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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

CLAIRE HEADLEY,

Plaintiff,

v.

CHURCH OF SCIENTOLOGY INTERNATIONAL, a corporate entity, RELIGIOUS TECHNOLOGY CENTER, a corporate entity AND DOES 1 -20,

Defendants.

CASE NO. CV09-3987 MMM (FFMx)

RELIGIOUS TECHNOLOGY CENTER'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS MOTION TO DISMISS SECOND AMENDED COMPLAINT PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6), OR, IN THE ALTERNATIVE, FOR A MORE DEFINITE STATEMENT PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(e)

[Notice of Motion and Motion filed concurrently]

Date: July 27, 2009
Time: 10:00 a.m.
Judge: Hon. Margaret M. Morrow
Dept.: 780

Defendant Religious Technology Center respectfully submits the following Memorandum of Points and Authorities in support of its Motion to Dismiss the Second Amended Complaint, or, in the alternative, for a more definite statement.

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I. INTRODUCTION

Plaintiff Claire Headley's ("Plaintiff") Second Amended Complaint ("SAC") against Religious Technology Center ("RTC")[1] fails as a matter of law in several respects.[2]

This is Plaintiff's third attempt at drafting a complaint against RTC. After being put on notice of the deficiencies in her previous complaint, and after RTC stipulated to allow Plaintiff to file the SAC to give Plaintiff the opportunity to correct the deficiencies, Plaintiff still has not (and cannot) allege viable claims for relief against RTC.

Plaintiff's First and Second Causes of Action, for restitution of wages and injunctive relief under California's Unfair Competition Law, Business & Professions Code § 17200 *et seq.*,("Section 17200") fail because the claims are barred by the four-year statute of limitations. This action was filed on January 20, 2009. It alleges that the plaintiff was "employed" by "Defendants" until some unspecified time in January 2005. Thus, on the face of the SAC, at the most, only eleven days of Plaintiff's "employment" by "Defendants" would survive the statute of limitations period with respect to either of the "Defendants." In addition, however, Plaintiff alleges no specific conduct by RTC that occurred within four years of this lawsuit,[3] and it is impossible to ascertain from the face of the SAC which Defendant Plaintiff purportedly worked for and when. Despite Plaintiff's attempts to plead around the

[1] Plaintiff also sued the Church of Scientology International ("CSI"). Collectively, where appropriate, CSI and RTC will be referred to herein as "Defendants".

[2] A significant portion of the SAC contains improper argument, inflammatory language, irrelevant factual allegations, and improper legal citations, none of which constitute material allegations. These allegations are addressed in CSI's Motion to Strike, in which RTC joins.

[3] As Plaintiff knows, RTC can establish that Plaintiff left RTC in September 2004. Plaintiff's failure to allege specific facts concerning her purported dates of employment must have been deliberate. Had Plaintiff alleged actual dates of her alleged employment, her claims against RTC would have been unequivocally time-barred. At the very least, the Court should require Plaintiff to provide a more definite statement regarding the specific date that she allegedly stopped working for RTC.

statute of limitations, none of Plaintiff's theories for avoiding the statutory time periods apply here. Furthermore, to the extent that Plaintiff purports to bring her SAC as a "representative action," she is required to allege the essential elements to proceed as a class action, which she failed to do. Accordingly, Plaintiff's First and Second Causes of Action fail as a matter of law.

Plaintiff's purported Third Cause of Action for "Forced Labor aka Human Trafficking" also fails to state a claim. Plaintiff attempts to allege a claim under California Civil Code Section 52.5, which provides a private cause of action for violations of California Penal Code Section 236.1. Civil Code Section 52.5 (as well as Section 236.1 of the Penal Code) went into effect one year after Plaintiff alleges she severed her ties with "Defendants," in January 2005. [¶25].[4] As such, even taking her allegations as true, any conduct on which Plaintiff bases her claims had to have occurred prior to the enactment of Section 52.5. Section 3 of the Civil Code states that "no part of [the Civil Code] is retroactive, unless expressly so declared." There is nothing in the statute that indicates Legislative intent for retroactive application of Civil Code Section 52.5. Therefore, Section 52.5 cannot be applied here. Furthermore, in order for Plaintiff to state a claim against RTC under Civil Code Section 52.5, RTC would have had to have violated Section 236.1 of the California Penal Code. However, the application of Section 236.1 to Plaintiff's claims would impose liability retrospectively for purported conduct that occurred prior to enactment of the statute, constituting an ex post facto law in violation of the United States and California constitutions. See U.S. CONST., Art. I, §§9, 10, CAL. CONST., Art. I, §9.

Plaintiff's other purported forced labor/human trafficking theories based on state law and Federal and State constitutional violations are also barred as a matter of law because such they are barred by a two-year statute of limitations. Likewise,

[4] All references to "¶" followed by a number are to the correspondingly numbered paragraph of the SAC, unless otherwise indicated.

Plaintiff cannot bring a claim under the federal human trafficking statutes because they are barred by the four-year statute of limitations in effect at the time the purported conduct took place.

The entire SAC should also be dismissed because Plaintiff does not meet the pleading standards of Federal Rule of Civil Procedure, 8(a)(2), which were recently clarified by the Supreme Court in Ashcroft v. Iqbal, 556 U.S. __ , 129 S.Ct 1937 (2009).[5] Specifically, Plaintiff has merely alleged facts that could "suggest," that Defendants have engaged in unlawful conduct, however, Plaintiff has not stated specific facts that would establish or identify each of the Defendants' wrongful conduct. Therefore, under Iqbal, Plaintiff's SAC should be dismissed.

Plaintiff should be denied leave to amend because she cannot allege facts that would support a single claim for relief. All of her claims are either barred by the statute of limitations or, with respect to Civil Code Section 52.5, barred because the statute is not available to her. Therefore, any amendment to Plaintiff's complaint would be futile. In the alternative, due to the ambiguous nature of the SAC, RTC seeks an order, pursuant to F.R.C.P. Rule 12(e), requiring Plaintiff to plead more definite facts regarding which Defendant was responsible for the conduct alleged in the SAC, and when that conduct occurred.

II. SUMMARY OF SECOND AMENDED COMPLAINT

A. Plaintiff's Allegations

The Second Amended Complaint is replete with irrelevant rhetoric which seeks

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[5] Plaintiff's entire SAC is vague and uncertain. For example, Plaintiff pleads that some unspecified person associated with one or another defendant at some unalleged time and in some unidentified context conveyed the message that "she had no realistic rights." [¶33]. She further alleges that she was required by someone unidentified, at some unspecified time, in some unalleged context to sign documents of unpled content. [¶34]. Plaintiff also alleges that "the management of the Scientology enterprise and Defendants" "substantially controlled" her life [¶35] and without specific identification of who, what, where, when, why, or how, Plaintiff then alleges that she could not "escape," but that she did escape, and "was followed and confronted with threats at a bus station" by unidentified persons. [¶¶34-35].

to put forth a false portrayal of the Scientology religion.[6] Once the irrelevant allegations are placed aside, Plaintiff's pertinent factual allegations may be summarized as follows. The SAC alleges that RTC "police[s] access and use of [the founder of the Scientology religion] L. Ron Hubbard's works" and "protects copyrighted material and trademarks." [¶5]. According to Plaintiff, she worked for "Defendants"[7] (without specifying which one or when) from 1991 to 2005, doing unspecified "clerical and secular" work [¶6]. She alleges that she worked for "Defendants" until "January, 2005."[8] [¶25]. Plaintiff asserts that she was not paid minimum wage or overtime, worked long hours, and had insufficient time off. [¶19]. She also asserts that she was "ordered to have abortions, at her expense, and in fact was coerced and intimidated into having abortions to keep her job with Defendant." [¶19].

Plaintiff does not differentiate which Defendant she allegedly worked for and when. The SAC also does not specify which Defendant was responsible for or participated in the conduct alleged by Plaintiff. Indeed, none of the SAC's factual allegations are directly ascribed to RTC or anyone in particular acting for RTC.

For Plaintiff's First Cause of Action for "Restitution For Unfair Practices Under B&P Code §17200 et. seq.," Plaintiff purports to bring the claim on behalf of herself, "and as a representative of persons wrongfully ordered and intimidated like Plaintiff, into having unwanted abortions or coerced into providing forced labor." [¶44]. For the First Cause of Action, Plaintiff seeks back pay as restitution [¶44] and attorney's fees. [¶45] [see also, Prayer for Relief].

For her purported Second Cause of Action, for "Injunctive Relief Re Unfair

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[6] Plaintiff's reliance on irrelevant, inflammatory, and sensationalized allegations is addressed in RTC's Motion to Strike, in which RTC joins.

[7] Plaintiff alleges that, although her written employment contract was with an entity known as the "Sea Organization," she was actually "employed by CSI and RTC." [¶27]. Although not plead in the SAC, RTC will show that the Sea Organization is a religious order.

[8] RTC denies this allegation. See footnote 3, supra.

Business Practice," Plaintiff alleges that she "seeks to enjoin certain illegal activity, to-wit coercing pregnant females to abort the child." [¶46]. For this cause of action, Plaintiff alleges that she "was employed by Defendants CSI and RTC for many years before leaving in 2005," and that she was "ordered" – by whom she does not say – to have two abortions "to remain an employee in good standing with Defendants and to avoid adverse consequences in her future employment." [¶48]. Plaintiff alleges that this purported conduct violated "state and federal law" as well as Plaintiff's "inalienable constitutional rights, including the rights of privacy." [¶49]. In connection with the Second Cause of Action, Plaintiff seeks "an order banning this practice in the future" [¶49] as well as attorney's fees. [¶50, Prayer for Relief].

Plaintiff's purported Third Cause of Action for "Forced Labor aka Human Trafficking" alleges that "Defendants" deprived Plaintiff of her personal liberty, restricted her freedom of movement and access to the outside world, and coerced her into laboring for low wages, [¶57-62]. All of Defendants' purported conduct occurred many years before Plaintiff alleges she terminated her relationship with Defendants in January 2005. For this alleged conduct by Defendants, Plaintiff purports to allege a claim under Civil Code § 52.5, 18 USC §§1589, 1593 and 1595, B&P Code § 17200 et. seq., and Civil Code §52.1(b) & (h). [¶¶56, 65-68].

B. Plaintiff's Entire SAC Fails To Meet the Rule 8(a) Pleading Standards, and it Should Be Dismissed In Its Entirety

The SAC is vague and ambiguous in its entirety because it fails to describe any specific conduct that is attributable to RTC. For this reason, the entire SAC fails to allege claims for relief against RTC.

The recent U.S. Supreme Court decision Ashcroft v. Iqbal, 556 U.S. __, 129 S.Ct 1937 (2009) clarified the pleading standards set forth in Federal Rule of Civil Procedure, 8(a)(2), ultimately finding that the plaintiff's complaint failed to plead sufficient facts to state a claim for discrimination. Iqbal involved an individual who was arrested and detained by federal officials. He sued numerous federal officials,

including former Attorney General Ashcroft and the Director of the FBI for various constitutional violations. In its decision, the Supreme Court ruled that the plaintiff failed to plead facts to support a claim for relief, finding that a plaintiff must plead specific facts, not just conclusions, that support it claims. The Court stated that:

> To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a "probability requirement," but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are "merely consistent with" a defendant's liability, it "stops short of the line between possibility and plausibility of 'entitlement to relief.'"

Id. at *14 (citing to Bell Atlantic Corp. v. Twombly, 55 U.S. 544 (2007) (internal citations omitted).

As part of this pleading standard, the Supreme Court reinforced the rules that, (1) courts "are not bound to accept as true a legal conclusion couched as a factual allegation," and that, (2) "where the well-pleaded facts do not permit the court to infer more than the mere *possibility* of misconduct, the complaint has alleged -- but it has not 'show[n]' -- 'that the pleader is entitled to relief.'" Id. at *15 (internal citations omitted, emphasis added).[9] The court determined that, because the plaintiff alleged only facts that merely "suggest," that the named defendants were responsible for the conduct alleged, the plaintiff failed to state specific facts that would establish the named defendants' state of mind or wrongful conduct. Id. at *19.

Here, Plaintiff does not meet the pleading standard established in Iqbal. The SAC's vagueness as to time, failure to identify specific events, glossing over the specifics of her alleged affiliation with each specific Defendant separately, and the failure to ascribe most of the misconduct alleged to have actually happened to Plaintiff herself makes it impossible for RTC to respond, and only at most suggests a

[9] The Court also noted that it intended its interpretation of Rule 8(a) to apply to all civil actions. Igbal, 556 U.S. at *20.

"possibility" of misconduct. Although, like Iqbal, Plaintiff pleads general purported misconduct by "Defendants," she does not specifically attribute which of the Defendants was responsible for the purported conduct. In fact, *nothing* in the SAC is specifically alleged to have been done specifically by RTC or by anyone acting on RTC's behalf. Significantly, when it comes to the essential allegations that would link RTC to a specific time period and to specific facts alleged to have occurred during that time period, the SAC instead asserts vague time periods, i.e., that Plaintiff "worked for defendants at below minimum wage compensation from 1991 to 2005" [¶6], that she "was employed by Defendants from 1991 to 2005 and was not paid minimum wage or overtime" [¶19], that she "worked for Defendants until January, 2005" [¶25], and that she "was employed by Defendants CSI and RTC for many years." [¶48]. Plaintiff's deliberately vague allegations are not sufficient to state a claim against RTC. The lack of specific facts and dates merely "suggests" a "possibility" that RTC could be liable, which, under Iqbal, is insufficient.

Therefore, Plaintiff's entire SAC fails to meet the pleading standards of Federal Rule of Civil Procedure 8(a)(2).

III. BASIC LEGAL PRINCIPLES

A. The Applicable Law

Claims must be dismissed when they fail to "state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6); Balistreri v. Pacifica Police Dept., 901 F.2d 696, 699 (9th Cir. 1988). Dismissal is proper where there is either a "lack of a cognizable legal theory or an absence of sufficient facts alleged under a cognizable legal theory." Balestreri, 901 F.2d at 699.

In reviewing a pleading for sufficiency, courts must decide whether the facts alleged, if true, would entitle the plaintiff to some form of a legal remedy. Transphase Systems, Inc. v. Southern Calif. Edison Co., 839 F.Supp. 711, 718 (C.D. Cal. 1993). However, the court need not accept as true conclusory allegations or legal characterizations. Beliveau v. Caras, 873 F.Supp. 1393, 1395-96 (C.D. Cal.

1995). Nor need it accept unreasonable inferences or unwarranted deductions of fact. Id. The court also need not assume that a plaintiff can prove facts different from those it has alleged. Associated Gen. Contractors of Calif. v. California State Council of Carpenters, 459 U.S. 519, 526, 103 S. Ct. 897 (1983).

Complaints that are barred on their face by the statute of limitations are properly subject to dismissal. See Jablon v. Dean Witter & Co., 614 F.2d 677, 682 (9th Cir. 1980) (dismissing complaint where statute of limitations barred relief); McDougal v. County of Imperial, 942 F.2d 668, 672-73 (9th Cir. 1991) (upholding dismissal of civil rights claims based on statute of limitations).

As detailed below, under the foregoing standards, Plaintiff's SAC should be dismissed in its entirety.

IV. PLAINTIFF'S FIRST AND SECOND CAUSES OF ACTION FOR UNFAIR BUSINESS PRACTICES FAIL AS A MATTER OF LAW

Plaintiff's First and Second Causes of Action, for violation of B&P Code § 17200 *et seq.* ("Section 17200"), fail as a matter of law because the claims are barred by the four-year statute of limitations. In addition, to the extent that Plaintiff purports to bring her SAC as a "representative action," Plaintiff fails to allege the essential elements to proceed as a class action. For these reasons, the First and Second Causes of Action in the SAC should be dismissed with prejudice.

A. The First and Second Causes of Action are Barred by the Four-Year Statute of Limitations

1. The SAC Alleges No Specific Conduct By RTC Within the Statutory Period

Although Plaintiff does not allege the specific date she stopped working for RTC, she generally alleges that she stopped working for "Defendants" in "January 2005." [¶25]. Plaintiff cannot base her Section 17200 claims on conduct that purportedly occurred more than four years ago. This means that, even if the Court assumes for the purposes of this Motion that Plaintiff has alleged that RTC engaged

in some conduct within four years prior to Plaintiff filing her lawsuit (and she did not), any purported conduct would have to had taken place after January 20 (when the Complaint was filed), but before January 31, 2005. [10]

In any event, Plaintiff's First and Second Causes of Action are barred because Plaintiff attempts to blur the distinction between CSI and RTC, alleging that she worked for "Defendants" "from 1991 to 2005" [¶19] and also alleging that she worked for "Defendants" "until January, 2005." [¶25]. Plaintiff alleges no specific conduct by RTC that occurred less than four years before she filed this lawsuit in January 2009. Plaintiff's First and Second Causes of Action under Section 17200 are therefore barred by the four-year statute of limitations. Cal. Business & Professions Code § 17208 (four year statute of limitations for Section 17200 claims). See, e.g., Van Dyke Ford, Inc. v. Ford Motor Co. 399 F.Supp. 277, 284 (E.D. WI 1975) ("[s]pecific identification of the parties to the activities alleged by the plaintiffs is required . . . to enable the defendant to plead intelligently").

Although most of the purported events in the SAC occurred over a decade ago, the most recent date referenced in the SAC is "January 2005." [¶25]. However, Plaintiff does not allege any specific conduct by RTC that occurred on or around that date or the specific dates in January 2005 when RTC engaged in any wrongful conduct. As such, Plaintiff does not allege that there was any particular wrongdoing by RTC within four years of initiating this lawsuit on January 20, 2009. In fact, the SAC alleges no specific conduct by RTC anywhere in the SAC. Given that Plaintiff's Complaint alleges no facts that would support her claims against RTC, the First and Second Claims should be dismissed. The lack of specific facts and dates at most

[10] In other words, taking Plaintiff's allegation as true, the very last day she could have "worked" for RTC is January 31, 2005. Because Plaintiff is time-barred from recovering restitution for more than four years before she filed this lawsuit, she cannot recover restitution of wages incurred before January 20, 2005. At the very least, the Court should dismiss Plaintiff's First and Second Claims and require Plaintiff to re-plead them to apply only to conduct that occurred within the statutory period.

merely "suggests" a "possibility" that RTC could be liable, which, under Iqbal, is insufficient. Iqbal, 556 U.S. at *14, 19; see also Jablon, 614 F.2d at 682.[11]

2. There is No Legal Basis for Plaintiff to Avoid the 4-Year Statute of Limitations

Plaintiff alleges various theories in an unsuccessful attempt to avoid the statute of limitations, namely, that the discovery rule, "continuing violations" theory and/or "equitable estoppel" theories apply. Plaintiff has not, and cannot, alleged that these theories apply to her claims so as to prevent the statute of limitations from barring her First and Second Causes of Action.

a. The "Discovery Rule" Does Not Apply to Section 17200

For Section 17200 claims, the four-year period, running from accrual of the claim, is fixed and rigid. Accordingly, the so-called "discovery rule" does not apply to section 17208.[12] Snapp & Assoc. Ins. Services, Inc. v. Malcolm Bruce Burlingame Robertson, 96 Cal.App.4th 884, 891 (2002) (section 17208's four-year limitations period is not tolled by "discovery rule"); Karl Storz Endoscopy–America, Inc. v. Surgical Technologies, Inc., (9th Cir. 2002) 285 F.3d 848, 857 ("claims under [§ 17200] are subject to a four-year statute of limitations which began to run on the date the cause of action accrued, not on the date of discovery"). Nor does the running of the statute toll under the "continuous misrepresentation" theory (County of Santa Clara v. Atlantic Richfield Co., 137 Cal.App.4th 292, 333 (2006)) or the "fraudulent

[11] At the very least, Plaintiff should be required to allege the specific dates she allegedly "worked" for RTC and to make the representation on the record that she is able to allege conduct that occurred within the statutory time period.

[12] The SAC cites to Broberg v. The Guardian Life Ins. Cos. Of America, 171 Cal.App.4th 912 (2009) in support of the purported application of the discovery rule. ¶22. Broberg, however, is easily distinguishable. Broberg involved alleged injuries from the plaintiff's reliance on an insurance company's misleading marketing materials. The court stated found that the discovery rule may apply under limited circumstances where, "in the context of unfair competition claims based on the defendant's allegedly deceptive marketing materials and sales practices, which is simply a different legal theory for challenging fraudulent conduct and where the harm from the unfair conduct will not reasonably be discovered until a future date." Id. at 920. Unlike the Broberg case, this case does not involve an injury that arose outside of the statute of limitations period, and there are no fraud allegations.

concealment" theory. Stutz Motor Car of America, Inc. v. Reebok Int'l, Ltd., 909 F.Supp. 1353, 1363 (C.D. Cal. 1995).

b. The "Continuing Violations" Theory Does Not Apply

Even though, as discussed above, the statute of limitations for Section 17200 claims is fixed and rigid, Plaintiff still attempts to raise a "continuing violations" argument. Specifically, Plaintiff alleges that she should recover unpaid wages for her "entire period of employment" under the "continuing violations doctrine." ¶38 (citing to Watson v. Dept. of Rehabilitation, 212 Cal.App.3d 1271, 1290 (1989). It is well established that recovery of unpaid wages is not subject to the continuing violations theory. Therefore, even if Plaintiff's claims were not subject to a fixed statute of limitations (and they are), they would still be barred because a cause of action for unpaid wages accrues when the wages first become legally due, i.e., on the regular payday for the pay period in which the employee performed the work. See, e.g., Biggs v. Wilson, 1 F.3d 1537, 1540 (9th Cir. 1993) (A cause of action for unpaid minimum wages accrues "the day the employee's paycheck is normally issued, but isn't."). In fact, with respect to back wages, *a separate and distinct cause of action accrues on each payday*, triggering on each occasion the running of a new limitations period. Cuadra v. Millan, 17 Cal.4th 855, 859 (1998).[13]

c. The Theory of Equitable Estoppel Does Not Prevent Plaintiff's Claims From Being Time-Barred

The statute of limitations is also not tolled under an equitable estoppel theory. [SAC ¶¶ 22-23]. Equitable estoppel "focuses primarily on the actions taken by the defendant in preventing a plaintiff from filing suit." Johnson v. Henderson, 314 F.3d 409 415 (9th Cir. 2002) (citing Santa Maria v. Pacific Bell, 202 F.3d 1170, 1176 (9th Cir. 2000). Equitable estoppel tolls the limitations period where the plaintiff knew about the claim, but the defendants' "egregious misconduct caused the plaintiff to

[13] In addition, for her Section 17200 claims, Plaintiff may only recover back pay as restitution, and not penalties or other damages. See Cortez v. Purolator Air Filtration Products Co., 23 Cal.4th 163, 176 (2000).

delay the filing of suit." Carell v. The Shubert Org., Inc., 104 F.Supp. 2d 236, 250 (SD NY 2000) (quoting Netzer v. Community Graphic Associates, Inc., 963 F. Supp. 1308, 1316 (SD NY 1997)). The doctrine only applies when the defendant actively prevents the plaintiff from suing in time -- situations that courts refer to as "fraudulent concealment." Diermenjian v. Deutsche Bank, A.G., 526 F.Supp.2d 1068, 1090 (CD CA 2007) (granting motion to dismiss for plaintiff's failure to sufficiently plead fraudulent concealment in the context of equitable estoppel); see also, Hinton v. Pacific Enterprises, 5 F.3d 391, 397 (9th Cir. 1993) (granting motion to dismiss and finding that the plaintiff did not plead sufficient facts to establish estoppel). In addition, "[t]he plaintiff must demonstrate that he relied on the defendant's misconduct in failing to file in a timely manner and 'must plead with particularity the facts which give rise to the claim of fraudulent concealment.'" Guerrero v. Gates, 442 F.3d 697, 706-07 (9th Cir. 2006) (citing Conerly v. Westinghouse Elec. Corp., 623 F.2d 117, 120 (9th Cir. 1980)) (emphasis added); see also Diermenjian, 526 F.Supp. at 1090.[14]

Courts apply the doctrine of equitable estoppel sparingly, and it will not apply where a plaintiff has not demonstrated reasonable diligence in asserting her claim. Indeed, "empty promises . . [or]. . . alleged deceptions [that] would not have deterred a reasonably diligent plaintiff" from bringing her claims "do not meet the . . . restrictive standards of equitable estoppel because 'due diligence is not satisfied by passive reliance upon an allegedly deceptive statement'." Weber v. Geffen Records, Inc., 63 F.Supp. 2d 458, 466-67 (SD NY 1999) (citing Margo v. Weiss, 1998 WL

[14] Under California law, equitable estoppel requires that, "(1) the party to be estopped must be apprised of the facts; (2) that party must intend that his or her conduct be acted on, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the party asserting the estoppel must be ignorant of the true state of facts; and (4) the party asserting the estoppel must reasonably rely on the conduct to his or her injury." Lukovsky v. City and County of San Francisco, 535 F.3d 1044, 1051-52 (9th Cir. 2008) (dismissing complaint and finding that plaintiff had not plead equitable estoppel). The Ninth Circuit has held that there are "no inconsistenc[ies] between California and federal law pleading on fraudulent concealment." Conerly, 623 F.2d at 120

2558 at *9 (SD NY 1998)) (granting motion to dismiss based on statute of limitations and rejecting plaintiff's tolling and estoppel arguments); see also, Conerly, 623 F.2d at 120 (a plaintiff must plead "with particularity the circumstances surrounding the concealment and state facts showing his due diligence in trying to uncover facts."). Indeed, "[i]n order to establish fraudulent concealment, the complaint must show: (1) when the fraud was discovered; (2) the circumstances under which it was discovered; and (3) that the plaintiff was not at fault for failing to discover it or had no actual presumptive knowledge of facts to put him on inquiry." Diermenjian, 526 F.Supp. at 1090 (citing Baker v. Beech Aircraft Corp., 39 Cal.App.3d 315, 321 (1974)) (finding that complaint was insufficient and subject to dismissal where these elements were not plead).

In addition, equitable estoppel "necessarily requires active conduct by a defendants, above and beyond the wrongdoing upon which the plaintiff's claim is filed, to prevent the plaintiff from suing in time." Santa Maria, 202 F.3d at 1177; see also, Guerrero, 442 F.3d at 707; Diermenjian, 526 F.Supp. at 1090.

Plaintiff has not alleged with any particularity facts that would demonstrate active conduct by RTC that would amount to fraudulent concealment or that was above and beyond the alleged wrongdoing on which Plaintiff bases her claims. Furthermore, Plaintiff has not alleged any specific conduct by RTC that would have deterred a reasonably diligent plaintiff from pursuing claims against it within the statutory timeframe (more than four years after she left RTC). Plaintiff has also failed to allege facts indicating that she proceeded diligently once she discovered her purported claim. As such, Plaintiff has not met the pleading requirements for equitable estoppel.

B. Plaintiff is Required to Plead The Elements of a Class Action To Proceed As a "Representative"

Plaintiffs' SAC purports to allege Plaintiff's Section 17200 claims as "representative actions." ¶¶7, 44 Since the passage of Proposition 64 in November

of 2004, there is no such thing as a "representative" action under Section 17200. Indeed, "any person may pursue representative claims or relief on behalf of others only if the claimant meets the standing requirements of section 17204 and *complies with section 382 of the Code of Civil Procedure*…." B&PC § 17203 (emphasis supplied); Fireside Bank v. Superior Court, 40 Cal.4th 1069, 1092 fn. 4 (2007) (all representative actions under the UCL must satisfy the class action requirements of C.C.P. §382); Californians for Disability Rights v. Mervyn's, LLC, 39 Cal.4th 223, 228-29 (2006) (same); In Re Tobacco II Cases, 2009 WL 1362556, * 6-7 (May 18, 2009).

The SAC cannot be construed to plead a class action because a putative UCL class representative plaintiff must plead facts that satisfy the pleading requirements for a class action. Central District Local Rule 23-2 requires that, to plead a class action, Plaintiff "shall" include in the complaint "a separate section entitled 'Class Action Allegations'." This section must contain "appropriate allegations thought to justify the action's proceeding as a class action, including, but not limited to: (a) The definition of the proposed class; (b) The size (or approximate size) of the proposed class; (c) The adequacy of representation by the representative(s) of the class; (d) The commonality of the questions of law and fact; (e) The typicality of the claims or defenses of the representative(s) of the class; (f) If proceeding under F.R.Civ.P. 23(b)(3), allegations to support the findings required by that subdivision; and (g) The nature of notice to the proposed class required and/or contemplated." [15]

[15] Although Plaintiff filed the SAC in state court, this Court's Local Rules have similar pleading requirements as state court. The pleading requirements for a class action in state court are: (1) a sufficiently numerous, ascertainable class, (2) a well-defined community of interest, and (3) that class certification will provide substantial benefits to litigants and the courts – *i.e.*, superiority to other methods. Moreover, the "community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." Fireside Bank v. Superior Court, 40 Cal.4th at 1089. Plaintiff did not meet these requirements. In addition, like Local Rule 23-1, state court procedures require that a complaint be specifically labeled as a class action. CRC 3.761(a), (b). Plaintiff did not do that here either.

Plaintiff's SAC satisfies none of the foregoing essential and mandatory pleading requirements. Thus, to the extent that Plaintiff purports to bring her First and Second Causes of Action as representative or class action claims, Plaintiff fails to plead facts sufficient to state a cause of action.

V. PLAINTIFF'S THIRD CLAIM FOR "FORCED LABOR AKA HUMAN TRAFFICKING" CLAIMS FAILS AS A MATTER OF LAW

There is no conceivable way for Plaintiff to maintain her forced labor/human trafficking claim against RTC under any of her theories for relief. Accordingly, Plaintiff's Third Claim for Relief should be dismissed with prejudice.

A. Plaintiff Cannot State a Claim Under Civil Code Section 52.5 Because That Section Was Enacted *After* Plaintiff Severed Her Relationship With Defendants

California Civil Code Section 52.5 creates a private right of action for "human trafficking," premised upon California Penal Code Section 236.1, which states that "[a]ny person who deprives or violates the personal liberty of another with the intent … to obtain forced labor or services, is guilty of human trafficking." Cal. Penal Code §236.1, subd. (a). "Forced labor or services" means "labor or services that are performed or provided by a person and are obtained or maintained through force, fraud, or coercion, or equivalent conduct that would reasonably overbear the will of the person." Cal. Penal Code §236.1, subd. (e).

According to the SAC, Plaintiff "worked for Defendants until January 2005." [¶25]. All of the alleged facts supporting the purported human trafficking claim necessarily arose during Plaintiff's purported employment with "Defendants" (from 1996- January 2005). [¶52] However, both California Civil Code Section 52.5 and Penal Code Section 236.1 were created by Assembly Bill 22, which did not become California law until January 1, 2006. (2005 Cal. Legis. Serv. Ch. 240 (A.B. 22) (West)). Accordingly, neither the penal statute nor the civil statute creating a private right of action for violation of the criminal predicate was in effect until one year *after*

Plaintiff alleges to have severed her relationship with Defendants.

Section 3 of the Civil Code states that "no part of [the civil code] is retroactive, unless expressly so declared." The California Supreme Court defines retroactivity as something that "affect[s] rights, obligations, acts, transactions and conditions performed or existing prior to adoption of the statute." Aetna Casualty & Surety Co. v. Industrial Accident Commission et al., 30 Cal.2d 388, 396 (1947) (finding that amendment to labor code did not apply to conduct that occurred before its enactment where the language of the amended statute did not clearly indicate that the Legislature intended it to apply in cases where the injury occurred before the effective date of the enactment) (emphasis added); City of Monte Sereno v. Padgett, 149 Cal. App. 4th 1530, 1537 (2007). "[A] statute will be construed as prospective unless there is clear legislative intent that it applies retroactively." K.J. v. Roman Catholic Bishop of Stockton, 172 Cal. App. 4th 1388 (2009); Myers v. Philip Morris Cos., Inc., 28 Cal. 4th 828, 844 (2002). This "familiar rule" arises from "concerns that retroactive application of new criminal laws may be barred by the ex post facto[16] clause, and that retroactive application of new civil laws may offend due process considerations." Rankin v. Longs Drug Stores California, Inc. 169 Cal. App. 4th 1246, 1253 (2009), citing Landgraf v. USI Film Prods,. 511 U.S. 244, 266-67 (1994). Section 52.5 has no language that would indicate the Legislature's intent to apply the statute retroactively, and the application of the law to Plaintiff's claims would certainly offend due process considerations.

Furthermore, Plaintiff cannot maintain a private cause of action under Section 52.5 of the Civil Code without alleging a violation of the underlying criminal statute, California Penal Code Section 236.1. Such an allegation, however, violates the United States and California constitutions as constituting an ex post facto law. Ex

[16] An ex post facto law is a criminal statute that would impose criminal liability retrospectively for conduct that was not criminal when committed. Calder v. Bull, 3 U.S. 386 (1798); People v. Jenkins, 35 Cal. App. 4th 669, 672 (1995); AIU Ins. Co. v. Gillespie, 222 Cal. App. 3d 1155, 1164 (1990).

post facto laws are expressly forbidden by both the United States Constitution, U.S. CONST., Art. I, §§9, 10, and California Constitutions. CAL. CONST., Art. I, §9. Thus, section 236.1 of the California Penal Code cannot constitutionally provide the predicate for Plaintiff's Third Cause of Action, because the conduct alleged in the SAC all predated the January 2006 enactment of the statute criminalizing the purported conduct (which RTC denies occurred). Plaintiff's claim under Section 52.5 of the Civil Code therefore fails as a matter of law.

B. Plaintiff's "Forced Labor/Human Trafficking" Claims Based on State Law and State and Federal Constitutional Theories Also Fail As a Matter of Law[17]

The SAC alleges that Plaintiff's "forced labor" claim constitutes "a common law tort under California law."[18] Plaintiff further alleges as part of her Third Cause of Action that RTC's purported conduct violates Article 1, Section 1 of the California Constitution as well as Civil Code § 52.1. However, even if these claims did exist (and they do not), they would be barred by a two-year statute of limitations. See, e.g., Barton v. New United Motor Manufacturing, Inc. 43 Cal.App.4th 1200, 1209 (1996) [19] (There is a two-year statute of limitations for an employment claim premised on a public policy allegedly expressed in the Constitution); C.C.P. §335.1 (2-year statute of limitations for personal injury); 3 Witkin Procedure, "Actions" § 553 (Section

[17] For the reasons discussed in Section IV, to the extent that Plaintiff brings her Third Cause of Action as a Section 17200 claim, her claim is barred as a matter of law.

[18] There do not appear to be any published California cases finding a "common law tort" for "forced labor."

[19] Barton concluded that the statute of limitations was one year based on the then applicable statute, Code Civ. Proc., § 340(3). 43 Cal.App.4th at p. 1205. All actions for invasion of privacy were also previously subject to the one year statute of limitations of section 340(3) Cain v. State Farm Mutual Automobile Ins. Co. (1976) 62 Cal. App. 3d 310, 313. Section 340(3) has since been revised and recodified in 2002, and public policy and privacy claims are now governed by the two-year statute of limitations set forth in Code Civ. Proc., § 335.1. Under C.C.P. §335.1 there is a two year statute of limitations for "[a]n action for … injury to … an individual caused by the wrongful act … of another."

335.1 is broad, and applies to actions involving harm to a person, whether or not they involve personal injury, including common law invasions of privacy.).[20] As discussed above, Plaintiff alleges that she "worked for Defendants until January 2005." [¶25]. All of the alleged facts supporting the purported human trafficking claim necessarily arose during Plaintiff's purported employment with Defendants (from 1996- January 2005). [¶52]. Thus, there is no conduct by RTC that occurred within the two-year statute of limitations.

C. Plaintiff's "Forced Labor" Claim Under the Federal Human Trafficking Statutes is Time-Barred

Until December 23, 2008, a claim under the federal human trafficking statutes was subject to the four-year statute of limitations set forth in 28 U.S.C. §1658, instead of the current ten-year statutory period set forth in 18 U.S.C. 1595(c). (Pub.L. 110-457, Title II, § 221(2), Dec. 23, 2008, 122 Stat. 5067.)

28 U.S.C. § 1658(a) states that, "[e]xcept as otherwise provided by law, a civil action arising under an Act of Congress enacted after the date of the enactment of this section may not be commenced later than 4 years after the cause of action accrues." Section 1658 was enacted as part of the Judicial Improvements Act of 1990 (Pub.L. 101-650). Until the aforementioned December 23, 2008 amendment to 18 U.S.C. § 1595 (which was originally enacted in December 2003), the statute had no express statute of limitations. Therefore, claims that arose under Section 1595 prior to its December 2008 amendment, are subject to a four-year statute of limitations.

Plaintiff's claims are subject to the statute of limitations in place at the time the purportedly wrongful conduct occurred. A change in a statute of limitations may be applied retroactively "only if the legislature clearly stated such an intent." Thompson

[20] To the extent that Plaintiff purports to bring a claim for violation of the Thirteenth Amendment to the U.S. Constitution, it would also be barred by the 2-year statute of limitations. See, e.g., McDougal, 942 F.2d at 672-73 ("all [personal injury actions [arising out of the U.S. Constitution] are expressly covered by the 'catchall language in [former] § 340(3)."") (relying on Owens v. Okure, 488 U.S. 235, 785 n. 3 (1989)): Del Percio v. Thornsley, 877 F.2d 785 (1989) (federal constitutional claims governed by state statute of limitations).

v. City of Shasta Lake, 314 F.Supp.2d 1017, 1024 (E.D. Cal. 2004) (citing Douglas Aircraft Co. v. Cranston, 58 Cal.2d 462, 466 (1962); see also Maldonado v. Harris, 370 F.3d 945, 954-55 (9th Cir. 2004). Here, there is nothing in the statute or the legislative history that suggests that the ten-year statute of limitations is meant to apply retroactively.

As discussed above, even if the Court assumes for the purposes of this Motion that Plaintiff has alleged that RTC engaged in some conduct within four years prior to Plaintiff filing her lawsuit (and she did not), Plaintiff cannot base her Section 17200 claims on conduct that purportedly occurred more than four years ago. This means that any purported conduct on which Plaintiff may base her claim would have to had taken place after January 20 (when the Complaint was filed), but before January 31, 2005. However, Plaintiff's claim under federal law is barred in any event because Plaintiff alleges no specific conduct by RTC that occurred less than four years before she filed this lawsuit in January 2009. Plaintiff instead attempts to blur the distinction between CSI and RTC, alleging that she worked for "Defendants" "from 1991 to 2005" [¶19] and also alleging that she worked for "Defendants" "until January, 2005." [¶25]. Under Iqbal, Plaintiff must allege specific facts that do more than "suggest" liability. Iqbal, 556 U.S. at *19. This was not done here. Therefore, under the four-year statute of limitations in place at the time the alleged conduct occurred, Plaintiff's claims under the federal human trafficking statute, 18 U.S.C. § 1595, is barred as a matter of law. Additionally, the other federal statutes alleged in Plaintiff's SAC are also subject to a four-year statute of limitations under Section 1658 because the statutes do not provide a statute of limitations. See 18 U.S.C. §§ 1589, 1593 (both added by Pub.L. 106-386, Div. A, § 112(a)(2) on Oct. 28, 2000).

VI. PLAINTIFF SHOULD BE DENIED LEAVE TO AMEND

After a responsive pleading is served, any amendments to a complaint must be made with "the opposing party's written consent or the court's leave." F.R.C.P. Rule 15(a)(1)(B). In considering a request for leave to amend, the Court may consider "the

presence or absence of undue delay, bad faith, dilatory motive, repeated failure to cure deficiencies by previous amendments, undue prejudice to the opposing party and futility of the proposed amendment." Moore v. Kayport Package Exp., Inc., 885 F.2d 531, 538 (9th Cir. 1989). If amendments to a complaint "will fail to cure fatally defective allegations, refusal to allow leave to file [an] amended complaint is acceptable." Hinton v. Pacific Enterprises, 5 F.3d 391, 395 (9th Cir. 1993) (citing Moore, 885 F.2d at 538, 540-41) (dismissing complaint without leave to amend because the complaint was time-barred). Indeed, "leave to amend need not be given if a complaint, as amended, is subject to dismissal." Moore, 885 F.2d at 538.

In Hinton, the Ninth Circuit upheld the District Court's grant of a motion to dismiss and denial of the plaintiff's request for leave to amend, where the plaintiff could not plead facts that would bring her claims within the two-year statute of limitations for her employment claims. Although, like here, the plaintiff argued that her claims were not time-barred under the principles of equitable tolling or equitable estoppel, the Court found that there was no way that the proposed amendments could cure the defects of the complaint or avoid being barred by the statute of limitations. Id. at 396-97.

Plaintiff cannot allege facts that would support a single viable claim for relief. Plaintiff left RTC in September 2004, and therefore, all of her claims are either barred by the statute of limitations or, with respect to Civil Code Section 52.5, barred because the statute is not available to her. Therefore, any amendment to Plaintiff's complaint would clearly be futile. Plaintiff should therefore be denied leave to amend.

If the Court is inclined to grant Plaintiff leave to amend, because this is Plaintiff's third attempt[21] to bring viable claims against RTC, RTC respectfully

[21] Prior to filing her SAC, RTC notified Plaintiff's counsel that Plaintiff left RTC in September 2004. RTC and Plaintiff stipulated to the filing of the SAC in order to give Plaintiff the opportunity to correct the deficiencies in the previous complaint. See Stipulation, filed May 19, 2009. Plaintiff, however, still failed to allege the September 2004 date in the SAC.

requests that as a condition to re-pleading her claims, Plaintiff first state on the record the specific dates of her alleged employment with RTC so that the Court can determine whether such dates are within the statute of limitations.

VII. IN THE ALTERNATIVE, RTC SEEKS AN ORDER PURSUANT TO RULE 12(E) REQUIRING A MORE DEFINITE STATEMENT SPECIFYING WHICH DEFENDANT IS PURPORTEDLY RESPONSIBLE FOR WHICH CONDUCT

Under Federal Rule of Civil Procedure 12(e), "[a] party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response." As discussed above, the SAC is vague and ambiguous in its entirety because it fails to describe any specific conduct that is attributable to RTC, including when Plaintiff allegedly worked for RTC and which Defendant is responsible for which conduct.

Thus, even if Plaintiff's SAC is not barred for the reasons discussed above, RTC respectfully requests that the Court require Plaintiff to allege a more definite statement regarding which Defendant was purportedly responsible for the acts alleged in the SAC, including specific facts concerning when the purported conduct by RTC took place, which conduct Plaintiff attributes to RTC, and the specific dates when Plaintiff was employed by RTC. See, e.g., Van Dyke Ford, Inc. 399 F.Supp. at 284 (granting defendant's motion for a more definite statement, pursuant to Rule 12(e) and stating that, "[s]pecific identification of the parties to the activities alleged by the plaintiffs is required . . . to enable the defendant to plead intelligently. . . [as] "the complaint frequently refers to 'plaintiffs' and 'defendants' without indicating which of the . . . defendants are intended.")

VIII. CONCLUSION

Given the severe deficiencies of Plaintiff's SAC, the Court should dismiss the First, Second, and Third Claims in the SAC with prejudice. In the alternative, RTC requests an order requiring Plaintiff to plead a more definite statement, including the

specific conduct that is attributable to RTC, when Plaintiff allegedly worked for RTC and which Defendant is responsible for which conduct.

DATED: June 10, 2009

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