UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Bell v. DeVry University, Inc.

No. 25-cv-595-RSH-BLM (S.D. Cal. May 21, 2025) · No. 25-cv-595-RSH-BLM · Decided May 21, 2025

SUMMARY

The United States District Court for the Southern District of California granted Plaintiff Delainya Bell’s motion to remand a representative California Private Attorneys General Act action against DeVry University, Inc. The court held that Defendant failed to demonstrate by a preponderance of the evidence that the amount in controversy exceeded $75,000 because only Plaintiff’s pro rata share of attorneys’ fees could be considered and PAGA penalties could not be aggregated. The action was remanded to the Superior Court of California, County of San Diego, and the federal case was closed.

OPINION

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA DELAINYA BELL, on behalf of others Case No.: 25-cv-595-RSH-BLM similarly situated and the State of California under the Private Attorneys ORDER ON PLAINTIFF’S MOTION General Act, TO REMAND Plaintiffs, [ECF No. 9] v. DEVRY UNIVERSITY, INC., et al., Defendants.

Before the Court is a motion to remand filed by Plaintiff Delainya Bell. ECF No. 9. Pursuant to Local Civil Rule 7.1(d)(1), the Court finds the motion presented appropriate for resolution without oral argument.

For the reasons below, the Court grants Plaintiff’s motion. I. BACKGROUND A. Plaintiff’s Allegations The instant case is a representative California Private Attorneys General Act (“PAGA”), Cal. Lab. Code § 2698 et seq., action filed against Defendant DeVry University (“DeVry”). Plaintiff’s Complaint alleges as follows. Plaintiff worked as an Admissions Advisor for Defendant from October 2023 to August 2024.

ECF No. 1-4, Ex. A (“Compl.”) ¶ 11. Plaintiff alleges Defendant failed to accurately track the hours she and other aggrieved employees worked, instead improperly implementing a non-neutral rounding policy that resulted in unpaid minimum and overtime wages and insufficient credit for accrued sick leave. Id. ¶¶ 18–28.

As a result, Defendant also allegedly failed to provide Plaintiff and other aggrieved employees with accurate wage statements. Id. ¶¶ 33–36. Finally, Plaintiff claims that she and other aggrieved employees incurred unreimbursed costs related to being required to work from home.

Id. ¶¶ 29–32. 9 B. Procedural Background 10 On January 23, 2025, Plaintiff initiated the instant representative PAGA action in 11 San Diego Superior Court.

See Compl. The Complaint asserts a single claim under PAGA 12 and alleges violations of the California Labor Code for: (1) failure to pay all wages owed 13 (Labor Code §§ 1194, 1197, 1198); (2) failure to pay overtime (Labor Code §§ 510, 1194, 14 1198); (3) unpaid sick leave (Labor Code §§ 246–248.7); (4) untimely payment of wages 15 during employment (Labor Code §§ 204, 204b, 210); (5) untimely payment of wages upon 16 separation of employment (Labor Code §§ 201, 202, 203, 256); (6) non-compliant wage 17 statements (Labor Code §§ 226, 226.3); (7) unreimbursed employee expenses (Labor Code 18 §§ 2802, 2804); and (8) failure to maintain accurate records (Labor Code § 1174).

Id. ¶ 49. 19 On March 13, 2025, Defendant removed the case to this Court based on diversity 20 jurisdiction. ECF No. 1. On April 14, 2025, Plaintiff filed the instant motion to remand. 21 ECF No. 9. Defendant filed a response and Plaintiff filed a reply. ECF Nos. 13; 16. 22 II. LEGAL STANDARD 23 "The removal jurisdiction of the federal courts is derived entirely from the statutory 24 authorization of Congress." Libhart v. Santa Monica Dairy Co., 592 F.2d 1062, 1064 (9th 25 Cir.

1979). Under 28 U.S.C.S. § 1441, "only state-court actions that originally could have 26 been filed in federal court may be removed to federal court by the defendant." Caterpillar, 27 Inc. v. Williams, 482 U.S. 386, 392 (1987); see 28 U. S. C. § 1441(a). "[R]emovability is 28 generally determined as of the time of the petition for removal[.]" Local Union 598, 1 Plumbers & Pipefitters Indus.

Journeymen & Apprentices Training Fund v. J.A. Jones 2 Constr. Co., 846 F.2d 1213, 1215 (9th Cir. 1988). 3 Federal courts have original jurisdiction where an action presents a federal question 4 or there is diversity jurisdiction. 28 U.S.C. §§ 1331, 1332. "Traditional diversity 5 jurisdiction requires complete diversity of citizenship and an amount in controversy greater 6 than $75,000." Canela v. Costco Wholesale Corp., 965 F.3d 694, 698 (9th Cir.

2020). 7 "Where it is not facially evident from the complaint that more than $75,000 is in 8 controversy, the removing party must prove, by a preponderance of the evidence, that the 9 amount in controversy meets the jurisdictional threshold." Corral v. Select Portfolio 10 Servicing, Inc., 878 F.3d 770, 774 (9th Cir. 2017) (internal quotation marks omitted).

11 "Where doubt regarding the right to removal exists, a case should be remanded to state 12 court." Matheson v. Progressive Specialty Ins. Co., 319 F.3d 1089, 1090 (9th Cir. 2003). 13 III. ANALYSIS 14 A. Amount in Controversy 15 In this case, the Parties do not dispute that the requirement of complete diversity of 16 citizenship has been met. See ECF Nos. 9-1; 13; 16.

Instead, they focus on whether the 17 amount in controversy in this case exceeds the $75,000 jurisdictional threshold. 18 1. PAGA, Generally 19 "PAGA authorizes aggrieved employees, acting as private attorneys general, to 20 recover civil penalties from their employers for violations of the Labor Code." Baumann 21 v. Chase Inv. Servs. Corp., 747 F.3d 1117, 1119 (9th Cir.

2014). Under PAGA, "[t]hough 22 [California's] Labor and Workforce Development Agency ('LWDA') retain[s] primacy 23 over private enforcement efforts, under PAGA, if the LWDA declines to investigate or 24 issue a citation for an alleged labor code violation, an aggrieved employee may commence 25 a civil action on behalf of himself or herself and other current or former employees against 26 his or her employer." Urbino v. Orkin Servs. of Cal., 726 F.3d 1118, 1121 (9th Cir.

2013) 27 (internal quotation marks omitted); see Cal. Lab. Code § 2699(a); see also Hamilton v. 28 Wal-Mart Stores, Inc., 39 F.4th 575, 582 (9th Cir. 2022) ("[F]ollowing the enactment of 1 PAGA in 2004, employees may stand in the shoes of the Labor Commissioner and recover 2 civil penalties for Labor Code violations."). 3 "If the representative plaintiff prevails, the aggrieved employees are statutorily 4 entitled to 25% of the civil penalties recovered while the LWDA is entitled to 75%." 5 Urbino, 726 F.3d at 1121 (citing Cal. Lab.

Code § 2699(i)). "Under PAGA, employees 6 may also seek $100 for each initial violation per pay period and $200 dollars for each 7 subsequent violation." Becerra-Zamora v. Gruma Corp., No. 24-CV-01076-WHO, 2024 8 WL 3338353, at *2 (N.D. Cal. July 8, 2024) (citing Cal. Lab. Code § 2699(f)(2)).

Under 9 California Labor Code § 2699, "[a]ny employee who prevails" in a PAGA action "shall be 10 entitled to an award of reasonable attorney's fees and costs." Cal. Lab. Code § 2699 (k)(1); 11 see Gunther v. Alaska Airlines, Inc., 72 Cal. App. 5th 334, 357 (Ct. App. 2021). 12 2. Amount in Controversy 13 In its Notice of Removal, Defendant asserts the total amount in controversy in this 14 case is at least $96,706, comprising: (1) $2,200 in penalties for unpaid minimum wages; 15 (2) $2,200 in penalties for unpaid overtime wages; (3) $2,200 in penalties for sick leave 16 violations; (4) $2,200 in penalties for unreimbursed expenses; (5) $12,906 in penalties for 17 Plaintiff's derivative claims; and (6) more than $75,000 in attorneys' fees.

ECF No. 1 ¶¶ 18 20–31. 19 In support, Defendant asserts Plaintiff was employed from October 2023 to August 20 2024 at an hourly rate of $24.82 and paid on a bi-weekly basis—amounting to 44 21 workweeks and 22 pay periods. Id. ¶ 19. Defendant then calculates the amount of penalties 22 for each category of labor code violation—namely unpaid minimum wages, unpaid 23 overtime wages, sick leave violations, and unreimbursed expenses—at $100 per pay period 24 for each of the 22 pay periods, amounting to a total of $2,200.

Id. ¶¶ 21–25. 25 Defendant next calculates the value of Plaintiff's derivative claims as $12,906 based 26 on the total of: (1) $5,956 in penalties for failure to timely pay wages upon separation of 27 employment (calculated by multiplying Plaintiff's hourly rate of $24.82 by 8 hours and 30 28 days); (2) $2,150 in penalties for wage statement violations ($50 for the initial violation 1 and $100 for each of the subsequent 21 violations); (3) $500 in penalties for failure to 2 maintain accurate employment records pursuant to Labor Code § 1174.5; and (4) $4,300 3 in penalties for failure to timely pay wages during employment ($100 for the initial 4 violation and $200 for each of the subsequent 21 violations).

Id. ¶ 27. 5 Finally, Defendant argues it is reasonable to assume Plaintiff's attorneys' fees to 6 litigate this case through trial will far exceed $75,000—as $75,000 would merely comprise 7 250 hours of billable attorney time at $300 per hour. Id. ¶ 29. 8 Plaintiff contends Defendant's calculation of the amount in controversy is flawed 9 for three reasons.

First, Plaintiff contends that it is improper for Defendant to attribute the 10 full amount of her individual attorneys' fees to the amount of controversy, rather than 11 allocating a pro rata share based on the total number of aggrieved employees. ECF No. 9- 12 1 at 7–11.

Second, Plaintiff argues Defendant based its calculation on a false premise 13 regarding the number of pay periods. Id. at 12. Finally, Plaintiff contends Defendant's 14 calculations assume incorrectly that Plaintiff is owed the maximum amount of penalties for 15 each pay period and further incorrectly calculates waiting time penalties. Id. at 12–13. 16 3. Attorneys' Fees 17 Plaintiff first argues that it is improper for Defendant to include the entirety of her 18 individual attorneys' fees to calculate the amount in controversy, and that any attorneys' 19 fees should instead be apportioned on a pro rata basis among all aggrieved employees.

ECF 20 No. 9-1 at 7–11. Under Defendant's calculation, the amount of attorneys' fees in this issue 21 amounts to a minimum of $75,000. ECF No. 1 ¶ 29. In contrast, Plaintiff contends her pro 22 rata share of attorneys' fees in this case is only $353.77. ECF No. 9-1 at 10–11. 23 The Court agrees that only Plaintiff's pro rata share of attorneys' fees should be 24 considered for amount in controversy purposes.

The Ninth Circuit's decisions in Urbino v. 25 Orkin Services of California and Canela v. Costco Wholesale Corporation are instructive. 26 In Urbino, the plaintiff brought a representative PAGA action in state court alleging meal 27 period violations, failure to pay overtime and vacation wages, and inaccurate itemized 28 wage statements. 726 F.3d at 1121.

The defendants removed the case to federal court, 1 submitting evidence the alleged labor code violations involved 811 employees and 17,182 2 pay checks. Id. If aggregated, the possible civil penalties that could be imposed against the 3 defendants would exceed $9,000,000. Id. at 1121.

In contrast, without aggregation, the named plaintiff’s claims would only amount to $11,602.40. Id. The Ninth Circuit concluded the district court lacked diversity jurisdiction, holding that potential PAGA penalties against an employer cannot be aggregated to meet the amount in controversy requirement set forth under 28 U.S.C. § 1332(a). Id. at 1122.

Similarly, in Canela, the plaintiff worked as a greeter and exit checker at two warehouses in California. 965 F.3d at 696. The plaintiff alleged she and other aggrieved employees were not provided with suitable seating in violation of the California Labor Code—asserting a PAGA claim. Id. In its Notice of Removal, the defendant contended the action would encompass 968 employees collectively seeking $5,324,000 in civil penalties and $1,064,800 in attorneys’ fees.

Id. at 698. Citing Urbino, the Ninth Circuit held the district court lacked diversity jurisdiction at the time of removal because plaintiff’s “pro- rata share of civil penalties, including attorney’s fees, totaled $6,600 at the time of removal, and the claims of other member service employees may not be aggregated[.]” Id. (first emphasis added).

In light of this precedent, multiple courts in the Ninth Circuit have prohibited the aggregation of attorneys’ fees in PAGA actions when determining whether the amount in controversy has been met. See Butt v. 9W Halo W. Opco, L.P., No. 2:22-CV-02012 WBS AC, 2023 WL 196472, at *3 (E.D. Cal. Jan. 17, 2023) (“Only plaintiff’s pro rata share of attorneys’ fees is appropriately considered.”); Harp v. California Cemetery & Funeral Servs., LLC, No. 121CV01118JLTBAK, 2022 WL 1658716, at *3 (E.D.

Cal. May 25, 2022) (“[C]ourts may only consider the pro rata share of attorney’s fees attributable to each plaintiff in determining whether the amount in controversy is met.”); Higginbotham v. S. E. Emp. Leasing Servs., Inc., No. 2:20-CV-00575-KJM-DB, 2020 WL 5535421, at *4 (E.D. Cal. Sept. 15, 2020) (“In PAGA actions, only the named plaintiff-employees’ pro rata share of attorneys’ fees is considered.”); Mutchler on behalf of California v. Circle K Stores, Inc., No. 20CV1239-GPC(BGS), 2020 WL 5511985, at *3 (S.D.

Cal. Sept. 14, 2020) (under Canela, in a PAGA action, “attorneys’ fees may not be aggregated in calculating the $75,000 amount in controversy.”); Arrellano v. Optum Med. Grp., No. CV 18-6093-DMG (ASX), 2019 WL 247220, at *4 (C.D. Cal. Jan. 17, 2019) (holding that in PAGA cases, in determining amount in controversy, an attorneys’ fees calculation “must be reduced to reflect only Plaintiff's pro rata share of those fees.”); Madison v. U.S. Bancorp, No. C-14-4934-EMC, 2015 WL 355984, at *3 (N.D.

Cal. Jan. 27, 2015) (“[T]he amount of attorneys’ fees likely to be recovered in a PAGA action should be distributed pro rata to all aggrieved employees the named plaintiff seeks to represent.”) (internal quotation marks omitted); Patel v. Nike Retail Servs., Inc., 58 F. Supp. 3d 1032, 1049 (N.D. Cal. 2014) (“When the rule is that claims are not aggregated... as it is now for PAGA 12 actions under Urbino[], it would seriously undermine the [anti-aggregation] rule to allow 13 attorney's fees to be allocated solely to a named plaintiff in determining the amount in 14 controversy.") (internal quotation marks omitted).

15 Defendant does not dispute Plaintiff's calculation of her pro rata share of attorneys' 16 fees would only equal $353.77. Instead, Defendant argues it is proper to allocate the 17 $75,000 plus in attorneys' fees to Plaintiff solely in light of recent changes to PAGA. ECF 18 No. 13 at 9. Specifically, Plaintiff cites a July 1, 2024 amendment, whereby a named 19 plaintiff in a PAGA action must now have "personally suffered each of the violations 20 alleged[.]" Cal. Lab.

Code § 2699(c)(1). In contrast, in prior versions of the Labor Code, 21 "[e]mployees who were subjected to at least one unlawful practice have standing to serve 22 as PAGA representatives even if they did not personally experience each and every alleged 23 violation." Kim v. Reins Int'l Cal., Inc., 9 Cal. 5th 73, 85 (2020). Apart from citing this 24 amendment, however, Defendant does not explain or provide any legal authority explaining 25 how the amendment supports allocating all of the attorneys' fees to Plaintiff individually.

26 See ECF No. 13; Ortiz v. Pacific, 973 F. Supp. 2d 1162, 1185 (E.D. Cal. 2013) ("It is not 27 the Court's role to make arguments for any party."). 28 /// 1 For these reasons, the Court holds Defendant has not met its burden in this case to 2 ||demonstrate that the amount in controversy meet the $75,000 jurisdictional requirement.' 3 B. Consolidation 4 Defendant next contends that the Court possesses jurisdiction over this case because 5 ||the instant case should be consolidated with the DeVry J action and that the amount in 6 ||controversy (when the DeVry J action and the instant one are combined) exceeds the 7 ||jurisdictional amount in controversy.

ECF No. 13 at 9-11. In light of the Court's remand 8 |lof DeVry I for lack of subject matter jurisdiction, the Court concludes this argument is 9 || moot. 10 CONCLUSION 11 For the above reasons, the Court GRANTS Plaintiff's motion to remand and 12 || REMANDS this action to the Superior Court of California, County of San Diego. 13 The Clerk of Court is DIRECTED to close the case.

14 IT IS SO ORDERED. 15 || Dated: May 21, 2025 ‘ 16 Febut ¢ Howe 7 Hon. Robert S. Hute United States District Judge 18 19 20 21 22 23 24 25 27 \I' As Defendant's calculation of the amount in controversy relies primarily on 28 Plaintiff' S attorney's fees, the Court declines to consider Plaintiff's remaining arguments challenging this calculation. °