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"MANDATORY CHAMBERS COPY"

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

RAUL VILLARREAL, an individual,

Plaintiff,

vs.

CENTRAL FREIGHT LINES, INC., a Texas corporation; and DOES 1 through 10, inclusive,

Defendants.

CASE NO: 2:17-CV-5496

[Assigned to Hon. Otis D. Wright, II]

(Removed from Los Angeles County Superior Court Action, Case No. NS032922)

NOTICE OF MOTION AND MOTION FOR REMAND; AND

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT

Appeal Filed: October 17, 2016

Date: October 16, 2017
Time: 1:30 pm
Place: Courtroom 5D

TO THE COURT AND ALL PARTIES AND THEIR COUNSEL OF RECORD:

Please take notice that on October 16, 2017 at 1:30 pm in Courtroom 5D, 5th Floor, located at 350 W. 1st Street, Los Angeles, CA 90012, RAUL VILLARREAL

will respectfully move this Court for an Order remanding this case to the Superior Court for the County of Los Angeles, as follows:

This Motion for Remand is brought pursuant to 28 U.S.C. § 1447(c) on the grounds that the amount in controversy is less than $75,000, there are no new or different grounds warranting a successive removal, and a *de novo* appeal of a Labor Commissioner award may not be removed to federal court.

This motion is made following the conference of counsel pursuant to L.R. 7-3 which took place on August 16, 2017.

Dated: September 7, 2017

STRAUSS & STRAUSS, APC

By: __/s_____
Michael A. Strauss
Rabiah A. Rahman
Attorneys for Plaintiff

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This case should not have been removed to federal court for a second time. Defendant Central Freight Lines, Inc. (CFL) has ***again*** failed to show that the amount in controversy exceeds $75,000 and there are no *new* or *different* grounds warranting a successive removal. Moreover, a *de novo* appeal of a Labor Commissioner decision may not be removed to federal court given the nature of the appeal and the role of the superior court in the appeal process. For these reasons, Plaintiff respectfully requests this Court to grant Plaintiff's Motion to Remand.

II. RELEVANT FACTS

Raul Villarreal worked for CFL from August 8, 2014 through April 30, 3015 as a truck driver. Declaration of Rabiah A. Rahman in Support of Motion for Remand ("Rahman Decl."), ¶ 6, Ex. A. CFL classified Mr. Villarreal as an "Owner Operator" and paid him as an independent contractor. CFL agreed to pay Mr. Villarreal on a piece-rate, per mile, basis. *Id*. Mr. Villarreal testified at his Labor Commissioner hearing that he regularly worked an average of 14 hours a day and 6 days a week throughout his employment. *Id*.

CFL paid Mr. Villarreal weekly and provided settlement statements detailing his wages and deductions. *Id*. CFL made deductions from each of Mr. Villarreal's paychecks. *Id*. On multiple occasions, CFL deducted amounts leaving Mr. Villarreal with a total compensation of $0.00, even though he preformed services for them during that pay period. *Id*.

III. PROCEDURAL HISTORY

On July 8, 2015, Raul Villarreal filed a complaint with the California Department of Industrial Relations ("DLSE") for unlawful wage deductions, associated penalties, and interest. After a hearing on August 29, 2016, the Labor Commissioner Hearing Officer issued an order awarding Mr. Villarreal $74,042.87 for unlawfully deducted wages, interest, and penalties on October 12, 2016. *Raul Villarreal v. Central Freight*

Lines, Inc., State Case Number 05-65228-EE (October 12, 2016)., Rahman Decl., ¶¶ 3-5, Ex. A.

CFL filed a notice of appeal under California Labor Code section 98.2(a) with the Superior Court of Los Angeles on October 26, 2016. *Id.* at ¶ 7. After CFL filed an Answer to its *De Novo* Appeal on November 14, 2016, Mr. Villarreal subsequently filed a Notice of Claims and Issues at *De Novo* Trial of Wage Claim on November 22, 2016. *Id*. at ¶ 8. Pursuant to *Murphy v. Kenneth Cole Productions, Inc*., 40 Cal.4th 1094 (2007), Mr. Villarreal made additional claims for minimum wage violations, rest period violations, and paycheck stub violations. *Id*. The claims made therein overlap to an extent with the claims on which he prevailed at the Labor Commissioner hearing and which CFL appealed to the superior court. *Id*.

On November 23, 2016, CFL removed this action to the United States District Court, Central District of California, Western Division (Case No. 2:16-cv-08747), for the first time. Plaintiff filed a timely Motion to Remand. On February 13, 2017, this Court granted Plaintiff's Motion to Remand. Specifically, the Court held, "Central Freight Lines, Inc. has not met its burden to show the amount in controversy exceeds the $75,000 threshold for diversity jurisdiction." Rahman Decl., ¶ 11, Ex D. On May 25, 2017, after remand, the Los Angeles Superior Court set trial in this case for August 28, 2017. Rahman Decl., ¶ 12, Ex. E.

IV. ARGUMENT

A. Authority To Remand

Diversity jurisdiction exists only "where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs…" 28 U.S.C. §1332(a). To invoke federal diversity jurisdiction under 28 U.S.C. § 1332(a), where the matter is unclear or ambiguous from the face of a state court complaint whether the requisite amount in controversy is pled, the removing defendant bears the burden of establishing, by a preponderance of the evidence, that the amount in controversy exceeds the

jurisdictional threshold. *Urbino v. Orkin Servs. of California, Inc.*, 726 F.3d 1118, 1121–22 (9th Cir. 2013).

Pursuant to 28 U.S.C. §1447(c), a removed action must be remanded to state court if the federal court lacks subject matter jurisdiction. "The removal statute is strictly construed against removal jurisdiction, and the burden of establishing federal jurisdiction falls to the party invoking the statute." *California ex rel. Lockyer v. Dynegy, Inc.*, 375 F.3d 831, 838 (9th Cir. 2004) citing *Ethridge v. Harbor House Rest.*, 861 F.2d 1389, 1393 (9th Cir. 1988). "Federal jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance." *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). "The defendant also has the burden of showing that it has complied with the procedural requirements for removal." *Riggs v. Plaid Pantries, Inc.*, 233 F. Supp. 2d 1260, 1264 (D. Or. 2001).

A strong presumption exists against removal. *Lockyer v. Dynegy, Inc.*, 375 F.3d at 838. Accordingly, a defendant seeking to remove an action to federal court bears the burden of proving the matter in controversy exceeds $75,000. *Id.* To meet this hefty burden, a defendant must prove, by a preponderance of the evidence, facts demonstrating that the amount in controversy exceeds the jurisdictional minimum. *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696 (9th Cir. 2007) .

B. <u>This Case Must Be Remanded Because CFL Has Again Failed to Show By A Preponderance Of The Evidence That The Amount In Controversy Exceeds the $75,000 Diversity Jurisdiction Requirement.</u>

Here, the amount in controversy is unclear and ambiguous and CFL cannot show, by a preponderance of the evidence, that the amount in controversy meets or exceeds the jurisdictional threshold. Specifically, the Court cannot aggregate the damages arising from Mr. Villarreal's alternate claims of recovery for jurisdictional purposes, which is what CFL attempts to do in arguing that the amount of controversy exceeds $75,000. *See Atrion Networking Corp. v. Marble Play, LLC*, 18 F. Supp. 3d 136, 140 (D. R.I. 2014).

It has long been held that "[o]n remand, … claims brought by a single plaintiff against a single defendant can be aggregated when calculating the amount in controversy, regardless of whether the claims are related to each other." *Suber v. Chrysler Corp.*, 104 F.3d 578, 588 (3d Cir. 1997), *as amended* (Feb. 18, 1997) *citing Snyder v. Harris*, 394 U.S. 332, 335 (1969). "However, when aggregating claims to determine if more than $75,000 is at issue, the court may not aggregate claims that merely assert different theories of recovery for the same damages." *Frump ex rel. Aubuchon v. Claire's Boutiques, Inc*., No. 10-1106-CV-W-SWH, 2011 WL 1103055, at *3 (W.D. Mo. Mar. 22, 2011)

In its Notice of Removal, CFL aggregated Plaintiff's alternative theories of recovery, for the same alleged injury, in calculating the amount in controversy. Notice of Removal at ¶27. This is an invalid method of calculating the amount of controversy. *See TriState HVAC Equip., LLP v. Big Belly Solar, Inc.*, 752 F. Supp. 2d 517, 529 (E.D. Pa. 2010) ("[A] plaintiff's claims against a single defendant may be aggregated for purposes of calculating the amount in controversy, except if the claims are alternative bases of recovery for the same harm such that the plaintiff could not be awarded damages for both claims.")

In *Holmes v. Boehringer Ingelheim Pharm., Inc.*, 158 F.Supp.2d 866 (N.D. Ill. 2001) (*Holmes*), the Plaintiff brought personal injury claims in state court on theories of negligence and strict liability. *Id*. at 867-868. The Defendants removed the case under diversity jurisdiction, alleging Plaintiff sought damages in excess of the diversity threshold. *Id*. at 867. The court held, "[O]ne claim pleaded in the alternative under separate legal theories cannot be aggregated for jurisdictional purposes." *Id*. at 868.

Here, Plaintiff's alleged injury arose under allegations that CFL failed to pay wages in compliance with the California Labor Code. Plaintiff advances four theories of recovery for his minimum wage claims. Rahman Decl. ¶9. Three of his four theories allege that CFL sometimes deducted so many wages from Plaintiff's earnings that Plaintiff's resulting pay was less than the California minimum wage. *Id*. These

theories of recovery and his claims for unlawful deductions are alternative in nature. If, for example, Plaintiff recovers wrongfully deducted wages from a pay period in which he took home less than the minimum wage, Plaintiff will be made whole. If, however, he does not recover the deducted wages, he must still be made whole for CFL's failure to pay him at least the minimum wage for that pay period. Stated differently, if CFL paid Plaintiff without making unlawful deductions from his wages, Plaintiff would **NOT** have a claim for those unpaid minimum wages. These theories of Labor Code violations are merely different bases for a single recovery. *See Indiana Harbor Belt R.R. Co. v. American Cyanamid Co.*, 860 F.2d 1441, 1445 (7th Cir.1988) (defining single "claim" for purposes of Fed.R.Civ.P. 54(b)).

CFL calculated the diversity threshold by aggregating Plaintiff's alternative theories of recovery for the same unpaid wages. In calculating the amount in controversy for jurisdictional purposes, CFL may only aggregate Plaintiff's fourth minimum wage theory of recovery for unpaid rest periods. Rahman Decl. ¶9. CFL has not factored that amount into its calculations to meet the diversity jurisdiction threshold requirement.

Again, CFL has not shown, by a preponderance of the evidence, that the amount will meet or exceed the jurisdictional requirement of $75,000. Therefore, Plaintiff respectfully requests this Court to Remand this case back to the Los Angeles Superior Court for the second time.

C. Remand Should Be Granted Because CFL Has Failed To Show That Its Second Notice Of Removal Is Based On Newly Discovered Facts Not Available At The Time Of The First Removal,' And Thus Their Successive Removal Is Improper.

"A successive removal petition is permitted only upon a 'relevant change of circumstances'—that is, 'when subsequent pleadings or events reveal a *new* and *different* ground for removal.' " *Reyes v. Dollar Tree Stores, Inc.*, 781 F.3d 1185, 1188 (9th Cir. 2015) quoting *Kirkbride v. Cont'l Cas. Co.*, 933 F.2d 729, 732 (9th Cir.1991).

However, "a party is not entitled to file a second notice of removal upon the same grounds where the district court previously remanded the action." *Leon v. Gordon Trucking, Inc.*, 76 F. Supp. 3d 1055, 1062 (C.D. Cal. 2014) (quoting *Allen v. UtiliQuest, LLC.*, No. CV 13–4466 SBA, 2014 WL 94337, *2 (N.D.Cal. Jan. 9, 2014). "Once a district court certifies a remand order to state court it is divested of jurisdiction and can take no further action on the case." *Seedman v. U.S. Dist. Court for Cent. Dist. of California*, 837 F.2d 413, 414 (9th Cir. 1988). "[A] second removal petition based on the same grounds does not 'reinvest' the court's jurisdiction." *Id*. "As the statute makes clear, if the remand order is based on section 1447(c), a district court has no power to correct or vacate it." *Id*.

In *Leon v. Gordon Trucking, Inc*., 76 F. Supp. 3d 1055, 1062 (C.D. Cal. 2014) (*Leon*), the Defendant, Gordon Trucking, removed the state action to federal court. The district court remanded the case to state court, finding no federal question jurisdiction. Specifically, the court found that the defendant failed to show the minimum diversity requirement was met because the defendant "did not proffer evidence concerning its principal place of business." *Id.* at 1059. The Defendant filed a second notice of removal sixty-two days after remand. *Id.* In its second removal notice, the defendant finally asserted facts to support its contention that the minimum diversity requirement was met. *Id*. The only additional evidence the Defendant proffered was in support of its principal place of business. *Id.* The court found that in all other respects, Defendant's "notice of removal [was] identical to its response to the court's order to show cause." *Id*. The court noted that "nothing changed in the interim between the remand to state court and Gordon Trucking's second removal." *Id*. at 1067. Furthermore, the court noted that the Defendant could not argue, in good faith, that evidence of their citizenship was "new or that they did not know the information at the time it first argued that the court had jurisdiction" because "a corporate defendant, like any other, is presumed to know its own citizenship." *Id*. at 1063.

In *Leon*, the court held that defendants failed to show "that their 'second notice of

removal is based on newly discovered facts not available at the time of the first removal,' and thus their successive removal is improper." *Id*. at 1062. The Defendant was "simply attempting to redo its response to the court's order to show cause so as to present sufficient evidence of its citizenship." *Id* at 1067.

Similarly, Defendant CFL fails to show any *new* or *different* grounds permitting a successive removal. In the Order granting Plaintiff's Motion to Remand, this Court held that CFL failed to show that the amount in controversy met the $75,000 diversity threshold requirement. Order Granting Granting Motion to Remand, Rahman Decl., ¶11, Ex. D. Specifically, the court found that CFL failed to calculate the value of Plaintiff's minimum wages claim and therefore did not credit any amount under that claim toward the amount in controversy. *Id*. Other than an amount attributed to Plaintiff's minimum wage claim, CFL's second notice of removal is virtually identical to its first.

In its second removal notice, CFL simply attempts to redo what they should have done in their first attempt to remove this action to federal court. CFL speculates that the minimum wage claim is worth at least $2,088. Central Freight Lines, Inc.'s [Second] Notice of Removal ¶27. CFL does not argue that this is new evidence, nor does CFL show that they did not know this information at the time of its first removal.

All information acquired at Plaintiff's deposition was known to Defendants at the time they filed their first Removal Notice. Defendant relies on Plaintiff's deposition testimony that he worked approximately 116 hours during the pay periods when he received $0.00 in wages as a result of CFL's substantial deductions from his wages. Decl. of Tim Johnson ¶10. However, Plaintiff had already testified at his Labor Commissioner hearing on August 29, 2016 that he worked, on average, 14 hours a day six days a week. The Labor Commissioner Hearing Officer also noted Plaintiff's average working hours as a finding of fact in the Labor Commissioner's decision. Rahman Decl., ¶6, Ex. A. This Court also noted this fact in its calculations of Plaintiff's claim for Rest Period Premiums. Rahman Decl., 11, Ex. D. Furthermore, as

the employer, CFL presumptively was well aware of Plaintiff's hours and working conditions throughout the duration of his employment. Therefore, the number of hours Plaintiff worked, while employed by Defendant, does not bring Defendant's subjective knowledge into play. See *Praisler v. Ryder Integrated Logistics, Inc.*, 417 F.Supp.2d 917, 920 (N.D.Ohio 2006) ("a defendant's citizenship does not ... bring the defendant's subjective knowledge into play, since an individual or a corporate defendant can be expected to know its own citizenship").

There were at least four pay periods in which CFL provided Plaintiff with settlement statements resulting in $0.00 earnings. Rahman Decl., ¶6. With full knowledge that Mr. Villarreal alleges he worked 14 hours a day and 6 days a week, on average, CFL could have easily presented facts in its first notice of removal to support a calculation of Mr. Villarreal's minimum wage claim. However, they failed to attribute any amount to that claim. Rahman Decl., ¶11, Ex. D. Therefore, CFL cannot argue, in good faith, that this evidence is new or that they did not know the number of hours Plaintiff worked during pay periods in which he received less than the minimum wage when they filed their first notice of removal ***or*** in its response to Plaintiff's first Motion to Remand.

In the absence of any new or different grounds for a second removal, Defendant's successive removal notice is procedurally improper. For this reason, Raul Villarreal requests this Court to remand this case back to the California Superior Court.

D. <u>This Court Should Order That This Case Be Remanded To State Court Based Upon A Lack of Subject Matter Jurisdiction.</u>

Although Respondent does not contest the parties' diversity of citizenship at this point, this is not a civil action that was brought in State Court or an action that could have been brought in the District Courts of the United States.

Pursuant to 28 U.S.C. section 1441(a), a defendant may remove "any civil action brought in State court of which the district court of the United States has original jurisdiction" when there is complete diversity of citizenship.

CFL argues that because CFL appealed to a civil court they can remove the civil action to federal court. CFL's argument ignores the requirement in 28 U.S.C. section 1441(a) that the case could have originally been brought in the federal district courts. "Defendant may only remove an action from state court if the matter could have originally been filed in federal court. Here, Section 98.2 specifically provides that any appeal from a decision by the Labor Commissioner must be filed in state court. Cal. Lab. Code § 98.2(a). Thus, this appeal was not a matter that could be removed since it could never have been originally filed in federal court." *De La Chapelle v. PDI, Inc.*, No. C 12-2667 MEJ, 2012 WL 3026413, at *1 (N.D. Cal. July 24, 2012).

The federal courts do not hear state administrative wage claims. Mr. Villarreal filed an administrative wage claim against CFL in the DLSE. The matter was heard by Labor Commissioner Hearing Officer. CFL appeared at the hearing with counsel and put on evidence. The only way this matter found its way into State Superior Court was because CFL appealed the award of the Labor Commissioner.

This court's lack of subject matter jurisdiction is made evident by the specific procedural rules governing the state courts in *de novo* Labor Commissioner appeals

First and foremost, Labor Code section 98.2 mandates, "the parties may seek review [of a Labor Commissioner award] by filing an appeal *to the superior court, where the appeal shall be heard* de novo." Lab. Code § 98.2(a) (emphasis added). Hence, state law provides that only the superior court may hear *de novo* Labor Commissioner appeals. The superior court "hears the matter, not as an appellate court, *but as a court of original jurisdiction*, with full power to hear and determine it as if it had never been before the labor commissioner." *Murphy v. Kenneth Cole Productions, Inc.*, 40 Cal. 4th 1094, 1116-17 (2007) (emphasis added). Federal Courts, on the other hand, do not have such original jurisdiction as that enumerated by the California Legislature in section 98.2.

Second, in order to appeal the decision of the Labor Commissioner, Labor Code section 98.2 requires the employer to "post an undertaking with the reviewing court in

the amount of the order, decision, or award." Lab. Code § 98.2(b). Labor Code section 98.2(b) sets forth the procedure for how an employee is to be paid out of the undertaking/bond. CFL posted a bond to appeal the Labor Commissioner's Decision with the Los Angeles Superior Court, not the district court. Rahman Decl., ¶ 7, Ex. B. Mr. Villarreal should be paid out of said bond when he prevails on this appeal. However, because CFL removed the action to this Court, the removal divested the superior court of all jurisdiction in this case. *See* 28 USC § 1446(d); *Ackerman v. ExxonMobil Corp.*, 734 F.3d 237, 249-250 (4th Cir. 2013). Hence, unless the case is remanded to state court, the state court has no power to pay Mr. Villarreal out of the bond that it is holding.

On a related note, an appeal under Labor Code section 98.2 cannot proceed unless the employer posts said bond in the reviewing court. "[T]he right of an employer to seek de novo judicial review in the superior court of a Labor Commissioner's order, decision or award is conditioned on the necessary prerequisite that the employer post a bond or undertaking for the amount of the award." *Williams v. FreedomCard, Inc.*, 123 Cal. App. 4th 609, 614 (2004). By posting the bond in the superior court and not in the instant Court, which, if the case stays in federal court, will be the "reviewing court," CFL has not complied with section 98.2.

V. CONCLUSION

Raul Villarreal respectfully requests that the Court grant his Motion for Remand.

Respectfully submitted,

Dated: September 7, 2017

STRAUSS & STRAUSS, APC

By: __/S/_____
Michael A. Strauss
Rabiah A. Rahman
Attorneys for Plaintiff

Applications/Ex Parte Applications/Motions/Petitions/Requests

2:17-cv-05496-ODW-AGR Raul Villarreal v. Central Freight Lines, Inc.

ACCO,(AGRx),DISCOVERY,MANADR,RELATED-G

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

Notice of Electronic Filing

The following transaction was entered by Rahman, Rabiah on 9/7/2017 at 4:29 PM PDT and filed on 9/7/2017

Case Name: Raul Villarreal v. Central Freight Lines, Inc.
Case Number: 2:17-cv-05496-ODW-AGR
Filer: Raul Villarreal
Document Number: 11

Docket Text:
Second NOTICE OF MOTION AND MOTION to Remand Case to Raul Villarreal. Motion set for hearing on 10/16/2017 at 01:30 PM before Judge Otis D. Wright II. (Attachments: # (1) Declaration of Rabiah A. Rahman ISO Plaintiff's Motion for Remand, # (2) Exhibit "A" ISO Declaration of Rabiah A. Rahman, # (3) Exhibit "B" ISO Declaration of Rabiah A. Rahman, # (4) Exhibit "C" ISO Declaration of Rabiah A. Rahman, # (5) Exhibit "D" ISO Declaration of Rabiah A. Rahman, # (6) Exhibit "E" ISO Declaration of Rabiah A. Rahman, # (7) Exhibit "F" ISO Declaration of Rabiah A. Rahman, # (8) Proposed Order Granting Motion to Remand) (Rahman, Rabiah)

2:17-cv-05496-ODW-AGR Notice has been electronically mailed to:

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2:17-cv-05496-ODW-AGR Notice has been delivered by First Class U. S. Mail or by other means BY THE FILER to :

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:C:\fakepath\Villarreal SECOND Motion to Remand .pdf
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Original filename:C:\fakepath\Decl of RAR ISO Motion to Remand .pdf
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Document description: Proposed Order Granting Motion to Remand
Original filename:C:\fakepath\Proposed Order Granting Motion to Remand.pdf
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