

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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LIONEL HARPER and DANIEL  
SINCLAIR, individually and on  
behalf of all others similarly  
situated and all aggrieved  
employees,

Plaintiffs,

v.

CHARTER COMMUNICATIONS, LLC,

Defendant.

No. 2:19-cv-00902 WBS DMC

ORDER RE: DEFENDANT'S MOTION  
TO STRIKE AND/OR DISMISS

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Plaintiffs Lionel Harper ("Harper") and Daniel Sinclair  
("Sinclair") brought this putative class action against defendant  
Charter Communications, LLC ("Charter") alleging various  
violations of the California Labor and Business and Professions  
Code. (See First Am. Compl. ("FAC") (Docket No. 45).) Before  
the court is Charter's motion to strike and/or dismiss portions  
of plaintiffs' First Amended Complaint. (Docket No. 48.)

I. Factual and Procedural Background

1 Plaintiffs were employed by Charter as salespeople in  
2 California. (FAC ¶ 9.) Harper worked for Charter from September  
3 2017 to March 2018, and Sinclair worked for Charter from January  
4 2015 to December 2016. (Id.) During and after training weeks,  
5 plaintiffs allege they were erroneously treated as exempt  
6 employees because Charter mistakenly categorized them as "outside  
7 salespersons." (Id.) Plaintiffs claim they were denied, inter  
8 alia, commission wages as a result of this misclassification.  
9 (Id. ¶ 10.) Harper initially brought this suit in California  
10 state court on behalf of himself and all similarly situated  
11 individuals, and Charter removed the action to this court.  
12 (Docket No. 1.) The court denied Harper's motion to remand in  
13 July 2019 (Docket No. 23), and thereafter the parties stipulated  
14 to Harper filing a First Amended Complaint. (Docket Nos. 40,  
15 42.) Sinclair was added as a named plaintiff at that time.  
16 (Docket No. 45.)

17 Collectively, plaintiffs allege ten causes of action:  
18 (1) failure to pay minimum wages for all hours worked in  
19 violation of California Labor Code §§ 1182.12, 1194, 1197, and  
20 1194.4; (2) failure to pay overtime wages for all overtime hours  
21 worked in violation of California Labor Code §§ 510 and 1197; (3)  
22 failure to provide meal periods or pay premium wages in lieu  
23 thereof in violation of California Labor Code §§ 512 and 226.7;  
24 (4) failure to provide rest breaks or pay premium wages in lieu  
25 thereof in violation of California Labor Code § 226.7; (5)  
26 unlawful calculation, deduction, and payment of commission wages  
27 under California Labor Code §§ 204, 221, 223, 224, and 2751; (6)  
28 failure to provide accurate wage statements in violation of

1 California Labor Code § 226; (7) failure to pay all wages owed  
2 upon termination in violation of California Labor Code § 203; (8)  
3 failure to provide timely and complete copies of employment  
4 records in violation of California Labor Code §§ 226, 432, and  
5 1198.5; (9) violation of California's Unfair Competition Law  
6 ("UCL") under California Business and Professions Code § 17200;  
7 and (10) civil penalties under the Private Attorney General Act  
8 ("PAGA"), Cal. Lab. Code § 2698, et seq. Charter now seeks to  
9 dismiss plaintiffs' third, fourth, sixth, and ninth causes of  
10 action in full or in part for failure to state a claim pursuant  
11 to Federal Rule of Civil Procedure 12(b)(6) and strike portions  
12 of the operative complaint pursuant to Federal Rule of Civil  
13 Procedure 12(f). (Mot. to Strike and Dismiss ("Mot.") (Docket  
14 No. 48).)

## 15 II. Discussion

### 16 A. Motion to Dismiss

17 On a motion to dismiss, the inquiry before the court is  
18 whether, accepting the allegations in the complaint as true and  
19 drawing all reasonable inferences in the plaintiffs' favor, the  
20 plaintiffs have stated a claim to relief that is plausible on its  
21 face. See Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). "A claim  
22 has facial plausibility when the plaintiff[s] plead factual  
23 content that allows the court to draw the reasonable inference  
24 that the defendant is liable for the misconduct alleged." Id. A  
25 complaint that offers mere "labels and conclusions" will not  
26 survive a motion to dismiss. Id. (citations and quotations  
27 omitted).  
28

1           1.   Claims Three & Four: Failure to Provide Meal &  
2                   Rest Periods

3           Under California Labor Code § 226.7, “[a]n employer  
4 shall not require an employee to work during a meal or rest.”  
5 Cal. Lab. Code § 226.7(b). These protections only extend to non-  
6 exempt employees. Cal. Lab. Code §§ 226.7(e), 512. “[A]n  
7 employer has an obligation to relieve its employee of all duty,  
8 permit the employee to take an uninterrupted 30-minute break, and  
9 to not impede or discourage the employee from doing so.” Bradley  
10 v. Networkers Int’l, LLC, 211 Cal. App. 4th 1129, 1151 (4th Dist.  
11 2012) (citing Brinker Rest. Corp. v. Superior Court, 53 Cal. 4th  
12 1004, 1040 (2012)). Importantly, “an employer has an obligation  
13 to provide a rest break, and if the employer fails to do so, the  
14 employer cannot claim the employee waived the break.” Id. If  
15 the employer forces employees to miss required rest breaks, or  
16 does not provide employees with required rest breaks, then the  
17 employee is entitled to premium wages of “one additional hour of  
18 pay at the employee’s regular rate of compensation for each  
19 workday that the meal or rest . . . is not provided.” Cal. Lab.  
20 Code § 226.7(c).

21           Defendant argues plaintiffs’ claim for failure to  
22 provide meal and rest periods under Labor Code § 226.7 should be  
23 dismissed because they were not entitled to meal breaks or rest  
24 periods as exempt employees, and even if they were, plaintiffs  
25 cannot plausibly allege that they were “actually forced to forgo  
26 their [] breaks, if they were misclassified.” (Mot. at 16-17.  
27 (emphasis original).) However, § 226.7 makes no mention of  
28 force; instead, “fail[ing] to provide an employee a meal or rest

1 or recovery period in accordance with a state law" is a violation  
2 of the statute. Cal. Lab. Code § 226.7(c).

3 Under § 512(a), an employer "shall not employ an  
4 employee for a work period of more than five hours per day  
5 without providing the employee with a meal period of not less  
6 than 30 minutes." Cal. Lab. Code § 512(a). Plaintiffs allege  
7 that during training weeks, employees were required "to work more  
8 than 8 hours in a day and 40 hours in a week." (FAC ¶ 22.)  
9 Charter allegedly had no policy that designated meal periods and  
10 rest breaks for outside salespersons during training weeks. (Id.  
11 ¶¶ 34, 39.) Furthermore, Charter allegedly "did not require or  
12 allow Plaintiffs and Outside Salesperson Class members to clock-  
13 out and clock-in for each meal period and to accurately record  
14 the existence and length of each meal period taken." (Id. ¶ 34.)  
15 While Charter need not "police [] breaks and ensure no work  
16 thereafter is performed," Brinker, 53 Cal. 4th at 1040,  
17 plaintiffs' assertions plausibly allege that Charter did not  
18 provide breaks and its employees' demanding schedules discouraged  
19 them from taking breaks. Accordingly, the court will deny  
20 defendant's motion to dismiss plaintiffs' third and fourth causes  
21 of action. Additionally, the court will deny defendant's motion  
22 to strike references to meal and rest breaks throughout the  
23 complaint.

24 2. Claim Six: Failure to Provide Wage Statements

25 California Labor Code § 226 provides nine itemized  
26 requirements that must be included on employee wage statements.  
27 See Cal. Lab. Code § 226(a). Under the 2013 amendment to Labor  
28 Code § 226:

1 An employee is deemed to suffer injury . . .  
2 if the employer fails to provide accurate  
3 and complete information as required by one  
4 or more of [the section (a) requirements]  
5 and if the employee cannot promptly and  
6 easily determine from the wage statement  
7 alone . . . . (i) [t]he amount of the gross  
wages or net wages paid to the employee  
during the pay period or any of the other  
information required to be provided on the  
itemized wage statement.

8 Cal. Lab. Code § 226(2)(B) (emphasis added).

9 Here, plaintiffs allege Charter failed to keep accurate  
10 records reflecting plaintiffs' hours worked, deductions taken,  
11 and all gross and net wages earned, including minimum, overtime,  
12 and commission wages in violation of Labor Code § 226(a). (FAC  
13 ¶¶ 51-52.) Under the 2013 amendment, plaintiffs are "deemed to  
14 suffer injury" upon a violation and allege as much. (See id. ¶  
15 54 ("Plaintiffs . . . suffered injury as a result of Charter's  
16 violations").) Additionally, plaintiffs explicitly allege  
17 Charter's violations were or are "knowing and intentional." (Id.  
18 ¶ 53.) "Malice, intent, knowledge, and other conditions of a  
19 person's mind may be alleged generally." Reinhardt v. Gemini  
20 Motor Transp., 879 F. Supp. 2d 1138, 1142 (E.D. Cal. 2012)  
21 (citing Fed. R. Civ. Pro. 9(b)) (Ishii, J.). Accordingly,  
22 plaintiffs have plausibly alleged their claim for failure to  
23 provide accurate wage statements, and the court will deny  
24 Charter's motion to dismiss Claim Six.

25 3. Claim Nine: Violation of California's UCL

26 Defendant moves to dismiss or strike plaintiffs' ninth  
27 cause of action to the extent that it seeks restitution under the  
28 UCL for Charter's alleged failure to provide compliant meal

1 periods and rest breaks under Labor Code § 226.7, complete and  
2 accurate wage statements under Labor Code § 226, and timely  
3 copies of employment records under Labor Code §§ 226(e)(1) and  
4 1198.5(k). (Mot. at 19.) In response to defendant's motion to  
5 dismiss, plaintiffs withdrew their request for restitution under  
6 Labor Code §§ 226 and 1198.5(k). (Opp. to Mot. at 24 (Docket No.  
7 51).) However, plaintiffs maintain their claim to recover  
8 restitution under the UCL for unpaid premium wages under Labor  
9 Code § 226.7. (Reply to Opp. at 12-13 (Docket No. 53).)

10 California's UCL prohibits "unlawful, unfair, or  
11 fraudulent business act[s] or practice[s]." Cal. Bus. & Prof. §  
12 17200. "Unlawful" business acts or practices are defined by  
13 "other laws", and the UCL then "treats them as unlawful practices  
14 that the unfair competition law makes independently actionable."  
15 Levitt v. Yelp! Inc., 765 F.3d 1123, 1130 (9th Cir. 2014) (citing  
16 Cle-Tech Commc'ns, Inc. v. L.A. Cellular Tel. Co., 20 Cal. 4th  
17 163, 180 (1999)). Under the UCL, remedies are "generally limited  
18 to injunctive relief and restitution." Clark v. Superior Ct., 50  
19 Cal. 4th 605, 610 (2010). Damages are not recoverable. Id.  
20 Restitution concerns the power "to order the defendant to restore  
21 to any person in interest any money . . . which may have been  
22 acquired by means of any unlawful practice." Cortez v. Purolator  
23 Air Filtration Prods. Co., 23 Cal. 4th 163, 177 (2000) (internal  
24 citations and modifications omitted). Defendant argues  
25 plaintiffs' claims fail as a matter of law because payments for  
26 meal and rest break violations are penalties, rather than wages  
27 subject to restitution. (Mot. at 20.)

28 The Labor Code defines "wages" expansively, as "all

1 amounts for labor performed by employees of every description.”  
2 Cal. Lab. Code § 200(a). Regardless, the California Supreme  
3 Court has offered conflicting interpretations about whether  
4 premium wages recoverable under Labor Code § 226.7 are “wages”  
5 under other provisions of the Labor Code. In Murphy v. Kenneth  
6 Cole Products Inc., 40 Cal. 4th 1094, 1109 (2007), the court  
7 analogized premium payments to overtime pay, describing premium  
8 payments as both a penalty and a wage. Premium payments were  
9 subject to the statute of limitations for wages because their  
10 primary purpose was to “compensate employees for their injuries.”  
11 Id. at 1110-11. In contrast, in Kirby v. Immoos Fire Protection,  
12 Inc., 53 Cal. 4th 1244, 1254 (2012), the court held “Section  
13 226.7 is not aimed at protecting or providing employees’ wages”  
14 because it is instead concerned with “ensuring the health and  
15 welfare of employees.” Consequently, “section 226.7 [] is not an  
16 action brought for nonpayment of wages; it is an action brought  
17 for non-provision of meal or rest breaks.” Id. at 1257.

18 Following these cases, district courts have diverged on  
19 whether premium wages paid for meal and rest periods are “wages”  
20 under other provisions of the Labor Code, and furthermore,  
21 whether they are wages recoverable as restitution for purposes of  
22 the UCL. Compare Horton v. NeoStrata Co., No. 3:16-cv-02189-AJB-  
23 JLB, 2017 WL 2721977, at \*9 (S.D. Cal. June 22, 2017) (holding  
24 that meal premiums are wages and are recoverable under the UCL)  
25 with Francisco v. Emeritus Corp., No. CV17-02871-BRO (SSx), 2017  
26 WL 7790038, at \*5-6 (C.D. Cal. July 14, 2017) (holding meal  
27 period premiums are wages but are not subject to restitution  
28 under the UCL) and Guerrero v. Halliburton Energy Serv., Inc.,

231 F. Supp. 3d 797, 808 (E.D. Cal. 2017) (holding meal period premiums do not constitute restitution recoverable under the UCL without deciding whether they are wages).

The court need not resolve this dispute, however. See Guerrero, 231 F. Supp. 3d at 808. Regardless of whether premium wages are "wages" under other provisions of the Labor Code,<sup>1</sup> restitution under the UCL is intended to "restore the status quo by returning to the plaintiff funds in which he or she has an ownership interest." Korea Supply Co. v. Lockheed Martin Corp., 29 Cal. 4th 1134, 1149 (2003). Consequently, restitution under the UCL is not available for all violations of the Labor Code. See Pineda v. Bank of Am., N.A., 50 Cal. 4th 1389, 1401-02 (2010). In Pineda, the California Supreme Court held Labor Code § 203 is "not designed to compensate employees for work performed [but] it is intended to encourage employers to pay final wages on time, and to punish employers who fail to do so." Id. Like

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<sup>1</sup> The court notes that the California Supreme Court recently granted review of a case in which the lower court held premium wages paid for lost meal and rest periods were not "wages" for the purpose of accurate pay statements and did not entitle employees to pursue penalties under Section 226. See Naranjo v. Spectrum Sec. Servs., Inc., 40 Cal. App. 5th 444, 270-271 (2d Dist. 2019), review granted, 2020 WL 35452. While the grant itself is not suggestive of the merits, the court assumes, without deciding, that premium wages are "wages" under other provisions of the Labor Code because of the Labor Code's expansive definition of "wages." See Cal. Lab. Code § 200(a); Murphy, 40 Cal. 4th at 1103 (defining wages to include "benefits to which an employee is entitled as part of his or her compensation, including money, room, board, clothing, vacation pay, and sick pay") (collecting cases); see also Suarez v. Bank of Am. Corp., No. 19-cv-01202-MEJ, 2018 WL 3659302, at \*12 (N.D. Cal. Aug. 2, 2018) (finding the majority of courts have held "the 'additional hour of pay' premium owned for meal and rest violations is a 'wage'" (collecting cases).

1 Section 203, Section 226.7 is "not an action brought for  
2 nonpayment of wages," but is instead meant to incentivize  
3 employers to ensure the health and welfare of its employees. See  
4 Kirby, 53 Cal. 4th at 1256-57. Therefore, employees have no  
5 ownership interest in premium wages awarded for a § 226.7  
6 violation, and restitution would not serve to "restore the status  
7 quo" by returning plaintiffs' funds to them. See Francisco, 2017  
8 WL 7790038, at \*6; accord Guerrero, 231 F. Supp. 3d at 808.

9 Accordingly, the court will grant defendant's motion to  
10 dismiss or strike plaintiffs' claim for restitution under the UCL  
11 to the extent it is predicated on § 226.7. Plaintiffs' UCL  
12 claims founded on failures to timely and properly pay all  
13 minimum, overtime, and commission wages; taking of unlawful  
14 commission wage reductions and deductions; and misclassification  
15 are unchallenged and will remain operative.

16 B. Motion to Strike

17 Rule 12(f) of the Federal Rules of Civil Procedure  
18 allows the court to "strike from a pleading an insufficient  
19 defense or any redundant, immaterial, impertinent, or scandalous  
20 matter." Fed. R. Civ. P. 12(f). Whether to grant a motion to  
21 strike is made at the Court's discretion. See Fantasy, Inc. v.  
22 Fogerty, 984 F.2d 1524, 1528 (9th Cir. 1993), rev'd on other  
23 grounds by Fogerty v. Fantastic, Inc., 510 U.S. 517 (1994)).  
24 "Motions to strike should not be granted unless the matter to be  
25 stricken clearly could have no possible bearing on the subject of  
26 the litigation or unless prejudice would result to the moving  
27 party from denial of the motion." Delgado v. Marketsource, Inc.,  
28 No. 17-CV-07370-LHK, 2019 WL 1904216, at \*3 (N.D. Cal. Apr. 29,

1 2019) (internal quotations and citations omitted). The court  
2 must view the pleadings in the light most favorable to the non-  
3 moving party. Terpin v. AT&T Mobility, LLC, 399 F. Supp. 3d  
4 1035, 1051 (C.D. Cal. 2019) (citations omitted).

5 1. Class and Subclass Claims

6 "An order striking class allegations is 'functionally  
7 equivalent' to an order denying class certification." Microsoft  
8 Corp. v. Baker, 137 S. Ct. 1702, 1711 n.7 (2017). Although some  
9 courts have granted motions to strike class allegations under  
10 Rule 12(f), "it is in fact rare to do so in advance of a motion  
11 for class certification." Rennick v. NPAS Sols., LLC, No. 19-cv-  
12 02495-ODW(KSx), 2020 WL 244170, at \*2 (quoting Cholakyan v.  
13 Mercedes-Benz USA, LLC, 796 F. Supp. 2d 1220, 1245 (C.D. Cal.  
14 2011) (collecting cases)). Indeed, while the Supreme Court has  
15 noted there are times in which "the issues are plain enough from  
16 the pleadings to determine whether the interests of the absent  
17 parties are fairly encompassed within the named plaintiff's  
18 claim," it did so in the face of a motion for class  
19 certification. See Gen. Tel. Co. of Sw. v. Falcon, 457 U.S. 147,  
20 160 (1982). Consequently, other judges in this district have  
21 recognized that "motions to strike class allegations are  
22 disfavored because a motion for class certification is a more  
23 appropriate vehicle for arguments pertaining to class  
24 allegations." Olney v. Job.com, Inc., No. 1:12-cv-01724-LJO-SKO,  
25 2013 WL 5476813, at \*3 (E.D. Cal. Sep. 30, 2013) (internal  
26 citations omitted).

27 As the Ninth Circuit has recognized, "[o]ur cases stand  
28 for the unremarkable proposition that often the pleadings alone

1 will not resolve the question of class certification and that  
2 some discovery will be warranted.” Vinole v. Countrywide Home  
3 Loans, Inc., 571 F.3d 935, 942 (9th Cir. 2009). The court is  
4 reluctant to strike plaintiffs’ class allegations before the  
5 parties have had an opportunity to proceed through discovery and  
6 the class certification process. Plaintiffs filed a motion to  
7 compel discovery on January 8, 2020, two days before the motion  
8 to strike was filed. (See Docket Nos. 47, 48.) Plaintiffs  
9 agreed to withdraw their discovery motion without prejudice after  
10 the parties stipulated to extending the dates and deadlines for  
11 plaintiffs’ motion for class certification. (Docket No. 49.)  
12 Accordingly, the court will deny defendant’s motion to strike the  
13 class allegations to allow discovery to proceed.

14 2. Claim Ten: PAGA Representative Allegations

15 District courts appear largely divided as to whether  
16 plaintiffs may bring representative PAGA claims without  
17 satisfying the requirement of manageability. See Silva v.  
18 Domino’s Pizza, No. SACV 18-2145 JVS (JDEX), 2019 WL 4187388, at  
19 \*5 (C.D. Cal. July 22, 2019) (collecting cases). Regardless of  
20 whether the manageability requirement applies in PAGA cases, the  
21 court finds defendant’s motion to strike premature. As previous  
22 courts have found, manageability issues are better addressed  
23 after discovery has concluded and class certification is  
24 determined. See, e.g., Litty v. Merrill Lynch, No. CV14-0425 PA  
25 (PJWx), 2014 WL 5904904, at \*3 (C.D. Cal. 2014) (striking PAGA  
26 claims after denial of class certification). Accordingly, the  
27 court will deny defendant’s motion to strike plaintiffs’ PAGA  
28 representative action.

1           3.    Claim Ten: PAGA Claims for Labor Code Violations

2           Defendant also moves to strike plaintiffs' PAGA claims  
3 to the extent they are based on failure to timely provide  
4 personnel records under California Labor Code § 1198.5(k), wage  
5 statement violations under California Labor Code § 226, and  
6 unpaid wages under California Labor Code § 558. (Mot. at 23-25.)

7           When a section of the Labor Code does not provide for  
8 civil penalties, PAGA supplies default civil penalties. See Cal.  
9 Lab. Code § 2699(f). California Labor Code § 1198.5(k) allows  
10 employees to recover against their employers for failing "to  
11 permit a current or former employee, or his or her  
12 representative, to inspect or copy personnel records" within a  
13 set amount of time. Cal. Lab. Code § 1198.5. Similarly, Labor  
14 Code § 226 permits employees to recover for inaccurate wage  
15 statements. See Cal. Lab. Code § 226. However, the availability  
16 of statutory penalties payable directly to plaintiffs does not  
17 preclude recovery of civil penalties under PAGA for the same  
18 violation. See Tenorio v. Gallardo, No. 1:16-cv-00283 DAD JLT,  
19 2019 WL 338220, at \*8 (E.D. Cal. Jan. 28, 2019) (holding the  
20 "weight of authority holds that plaintiffs are entitled to both  
21 statutory and civil penalties for the same violation of the  
22 California Labor Code") (collecting cases). Accordingly, the  
23 court will deny defendant's motion to strike California Labor  
24 Code §§ 1198.5(k) and 226 from plaintiffs' PAGA action.

25           California Labor Code § 558 permits plaintiffs to sue  
26 for underpayment. Cal. Lab. Code § 558(a). Plaintiffs and  
27 defendant agree that the California Supreme Court has expressly  
28 held PAGA "does not authorize employees to collect section 558's

1 unpaid wages through a PAGA action.” See Mot. at 24-25, Opp. to  
2 Mot. at 29, citing ZB, N.A. v. Superior Court, 8 Cal. 5th 175,  
3 188 (2019) (emphasis added). Consequently, plaintiffs have  
4 clarified that they only request civil penalties in conformity  
5 with ZB, N.A. Accordingly, the court will deny defendant’s  
6 motion to strike plaintiffs’ PAGA claim under Section 558.

7 4. Request for Attorney’s Fees

8 The parties agree that attorneys’ fees are not  
9 recoverable under Labor Code §§ 218.5 or 1194 for violations of  
10 Section 226.7. (See Mot. at 23; Opp. at 26.) However,  
11 plaintiffs argue that attorneys’ fees can be recovered under  
12 California Code of Civil Procedure § 1021.5 if plaintiffs’ meal  
13 and rest break claims “result[] in the enforcement of an  
14 important right affecting the public interest.” Cal. Code Civ.  
15 P. § 1021.5.

16 “Three basic criteria are required to support an award  
17 of attorneys’ fees under [§ 1021.5]: (1) the action resulted in  
18 the enforcement of an important right affecting the public  
19 interest; (2) a significant benefit was conferred on the general  
20 public or a large class of persons; and (3) the necessity and  
21 financial burden of private enforcement were such as to make the  
22 award appropriate.” Abouab v. City & Cty. of San Francisco, 141  
23 Cal. App. 4th 643, 663 (1st Dist. 2006). Plaintiffs assert their  
24 action “is designed to ensure the enforcement of important rights  
25 affecting the public interest generally and the interests of  
26 large number of employees” and “[t]he necessity and financial  
27 burden of private enforcement is great.” (FAC ¶ 73.) On their  
28 face, these assertions are sufficient to overcome defendant’s

1 motion to strike. See Guerrero, 231 F. Supp. 3d at 807.

2 However, plaintiffs only seek attorneys' fees under § 1021.5 in  
3 conjunction with their claim for restitution under the UCL, which  
4 was dismissed in part. See Part II(A)(3), supra. To the extent  
5 that plaintiffs can recover attorneys' fees under their operative  
6 UCL claims for failure to timely and properly pay all minimum,  
7 overtime, and commission wages, unlawful taking of commission  
8 wage reductions and deductions, and misclassification, the court  
9 will deny defendant's motion to strike.

10 5. Request for Injunctive and Declaratory Relief

11 Charter moves to strike plaintiffs' claims for  
12 injunctive relief because plaintiffs are no longer employed by  
13 Charter and therefore lack standing. (Mot. at 23.)

14 In this suit, Harper seeks "individual, representative,  
15 and public injunctive and declaratory relief that compels Charter  
16 to stop its unlawful and unfair practices and fix its broken  
17 timekeeping, recordkeeping, and wage payment systems and  
18 practices, its misclassification of Outside Salespersons Class  
19 members both during training and after training, and its improper  
20 use of commission agreements with Commissions Class members" in  
21 conjunction with his UCL claim. (FAC ¶ 72.) "A former employee  
22 currently seeking to be reinstated or rehired may have standing  
23 to seek injunctive relief against a former employer." Bayer v.  
24 Neiman Marcus Grp., Inc., 861 F.3d 853, 865 (9th Cir. 2017)  
25 (citing Walsh v. Nev. Dep't. of Human Res., 471 F.3d 1033, 1036  
26 (9th Cir. 2006)). However, Harper only seeks to be reinstated as  
27 an employee with Charter in another lawsuit. See Harper v.  
28 Charter Commc'ns, LLC, No. 2:19-cv-01749 WBS DMC. The

1 consequence of a distinct (albeit related) case will not be  
2 brought to bear on this action. Accordingly, the court will  
3 grant defendant's motion to strike plaintiffs' request for  
4 injunctive and declaratory relief.

5 IT IS THEREFORE ORDERED that defendant's motion to  
6 strike plaintiffs' claim for injunctive and declaratory relief  
7 be, and the same hereby is, GRANTED.

8 IT IS FURTHER ORDERED that in all other respects  
9 defendant's motion to dismiss or strike be, and the same hereby  
10 is, DENIED.

11 Dated: February 25, 2020

  
12 WILLIAM B. SHUBB  
13 UNITED STATES DISTRICT JUDGE  
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