227.3.

Finally, this interpretation of § 226(a) is bolstered by Mr. Heinzman's inability to present any on-point authority interpreting § 226(a)(1) as requiring employers to itemize earned vacation hours as "gross wages" in wage statements or justifying extending § 226(a)(1) to reach Mr. Heinzman's claim. Mr. Heinzman contends that the Court should rely on cases that, in effect, equate earned vacation hours with "additional wages." *See Suastez v. Plastic Dress-Up Co.*, 31 Cal. 3d 774, 779–80 (1982) (explaining that "vacation pay is not a gratuity or a gift, but is, in effect, *additional* wages for services performed" or a "form of *deferred* compensation" (emphases added)). This analogy fails. Admittedly the authority suggesting that earned vacation hours are *like* additional wages has legal significance, but that authority does not address the precise issue presented here: whether earned vacation hours are a "wage" within the *statutory* meaning of that term in § 226(a). In fact, the longstanding nature of the rule that earned vacation hours are similar to additional wages, *see* Opp'n at 2 ("[Mr. Heinzman] is simply asking the Court to recognize what has been California law for at least the past 30 years."), combined with Mr. Heinzman's failure to produce any authority interpreting § 226(a) to require itemization of earned vacation hours, significantly undermines Mr. Heinzman's position. For all of these reasons, the Court declines to make the interpretive leap that Mr. Heinzman requests.

CONCLUSION

Home Depot's motion to dismiss is GRANTED as to Mr. Heinzman's third cause of action for violation of California Labor Code § 226 and fourth cause of action for violation of California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 et seq., to the extent it relies on an alleged violation of § 226. Home Depot's motion to strike is DENIED AS MOOT.

DATED: January 20, 2011



CORMAC J. CARNEY
UNITED STATES DISTRICT JUDGE