

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PRECEDENTIAL VALUE	unpublished and nonprecedential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)