

**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

OPINION

Cunningham v. Columbia State Bank

PER CURIAM.

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 8 have original jurisdiction of all civil actions arising under 9 the Constitution, laws, or treaties of the United States." 28 10 U.S.C. § 1331. Courts strictly construe the removal statute 11 against removal and federal jurisdiction must be rejected if 12 there is any doubt as to the right of removal. *Gaus v. Miles, 13 Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). The party removing a 14 case to federal court "has the burden to prove, by a 15 preponderance of the evidence, that removal is proper." 16 *Geographic Expeditions, Inc. v. Estate of Lhotka ex rel. Lhotka*, 17 599 F.3d 1102, 1107 (9th Cir. 2010). 18 B. Diversity Jurisdiction 19 A court may exercise diversity jurisdiction over a matter 20 when the amount in controversy exceeds \$75,000 and there is 21 diversity of citizenship among the parties. See 28 U.S.C. 22 § 1332(a). For diversity purposes, a person is a citizen of a 23 state if he or she is: (1) a citizen of the United States and 24 (2) domiciled in that state. *Kantor v. Wellesley Galleries, 25 Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983). An LLC is a citizen 26 of the state of which its owners or members are citizens. 27 *Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d 894, 899 (9th

28 Cir. 2006). "In determining whether a civil action is removable

1 on the basis of [diversity jurisdiction], the citizenship of 2 defendants sued under fictitious names shall be disregarded." 28 3 U.S.C. § 1441(b)(1). 4 Regarding the amount in controversy, Plaintiff did not plead 5 an amount of damages. Because Defendants provide a plausible 6 allegation that the amount in controversy is sufficient, and 7 because Plaintiff does not contest this allegation, the Court 8 accepts Defendants' allegation as true for purposes of this 9 motion. See Notice of Removal at 5-7; *Dart Cherokee Basin 10 Operating Co., LLC v. Owens*, 574 U.S. 81, 89 (2014). 11 This dispute boils down to whether there is complete 12 diversity of citizenship. Plaintiff and Defendants agree on the 13 following: Plaintiff is a citizen of California, Columbia State 14 Bank resides in Washington, Umpqua Bank resides in Oregon, and 15 Carlson is a citizen of California. See Compl. ¶¶ 1-4; Notice of

16 Removal at 3-4. They disagree, however, on whether Carlson was
17 fraudulently joined. 18 1. Applicable Law 19 The Ninth Circuit held, “Joinder of a non-diverse
defendant 20 is deemed fraudulent, and the defendant’s presence in the lawsuit 21 is ignored for
purposes of determining diversity, if the 22 plaintiff fails to state a cause of action against a
resident 23 defendant, and the failure is obvious according to the settled 24 rules of the state.
Further, the defendant is entitled to 25 present the facts showing the joinder to be fraudulent.”
Morris 26 v. Princess Cruises, Inc., 236 F.3d 1061, 1067 (9th Cir. 2001) 27 (cleaned up). A
defendant alleging fraudulent joinder carries a 28 “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. 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

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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