

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

OPINION

Bricine Mitchell v. Continental Casualty Insurance

PER CURIAM.

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 23 28 U.S.C. § 1332(a)(1) requires complete diversity of citizenship and an
amount in controversy in 24 excess of \$75,000. The defendant seeking removal “bears the burden
of establishing that removal 25 is proper,” and the “removal statute is strictly construed against
removal jurisdiction.” *Provincial 26 Gov’t of Marinduque v. Placer Dome, Inc.*, 582 F.3d 1083,
1087 (9th Cir. 2009). A federal court 27 1 also has an independent obligation to satisfy itself it has
federal subject matter jurisdiction. See 2 *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1116 (9th Cir.
2004). A case removed to federal court 3 must be remanded to state court “[i]f at any time before
final judgment it appears that the district 4 court lacks subject matter jurisdiction.” See 28 U.S.C.

§ 1447(c). “Where, as here, it is unclear or 5 ambiguous from the face of a state-court complaint whether the requisite amount in controversy is 6 pled, the removing defendant bears the burden of establishing, by a preponderance of the 7 evidence, that the amount in controversy exceeds the jurisdictional threshold.” *Urbino v. Orkin 8 Servs. of Cal., Inc.*, 726 F.3d 1118, 1121-22 (9th Cir. 2013) (cleaned up). 9 Defendant first argues Plaintiff’s attorney’s fees will exceed \$75,000. Attorney’s fees can 10 count toward the amount in controversy, but a removing defendant must “make this showing with 11 summary-judgment-type evidence.” *Fritsch v. Swift Transp. Co. of Ariz., LLC*, 899 F.3d 785, 794- 12 95 (9th Cir. 2018). Furthermore, when calculating the amount in controversy in a putative class 13 action, “the potential attorneys’ fees should be attributed pro rata to each class member.” 14 *Rosenwald v. Kimberly-Clark Corp.*, 152 F.4th 1167, 1179-80 (9th Cir. 2025) (cleaned up; citing 15 *Goldberg v. CPC Int’l, Inc.*, 678 F.2d 1365, 1367 (9th Cir. 1982)); see also *Gibson v. Chrysler 16 Corp.*, 261 F.3d 927, 942 (9th Cir. 2001) (explaining awarding fees “to a successful party” under 17 Cal. Civ. P. Code § 1021.5 requires apportioning fees to all prevailing plaintiffs). 18 California’s Business & Professions Code § 16600.5(e)(2) provides “a prevailing 19 employee, former employee, or prospective employee in an action based on a violation of 20 [sections 16600 and 16600.1] shall be entitled to recover reasonable attorney’s fees and costs.” 21 Cal. Bus. & Prof. Code § 16600.5(e)(2). Defendant asserts Plaintiff’s attorney has recently 22 collected fees at a \$400 hourly rate, the median time from filing to civil trial in the Northern 23 District of California is 47.9 months, and Plaintiff’s counsel can be expected to spend at least the 24 approximately four hours per month necessary to—given such an hourly rate and case duration— 25 exceed \$75,000 in attorney’s fees. (Dkt. No. 3 at 5 (citing *Ramirez v. Merrill Gardens, LLC*, No. 26 1:22-CV-00542-SAB, 2024 WL 3011142, at *28 (E.D. Cal. June 11, 2024).) But, as section 27 16600.5 allows attorney’s fees to any prevailing employee, and Plaintiff seeks to represent a class 1 attorney’s fees per class member. See *Rosenwald*, 152 F.4th at 1179-80. So, Defendant has not 2 || met its burden of establishing by a preponderance of the evidence Plaintiffs attorney’s fees will 3 exceed \$75,000. See *Hass v. Flowers Bakeries Sales of Norcal, LLC*, No. 25-CV-06018-JSC, 4 || 2025 WL 3295328 (N.D. Cal. Nov. 26, 2025). 5 Defendant also argues the cost of compliance with the injunction Plaintiff seeks— 6 || “requiring Defendant to issue individualized notices to all current and former employees and to 7 refrain from including noncompete or nonsolicitation provisions in all future agreements”—would 8 exceed \$75,000. (Dkt. No. 3 at 6.) The cost of complying with an injunction may count toward 9 the amount in controversy requirement. See *In re Ford Motor Co./Citibank (S.D.), N.A.*, 264 F.3d 10 || 952, 958 (9th Cir. 2001). But Defendant has not provided any evidence supporting its assertion 11 “identifying, reviewing, and contacting each potentially affected employee, preparing compliant 12 || notices, and distributing them” will cost more than \$75,000. (Dkt. No. 3 at 6.) Further, it has not 13 cited any caselaw that suggests in a removed putative class action the cost of complying with an 14 || injunction would not be treated the same as attorney’s fees for amount in controversy purposes, 3 15 that is, determined pro rata based on the number of class members. a 16 So, the

Notice of Removal does not satisfy Defendant's burden of showing the amount in 3 17
controversy is satisfied. Accordingly, on or before December 8, 2025, Defendant is ORDERED 18
|| TO SHOW CAUSE why this action should not be remanded for lack of subject matter 19 ||
jurisdiction. 20 IT IS SO ORDERED. 21 Dated: December 1, 2025 , td 22 ne
JAGQUELINE SCOTT CORL
23 United States District Judge 24 25 26 27 28

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