

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Cunningham v. Columbia State Bank

Cunningham v. Columbia State Bank · No. 2:25-cv-01036-JAM-SCR · Decided June 18, 2025

SUMMARY

The United States District Court for the Eastern District of California grants Marcus Cunningham’s motion to remand an employment-related action to Sacramento County Superior Court. The court holds that the defendants failed to establish fraudulent joinder because California law leaves open the possibility of individual liability under Labor Code section 1102.5. The court also denies the pending motion to dismiss as moot and sanctions plaintiff’s counsel \$200 for exceeding the reply brief page limit.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	John A. Mendez
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	June 18, 2025
DOCKET	2:25-cv-01036-JAM-SCR
DISPOSITION	remanded
PROCEDURAL POSTURE	Plaintiff moved to remand an employment-related action that defendants removed from California state court based on diversity jurisdiction. The court granted the motion, denied defendants' pending motion to dismiss as moot, remanded the case, and imposed sanctions on plaintiff's counsel for exceeding the reply-brief page limit.
STANDARD OF REVIEW	The removing party bears the burden of proving by a preponderance of the evidence that removal is proper. Fraudulent joinder must be proven by clear and convincing evidence, and remand is required if there is any possibility that a state court would find that the complaint states a cause of action against the nondiverse defendant.
PRECEDENTIAL VALUE	unpublished and nonprecedential

TOPICS

- subject matter jurisdiction
- whistleblower
- sanctions
- civil procedure
- retaliation

PRACTICE AREAS

civil procedure

employment law

federal jurisdiction

remedies

QUESTIONS PRESENTED

1. Whether Carlson was fraudulently joined so that her California citizenship could be disregarded for purposes of diversity jurisdiction.
2. Whether Cunningham's whistleblower-retaliation allegations under California Labor Code section 1102.5 created at least a possibility that a California court would find a claim against Carlson individually.
3. Whether sanctions should be imposed on plaintiff's counsel for filing a reply exceeding the court-ordered page limit.

HOLDINGS

1. Carlson was not fraudulently joined because there was a possibility that a California state court would find Cunningham's complaint stated a cause of action against her under California Labor Code section 1102.5. Carlson's citizenship therefore could not be disregarded, complete diversity was absent, and remand was required.
2. Cunningham adequately alleged the elements necessary to establish at least a possibility of a section 1102.5 claim against Carlson: retaliation, disclosure of information reasonably believed to concern unlawful conduct, and disclosure to an employee with authority to investigate, discover, or correct the violation.
3. Plaintiff's counsel was sanctioned \$200 for filing a nine-page reply when the court's filing requirements limited the reply to five pages and imposed a \$50-per-page sanction for excess pages.

KEY QUOTATIONS

“if there is a possibility that a state court would find that the complaint states a cause of action against any of the resident defendants, the federal court must find that the joinder was proper and remand the case to the state court.” (Section II.B.1)

“Accordingly, this Court holds that because there is a “possibility” that a state court would hold Carlson individually liable under Section 1102.5, it “must find that the joinder was proper and remand the case.”” (Section II.B.2.b)

FACTUAL BACKGROUND

Cunningham alleged that he was employed by defendants and was terminated after complaining about a coworker's noncompliance with bank policies and another coworker's racist remarks. He alleged that the policy violations, including force balancing of a teller drawer, could constitute embezzlement or theft, and that he reported his concerns to Chivvis Carlson, the human-resources manager. His complaint asserted California employment and related claims, including whistleblower retaliation under California Labor Code section 1102.5.

PROCEDURAL HISTORY

Marcus Cunningham originally filed the action in the Superior Court of California, County of Sacramento. Defendants removed the case to federal court, asserting diversity jurisdiction and arguing that California defendant Chivvis Carlson had been fraudulently joined. After removal, defendants moved to dismiss, and Cunningham moved to remand. The court found a possibility that a California court could hold Carlson individually liable under California Labor Code section 1102.5 and therefore rejected the fraudulent-joinder argument.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The Clerk shall remand the matter to the Sacramento County Superior Court. Plaintiff's counsel Erum Siddiqui shall pay \$200.00 in sanctions to the Clerk within ten days of the order.

CASES CITED

- City of Chicago v. International College of Surgeons, 522 U.S. 156, 163 (1997)
- Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992)
- Geographic Expeditions, Inc. v. Estate of Lhotka ex rel. Lhotka, 599 F.3d 1102, 1107 (9th Cir. 2010)
- Kantor v. Wellesley Galleries, Ltd., 704 F.2d 1088, 1090 (9th Cir. 1983)
- Johnson v. Columbia Properties Anchorage, LP, 437 F.3d 894, 899 (9th Cir. 2006)
- Dart Cherokee Basin Operating Co., LLC v. Owens, 574 U.S. 81, 89 (2014)
- Morris v. Princess Cruises, Inc., 236 F.3d 1061, 1067 (9th Cir. 2001)
- Hunter v. Philip Morris USA, 582 F.3d 1039, 1046 (9th Cir. 2009)
- Hamilton Materials, Inc. v. Dow Chemical Corp., 494 F.3d 1203, 1206 (9th Cir. 2007)
- Green v. Ralee Engineering Co., 19 Cal. 4th 66, 87 (1998)
- Dawson v. Caregard Warranty Service, Inc., No. 5:23-CV-01139-SB-SP, 2024 WL 661198, at *1 (C.D. Cal. Jan. 12, 2024)
- Bales v. County of El Dorado, No. 2:18-CV-01714-JAM-DB, 2018 WL 4558235, at *3 (E.D. Cal. Sept. 20, 2018)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Moren v. National Express Transit, Inc., No. 121CV01206AWIJLT, 2021 WL 5602820, at *2 (E.D. Cal. Nov. 30, 2021)

OPINION

1 2 3 4 5 UNITED STATES DISTRICT COURT 6 EASTERN DISTRICT OF CALIFORNIA 7 8
MARCUS CUNNINGHAM, an individual, No. 2:25-cv-01036-JAM-SCR 9 Plaintiff, 10 v.
ORDER GRANTING PLAINTIFF’S MOTION TO REMAND 11 COLUMBIA STATE BANK, a

Washington limited liability company; UMPQUA 12 BANK, an Oregon limited liability company; CHIVVAS CARLSON, an 13 individual; and DOES 1-10, inclusive, 14 Defendants.

15 16 Before the Court is Marcus Cunningham's ("Plaintiff") motion 17 to remand. See Mot., ECF No. 7. Columbia State Bank, Umpqua 18 Bank, and Chivvis Carlson (collectively, "Defendants") oppose. 19 See Opp'n, ECF No. 12. Plaintiff replied, though he failed to 20 comply with the Court's order regarding the length of his brief. 21 See Reply, ECF No. 13; Order re Filing Requirements at 1, ECF No. 22 3-2.

For the following reasons, Plaintiff's motion is granted.¹ 23 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND 24 This controversy arises out of Plaintiff's employment and 25 subsequent termination by Defendants. Compl. ¶¶ 9, 65, ECF No. 26 27 1This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g).

The hearing was 28 scheduled for June 17, 2025. 1 7-2. Plaintiff alleges he made complaints about a coworker's 2 noncompliance with bank policy and a separate coworker's racist 3 remarks. Id. ¶¶ 14-18, 27-33. Instead of having his complaints 4 taken seriously, Plaintiff pleads that he was retaliated against 5 and terminated. Id. ¶ 65.

In his complaint, Plaintiff brings 6 seven causes of action: (1) discrimination in violation of 7 California's Fair Employment and Housing Act ("FEHA"); 8 (2) harassment in violation of FEHA; (3) retaliation in violation 9 of FEHA; (4) failure to prevent discrimination and retaliation; 10 (5) whistleblower retaliation; (6) wrongful termination in 11 violation of public policy; and (7) defamation.

Id. ¶¶ 67-118. 12 Plaintiff originally filed suit in the Superior Court of 13 California, County of Sacramento. Notice of Removal, ECF No. 1. 14 Defendants timely removed the case to federal court under 15 diversity jurisdiction. Id. Plaintiff is purportedly a citizen 16 of California, and while Defendants concede Carlson is also a 17 citizen of California, they argue she was fraudulently joined and 18 therefore should not be considered for purposes of establishing 19 diversity jurisdiction.

Id. at 4-5. After removal, Defendants 20 moved to dismiss all causes of action for failure to state a 21 claim. Motion to Dismiss, ECF No. 4. Defendants' motion is 22 still pending before this Court. 23 Plaintiff now moves to remand this action to state court, 24 arguing that Carlson was not fraudulently joined because he has 25 properly alleged claims against Carlson for harassment, 26 whistleblower retaliation, and defamation (the Second, Fifth, and 27 Seventh Causes of Action, respectively).

Mot. at 4-8. 28 Defendants disagree, contending that Plaintiff cannot sustain any 1 claim against Carlson. Opp'n at 4-11. 2 II. OPINION 3 A. Legal Standard 4 Under 28 U.S.C. Section 1441, a defendant may remove a 5 civil action from state to federal court if there exists 6 original

jurisdiction. *City of Chicago v. Int'l Coll. of 7 Surgeons*, 522 U.S. 156, 163 (1997). “The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331.

Courts strictly construe the removal statute against removal and federal jurisdiction must be rejected if there is any doubt as to the right of removal. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992).

The party removing a case to federal court “has the burden to prove, by a preponderance of the evidence, that removal is proper.” *Geographic Expeditions, Inc. v. Estate of Lhotka ex rel. Lhotka*, 599 F.3d 1102, 1107 (9th Cir. 2010). B. Diversity Jurisdiction A court may exercise diversity jurisdiction over a matter when the amount in controversy exceeds \$75,000 and there is diversity of citizenship among the parties.

See 28 U.S.C. § 1332(a). For diversity purposes, a person is a citizen of a state if he or she is: (1) a citizen of the United States and (2) domiciled in that state. *Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983). An LLC is a citizen of the state of which its owners or members are citizens. *Johnson v. Columbia Props.*

Anchorage, LP, 437 F.3d 894, 899 (9th Cir. 2006). “In determining whether a civil action is removable on the basis of [diversity jurisdiction], the citizenship of 2 defendants sued under fictitious names shall be disregarded.” 28 U.S.C. § 1441(b)(1). 4 Regarding the amount in controversy, Plaintiff did not plead an amount of damages.

Because Defendants provide a plausible allegation that the amount in controversy is sufficient, and because Plaintiff does not contest this allegation, the Court accepts Defendants’ allegation as true for purposes of this motion. See Notice of Removal at 5-7; *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 89 (2014). 11 This dispute boils down to whether there is complete diversity of citizenship.

Plaintiff and Defendants agree on the following: Plaintiff is a citizen of California, Columbia State Bank resides in Washington, Umpqua Bank resides in Oregon, and Carlson is a citizen of California. See Compl. ¶¶ 1-4; Notice of Removal at 3-4. They disagree, however, on whether Carlson was fraudulently joined. 1. Applicable Law The Ninth Circuit held, “Joinder of a non-diverse defendant is deemed fraudulent, and the defendant’s presence in the lawsuit is ignored for purposes of determining diversity, if the plaintiff fails to state a cause of action against a resident defendant, and the failure is obvious according to the settled rules of the state.

Further, the defendant is entitled to present the facts showing the joinder to be fraudulent.” *Morris v. Princess Cruises, Inc.*, 236 F.3d 1061, 1067 (9th Cir. 2001) (cleaned up). A defendant alleging fraudulent joinder carries a “heavy burden,” as there is a “general

presumption against 1 [finding] fraudulent joinder.” *Hunter v. Philip Morris USA*, 582 2 F.3d 1039, 1046 (9th Cir.

2009) (citation omitted). Indeed, “if 3 there is a possibility that a state court would find that the 4 complaint states a cause of action against any of the resident 5 defendants, the federal court must find that the joinder was 6 proper and remand the case to the state court.” *Id.* (citation 7 omitted). “Fraudulent joinder must be proven by clear and 8 convincing evidence.” *Hamilton Materials, Inc. v. Dow Chem.*

9 Corp., 494 F.3d 1203, 1206 (9th Cir. 2007) (citation omitted). 10 2. Whistleblower Retaliation 11 a. Stating a Claim 12 Plaintiff brings his whistleblower retaliation claim against 13 Carlson under California Labor Code Section 1102.5, which 14 provides in relevant part: 15 An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for 16 disclosing information, or because the employer believes that the employee disclosed or may disclose 17 information, to a government or law enforcement agency, to a person with authority over the employee 18 or another employee who has the authority to investigate, discover, or correct the violation or 19 noncompliance, or for providing information to, or testifying before, any public body conducting an 20 investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information 21 discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, 22 or federal rule or regulation, regardless of whether disclosing the information is part of the employee’s 23 job duties.

24 Cal. Lab. Code § 1102.5(b). 25 Thus, to state a claim under Section 1102.5, Plaintiff must 26 allege (1) he was retaliated against after (2) disclosing 27 information which he had “reasonable cause to believe” related to 28 a violation or noncompliance with a local, state, or federal rule 1 or law (3) to an “employee who has the authority to investigate, 2 discover, or correct the violation or noncompliance.” *Id.* 3 Plaintiff satisfies theses pleading requirements.

Plaintiff 4 was terminated after he allegedly disclosed information, which 5 plausibly meets the first requirement of experiencing 6 retaliation. See *Compl.* ¶ 65. Regarding disclosure of a legal 7 violation, “an employee need not prove an actual violation of 8 law; it suffices if the employer fired him for reporting his 9 ‘reasonably based suspicions’ of illegal activity.” *Green v. 10 Ralee Engineering Co.*, 19 Cal. 4th 66, 87 (1998) (citation 11 omitted).

Plaintiff alleges that a co-worker, Irene Damian, was 12 negligent regarding her compliance with policies and procedures. 13 *Compl.* ¶ 15. Plaintiff suspected Damian of “force balancing,” 14 which is when a teller “intentionally makes adjustments (overage 15 or shortage) to their drawer at the end of the day if the ending 16 balance is different from the actual cash in the teller’s drawer 17 to balance it.” *Id.* ¶ 14.

Plaintiff alleges that this practice 18 “could result in embezzlement [or] theft.” Id. Plaintiff 19 informed Carlson about Damian’s negligence and had weekly 20 conversations with her about Damian’s “willful ignorance of the 21 policies and procedures.” Id. ¶¶ 16, 18. Plaintiff thus 22 reported reasonably based suspicions of illegal activity, which 23 meets the second element of stating a claim under Section 1102.5.

24 See Green, 19 Cal. 4th at 87. Finally, as for the third 25 requirement, because Carlson is the HR Manager, see Compl. ¶ 4, 26 Plaintiff presumably disclosed information to an “employee who 27 has the authority to investigate, discover, or correct the 28 violation or noncompliance.” See Cal. Lab. Code § 1102.5(b). 1 Accordingly, Plaintiff states a plausible claim under 2 Section 1102.5.

3 b. Individual Liability 4 Defendants’ only argument regarding the viability of 5 Plaintiff’s claim is that a non-employer individual, such as 6 Carlson, cannot be held liable under Section 1102.5. Opp’n at 7- 7 8.

The statute was amended in 2013 to include the addition of 8 “or any person acting on behalf of the employer” instead of 9 referring solely to “[a]n employer.” Cal. Lab. Code § 1102.5(b). 10 “Neither the California Supreme Court nor any intermediate 11 appellate court appears to have considered whether the 2013 12 amendment expands liability for violations of § 1102.5 to permit 13 claims for money damages against individual non-employers.” 14 Dawson v. Caregard Warranty Serv., Inc., No. 5:23-CV-01139-SB-SP, 15 2024 WL 661198, at *1 (C.D.

Cal. Jan. 12, 2024). As Defendants 16 point out, in the absence of controlling caselaw, numerous 17 federal courts — including this Court — have held that 18 individuals cannot be held liable under Section 1102.5(b). See 19 Motion to Dismiss at 11, ECF No. 4 (citing Bales v. Cnty. of EL 20 Dorado, No. 2:18-CV-01714-JAM-DB, 2018 WL 4558235, at *3 (E.D. 21 Cal. Sept.

20, 2018)). However, the cases relied on by 22 Defendants, including Bales, are not dispositive here given that 23 these cases involved motions to dismiss, not a motion to remand 24 focused on joinder. This distinction is important because a 25 motion to dismiss requires a plaintiff to show that its claim is 26 plausible.

The Supreme Court held that this standard is 27 satisfied where the court can “draw the reasonable inference that 28 the defendant is liable for the misconduct alleged.” Ashcroft v. 1 Iqbal, 556 U.S. 662, 678 (2009).

The Court explained that the 2 plausibility standard “asks for more than a sheer possibility” 3 that the defendant is liable. Id. As such, on motions to 4 dismiss, courts analyzing Section 1102.5 claims against non- 5 employer individuals have held that they cannot draw the 6 reasonable inference that such individuals are liable under the 7 statute. 8 For a motion to remand concerning fraudulent joinder, if a 9 plaintiff shows “a possibility that a state court would find that 10 the complaint states a cause of action against any of the 11 resident defendants, the federal court must

find that the joinder 12 was proper and remand the case to the state court.” See Hunter, 13 582 F.3d at 1046 (emphasis added) (citation omitted).

Plaintiff 14 here faces a lower burden on establishing joinder than surviving 15 a motion to dismiss, and courts in this circuit routinely remand 16 actions where a plaintiff has brought a claim under Section 17 1102.5 against a non-employer individual. Indeed, “more than a 18 dozen courts considering motions to remand based on fraudulent 19 joinder of individual defendants have determined that state law 20 is unsettled following the 2013 amendment, such that ‘as a matter 21 of state law, it is not obvious whether a defendant can or cannot 22 be found personally liable under § 1102.5.’” Dawson, 2024 WL 23 661198, at *1 (citing *Moren v. Nat’l Express Transit, Inc.*, No. 24 121CV01206AWIJLT, 2021 WL 5602820, at *2 (E.D.

Cal. Nov. 30, 25 2021) (collecting cases)). 26 Accordingly, this Court holds that because there is a 27 “possibility” that a state court would hold Carlson individually 28 liable under Section 1102.5, it “must find that the joinder was ee IE OIE IRIE II I IIE IE OIE IE IE IONE IIE IED OE 1 proper and remand the case.” See Hunter, 582 F.3d at 1046.

As 2 such, the Court need not determine whether Plaintiff states a 3 harassment or defamation claim against Carlson, as the 4 | whistleblower retaliation claim alone requires remand. See *id.* 5 Cc. Sanctions for Failure to Comply with the Court’s Order 6 Plaintiff’s Reply exceeded the Court’s page limit. See 7 Order re Filing Requirements at 1. Plaintiff’s Reply was nine 8 | pages, and the filing requirements limit this brief to five pages 9 and call for sanctions of \$50 per page exceeding the limit.

See 10 | *id.* Local Rule 110 authorizes the Court to impose sanctions for 11 “failure of counsel or of a party to comply with... any order 12 of the Court.” Therefore, the Court sanctions Plaintiff’s 13 counsel, Erum Siddiqui, \$200. 14 III. ORDER 15 For the reasons set forth above, the Court GRANTS 16 | Plaintiff’s motion to remand. 17 Defendants’ motion to dismiss at ECF No. 4 is DENIED AS 18 MOOT.

19 The Clerk of the Court shall remand this matter to the 20 Sacramento County Superior Court. 21 It is further ordered that within ten (10) days of this 22 Order Plaintiff’s counsel Erum Siddiqui shall pay sanctions of 23 | \$200.00 to the Clerk of the Court. 24 IT IS SO ORDERED. 25 Dated: June 17, 2025 26 27 a 7 Yond JOHN A. MENDEZ 28 SENIOR UNITED*STATES DISTRICT JUDGE