UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Bricine Mitchell v. Continental Casualty Insurance

Mitchell · No. 25-cv-09553-JSC · Decided December 1, 2025

SUMMARY

The court orders Continental Casualty Insurance to show cause why this removed putative class action should not be remanded for lack of subject matter jurisdiction. The court concludes that Defendant has not shown by a preponderance of the evidence that the amount in controversy exceeds $75,000, including through attorney's fees or the cost of complying with the requested injunction.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Jacqueline Scott Corley
JURISDICTION	United States District Court for the Northern District of California
DECIDED	December 1, 2025
DOCKET	25-cv-09553-JSC
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff filed a putative class action in California state court. Defendant removed the action to federal court on diversity-of-citizenship grounds, and the district court ordered Defendant to show cause why the case should not be remanded for lack of subject matter jurisdiction.
STANDARD OF REVIEW	A removing defendant bears the burden of establishing that removal is proper. When the complaint does not clearly allege the amount in controversy, the defendant must establish by a preponderance of the evidence that the amount exceeds $75,000. The federal court independently evaluates whether subject matter jurisdiction exists.
PRECEDENTIAL VALUE	Unknown; unpublished interlocutory district court order

TOPICS

subject matter jurisdiction · civil procedure · class actions · noncompete agreements · motions to dismiss

PRACTICE AREAS

civil procedure · insurance · employment law

QUESTIONS PRESENTED

1. Whether Continental established by a preponderance of the evidence that the amount in controversy exceeds $75,000 for diversity jurisdiction.
2. Whether projected attorney's fees attributable to a putative class action established the amount-in-controversy requirement.
3. Whether the anticipated cost of complying with the requested injunction established the amount-in-controversy requirement.

HOLDINGS

1. Continental did not meet its burden of showing by a preponderance of the evidence that the amount in controversy exceeds $75,000.
2. The cost of complying with an injunction may count toward the amount in controversy, but Continental failed to provide evidence showing that compliance would cost more than $75,000.

KEY QUOTATIONS

> *"The defendant seeking removal "bears the burden of establishing that removal is proper," and the "removal statute is strictly construed against removal jurisdiction.""* (at 1)

> *"Where, as here, it 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."* (at 1-2)

> *"So, the Notice of Removal does not satisfy Defendant's burden of showing the amount in controversy is satisfied."* (at 3)

FACTUAL BACKGROUND

Mitchell, a California citizen, challenged Continental Casualty Insurance's use of noncompete and nonsolicitation clauses in a putative class action. Continental, an Illinois citizen, removed the action based on diversity jurisdiction. Mitchell's complaint did not specify an amount in controversy, so Continental relied on projected attorney's fees and the anticipated cost of complying with requested injunctive relief to establish the jurisdictional threshold.

PROCEDURAL HISTORY

Mitchell filed a putative class action alleging that Continental Casualty Insurance used noncompete and nonsolicitation clauses that violate California law. Continental removed the action under 28 U.S.C. § 1441 based on diversity jurisdiction. The district court concluded that the notice of removal did not adequately establish that the amount in controversy exceeded $75,000 and ordered Defendant to show cause by December 8, 2025, why remand should not follow.

DISPOSITION

other

REMAND INSTRUCTIONS

Defendant was ordered to show cause on or before December 8, 2025, why the action should not be remanded for lack of subject matter jurisdiction. The order did not itself enter a final remand order.

CASES CITED

- Provincial Government of Marinduque v. Placer Dome, Inc., 582 F.3d 1083, 1087 (9th Cir. 2009)
- Valdez v. Allstate Insurance Co., 372 F.3d 1115, 1116 (9th Cir. 2004)
- Urbino v. Orkin Services of California, Inc., 726 F.3d 1118, 1121-22 (9th Cir. 2013)
- Fritsch v. Swift Transportation Co. of Arizona, LLC, 899 F.3d 785, 794-95 (9th Cir. 2018)
- Rosenwald v. Kimberly-Clark Corp., 152 F.4th 1167, 1179-80 (9th Cir. 2025)
- Goldberg v. CPC International, Inc., 678 F.2d 1365, 1367 (9th Cir. 1982)
- Gibson v. Chrysler Corp., 261 F.3d 927, 942 (9th Cir. 2001)
- Ramirez v. Merrill Gardens, LLC, No. 1:22-CV-00542-SAB, 2024 WL 3011142, at *28 (E.D. Cal. June 11, 2024)
- Hass v. Flowers Bakeries Sales of Norcal, LLC, No. 25-CV-06018-JSC, 2025 WL 3295328 (N.D. Cal. Nov. 26, 2025)
- In re Ford Motor Co./Citibank (South Dakota), N.A., 264 F.3d 952, 958 (9th Cir. 2001)

OPINION

1 2 3 4 UNITED STATES DISTRICT COURT 5 NORTHERN DISTRICT OF CALIFORNIA 6 7 BRICINE MITCHELL, Case No. 25-cv-09553-JSC 8 Plaintiff, ORDER TO DEFENDANTS TO SHOW 9 v. CAUSE RE: DIVERSITY JURISDICTION 10 CONTINENTAL CASUALTY INSURANCE, 11 Defendant. 12 13 Plaintiff filed this putative class action against Defendant in state court and alleged 14 violations of California Business & Professions Code §§ 16600, 16600.1, 16600.5, and 17200.

15 (Dkt. No. 3 at 9-18.)1 Plaintiff challenges Defendant's use of non-compete and/or non-solicitation 16 clauses on the grounds they are void under California law. Defendant removed the case to this 17 Court based on diversity jurisdiction, not the Class Action Fairness Act. (Id. at 1-7.)

The parties 18 agree Plaintiff is a California citizen and Defendant is an Illinois citizen. (Id. at 3, 11.) Because 19 Plaintiff's complaint did not allege a specific amount in controversy, Defendant argues attorney's 20 fees and the cost of compliance with the injunctive relief Plaintiff seeks will exceed $75,000. 21 A defendant may remove an action from state court to federal court so long as the federal 22 court has original jurisdiction.

See 28 U.S.C. § 1441(a). Federal subject matter jurisdiction under 28 U.S.C. § 1332(a)(1) requires complete diversity of citizenship and an amount in controversy in excess of $75,000. The defendant seeking removal “bears the burden of establishing that removal is proper,” and the “removal statute is strictly construed against removal jurisdiction.” Provincial Gov’t of Marinduque v. Placer Dome, Inc., 582 F.3d 1083, 1087 (9th Cir.

2009). A federal court also has an independent obligation to satisfy itself it has federal subject matter jurisdiction. See Valdez v. Allstate Ins. Co., 372 F.3d 1115, 1116 (9th Cir. 2004). A case removed to federal court must be remanded to state court “[i]f at any time before final judgment it appears that the district court lacks subject matter jurisdiction.” See 28 U.S.C. § 1447(c). “Where, as here, it 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 Cal., Inc., 726 F.3d 1118, 1121-22 (9th Cir.

2013) (cleaned up). Defendant first argues Plaintiff’s attorney’s fees will exceed $75,000. Attorney’s fees can count toward the amount in controversy, but a removing defendant must “make this showing with summary-judgment-type evidence.” Fritsch v. Swift Transp. Co. of Ariz., LLC, 899 F.3d 785, 794-95 (9th Cir. 2018). Furthermore, when calculating the amount in controversy in a putative class action, “the potential attorneys’ fees should be attributed pro rata to each class member.” Rosenwald v. Kimberly-Clark Corp., 152 F.4th 1167, 1179-80 (9th Cir.

2025) (cleaned up; citing Goldberg v. CPC Int’l, Inc., 678 F.2d 1365, 1367 (9th Cir. 1982)); see also Gibson v. Chrysler Corp., 261 F.3d 927, 942 (9th Cir. 2001) (explaining awarding fees “to a successful party” under Cal. Civ. P. Code § 1021.5 requires apportioning fees to all prevailing plaintiffs). California’s Business & Professions Code § 16600.5(e)(2) provides “a prevailing employee, former employee, or prospective employee in an action based on a violation of [sections 16600 and 16600.1] shall be entitled to recover reasonable attorney’s fees and costs.” Cal. Bus. & Prof.

Code § 16600.5(e)(2). Defendant asserts Plaintiff’s attorney has recently collected fees at a $400 hourly rate, the median time from filing to civil trial in the Northern District of California is 47.9 months, and Plaintiff’s counsel can be expected to spend at least the approximately four hours per month necessary to—given such an hourly rate and case duration— exceed $75,000 in attorney’s fees.

(Dkt. No. 3 at 5 (citing Ramirez v. Merrill Gardens, LLC, No. 1:22-CV-00542-SAB, 2024 WL 3011142, at *28 (E.D. Cal. June 11, 2024).) But, as section 16600.5 allows attorney’s fees to any prevailing employee, and Plaintiff seeks to represent a class attorney’s fees per class member. See Rosenwald, 152 F.4th at 1179-80. So, Defendant has not met its burden of establishing by a preponderance of the evidence Plaintiffs attorney's fees will exceed $75,000.

See Hass v. Flowers Bakeries Sales of Norcal, LLC, No. 25-CV-06018-JSC, 2025 WL 3295328 (N.D. Cal. Nov. 26, 2025). Defendant also argues the cost of compliance with the injunction Plaintiff seeks— “requiring Defendant to issue individualized notices to all current and former employees and to refrain from including noncompete or nonsolicitation provisions in all future agreements”—would exceed $75,000.

(Dkt. No. 3 at 6.) The cost of complying with an injunction may count toward the amount in controversy requirement. See In re Ford Motor Co./Citibank (S.D.), N.A., 264 F.3d 952, 958 (9th Cir. 2001). But Defendant has not provided any evidence supporting its assertion “identifying, reviewing, and contacting each potentially affected employee, preparing compliant notices, and distributing them” will cost more than $75,000.

(Dkt. No. 3 at 6.) Further, it has not cited any caselaw that suggests in a removed putative class action the cost of complying with an injunction would not be treated the same as attorney's fees for amount in controversy purposes, 3 that is, determined pro rata based on the number of class members. a So, the Notice of Removal does not satisfy Defendant's burden of showing the amount in 3 controversy is satisfied.

Accordingly, on or before December 8, 2025, Defendant is ORDERED TO SHOW CAUSE why this action should not be remanded for lack of subject matter jurisdiction. IT IS SO ORDERED. Dated: December 1, 2025, td ne JAGQUELINE SCOTT CORL United States District Judge