

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF  
CALIFORNIA

Luciano v. GS Operating, LLC

No. 24-cv-05408-JD (N.D. Cal. Feb. 28, 2025) · No. 24-cv-05408-JD · Decided February 28, 2025

SUMMARY

The United States District Court for the Northern District of California denied plaintiff Pedro Luciano’s motion to remand a wage-and-hour putative class action to state court. The court held that traditional diversity jurisdiction under 28 U.S.C. § 1332(a), rather than class-action jurisdiction under § 1332(d), governed the removal. It concluded that the amount in controversy exceeded \$75,000 when the plaintiff’s estimated damages were combined with recoverable attorney’s fees and costs.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                   |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States District Court for the Northern District of California                                                                                                                                                                                                                              |
| WRITING FOR THE COURT | James Donato                                                                                                                                                                                                                                                                                      |
| JURISDICTION          | United States District Court for the Northern District of California                                                                                                                                                                                                                              |
| DECIDED               | February 28, 2025                                                                                                                                                                                                                                                                                 |
| DOCKET                | 24-cv-05408-JD                                                                                                                                                                                                                                                                                    |
| DISPOSITION           | remanded                                                                                                                                                                                                                                                                                          |
| PROCEDURAL POSTURE    | Plaintiff moved to remand a removed putative class action asserting California wage-and-hour claims. The court denied the motion and retained the action under traditional diversity jurisdiction.                                                                                                |
| STANDARD OF REVIEW    | The removing defendant bears the burden of establishing federal jurisdiction by a preponderance of the evidence when the amount-in-controversy allegation is contested. The court evaluates the amount in controversy based on the evidence and allegations available in the removal proceedings. |
| PRECEDENTIAL VALUE    | Unpublished federal district court order; generally nonprecedential.                                                                                                                                                                                                                              |
| PARTIES               | Pedro Luciano v. GS Operating, LLC                                                                                                                                                                                                                                                                |

TOPICS

- subject matter jurisdiction
- class actions
- attorney fees
- wage and hour
- civil procedure

## PRACTICE AREAS

civil procedure

employment law

wage and hour

class actions

## QUESTIONS PRESENTED

1. Whether federal jurisdiction should be analyzed under traditional diversity jurisdiction pursuant to 28 U.S.C. § 1332(a), rather than class-action jurisdiction under § 1332(d).
2. Whether GS Operating established by a preponderance of the evidence that the amount in controversy exceeded \$75,000 for purposes of diversity jurisdiction.
3. Whether potentially recoverable attorney's fees and costs may be included in calculating the amount in controversy.

## HOLDINGS

1. The court analyzed removal solely under traditional diversity jurisdiction pursuant to 28 U.S.C. § 1332(a) because GS Operating's removal theory and supporting arguments rested on that provision, notwithstanding incidental references to § 1332(d).
2. GS Operating established by a preponderance of the evidence that the amount in controversy exceeded \$75,000.
3. Attorney's fees and costs that may be recovered by statute or contract count toward the amount in controversy, and GS Operating demonstrated in a non-speculative manner that the recoverable fees and costs could bring the total above \$75,000.

## KEY QUOTATIONS

*"Consequently, the question of federal jurisdiction in this case will be answered solely with respect to Section 1332(a)." (at 1)*

*"If the plaintiff contests the defendant's allegation, then removal is proper only if the district court finds, by the preponderance of the evidence, that the amount in controversy exceeds the jurisdictional threshold." (at 2)*

*"Consequently, removal under 28 U.S.C. § 1332(a) was proper. A remand to state court is denied." (at 4)*

## FACTUAL BACKGROUND

Luciano asserted California wage-and-hour claims against GS Operating on behalf of himself and putative classes of California employees. The complaint did not state the amount of Luciano's individual damages. GS Operating estimated Luciano's damages at approximately \$20,850 and estimated that recoverable attorney's fees and costs would exceed \$55,000, based on anticipated litigation hours, blended billing rates, and fee awards in similar wage-and-hour cases. Luciano did not dispute the damages estimate or submit contrary evidence regarding the fee estimate.

## PROCEDURAL HISTORY

Luciano filed the action in Alameda County Superior Court on behalf of himself and putative classes of California employees. GS Operating removed the action under 28 U.S.C. § 1332(a), asserting diversity of

citizenship and an amount in controversy exceeding \$75,000. Luciano moved to remand; the district court denied the motion after finding that the amount-in-controversy requirement was satisfied.

DISPOSITION

remanded

REMAND INSTRUCTIONS

No remand to state court was ordered. The motion to remand was denied, so the federal action remained pending in the Northern District of California.

CASES CITED

- Urbino v. Orkin Services of California, Inc., 726 F.3d 1118, 1122 (9th Cir. 2013)
- Dart Cherokee Basin Operating Company, LLC v. Owens, 574 U.S. 81, 84, 87-89 (2014)
- Wondeh v. Change Healthcare Practice Management Solutions, Inc., No. 19-cv-07824-JD, 2020 WL 5630268, at \*1 (N.D. Cal. Sep. 9, 2020)
- Coleman v. Hat World, Inc., No. 3:23-cv-03437-JD, 2024 WL 422079, at \*1 (N.D. Cal. Feb. 5, 2024)
- Fritsch v. Swift Transportation Company of Arizona, LLC, 899 F.3d 785, 794 (9th Cir. 2018)
- Guglielmino v. McKee Foods Corporation, 506 F.3d 696, 701 (9th Cir. 2007)

OPINION

Luciano v. GS Operating, LLC

PER CURIAM.

1 2 3

4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 7 PEDRO LUCIANO, on behalf of himself Case No. 24-cv-05408-JD and all others similarly  
situated, 8 Plaintiffs, ORDER RE REMAND 9 v. 10

GS OPERATING, LLC,

11 Defendant. 12

13 Plaintiff Pedro Luciano sued defendant GS Operating, LLC, on a variety of wage and hour 14  
claims under California state law on behalf of himself and putative classes of California 15  
employees. Dkt. No. 2-1 (complaint). The complaint was originally filed in Alameda County 16  
Superior Court. Id. GS Operating removed the case to federal court on traditional diversity 17  
jurisdiction grounds. Dkt. No. 1 at 2, 5-15. Luciano asks to remand. Dkt. No. 16. The parties’ 18  
familiarity with the record is assumed, and remand is denied. 19 Before getting to the merits, GS  
Operating’s muddled comments on jurisdiction need 20 straightening out. GS Operating expressly  
removed under 28 U.S.C. § 1332(a) on the basis of 21 diversity of citizenship of the parties and an  
amount in controversy that exceeds \$75,000. Dkt.

22 No. 1 at 2. All of its arguments in support of removal were made under Section 1332(a). See *id.*  
23 at 4-8. In opposition to the remand motion, GS Operating again focused on the elements of  
24 Section 1332(a). See Dkt. No. 17 at 7-8. Inexplicably, GS Operating also sprinkled random  
25 references in the removal petition and opposition brief to 28 U.S.C. § 1332(d), which permits  
26 removal of certain class actions where the amount in controversy exceeds \$5 million dollars.  
See, 27 e.g., Dkt. No. 1 at 2 (mentioning Section 1332(d)); Dkt. No. 17 at 8 (mentioning no anti-  
removal 1 Why Section 1332(d) was referenced at all by GS Operating is a mystery. The case is 2  
styled as a putative class action, but none of GS Operating’s arguments touch upon that in any 3  
way as a basis of federal jurisdiction and removal. GS Operating’s removal theory is based 4  
entirely on traditional diversity jurisdiction under Section 1332(a), as its papers and arguments 5  
amply demonstrate. Consequently, the question of federal jurisdiction in this case will be 6  
answered solely with respect to Section 1332(a). 7 The only dispute with respect to diversity  
jurisdiction is whether the amount in controversy 8 exceeds the statutory threshold of \$75,000. 28  
U.S.C. § 1332(a); Dkt. No. 16 at 2-3. To 9 determine the amount in controversy in this case, the  
Court looks only at the named plaintiff and 10 not the putative class. See *Urbino v. Orkin Servs. of  
California, Inc.*, 726 F.3d 1118, 1122 (9th

11 Cir. 2013). The complaint is silent on its face about the amount of Luciano’s damages.

12 Consequently, “[u]nder *Dart Cherokee Basin Operating Company, LLC v. Owens*, 574 U.S. 81,  
84 13 (2014), ‘[w]hen the plaintiff’s complaint does not state the amount in controversy, the  
defendant’s 14 notice of removal may do so,’ and it may do so in a ‘short and plain’ statement that  
‘need not 15 contain evidentiary submissions.’” *Wondeh v. Change Healthcare Practice  
Management* 16 Solutions, Inc., No. 19-cv-07824-JD, 2020 WL 5630268, at \*1 (N.D. Cal. Sep. 9,  
2020). 17 “[W]hen a defendant seeks federal-court adjudication, the defendant’s amount-in- 18  
controversy allegation should be accepted when not contested by the plaintiff or questioned by the  
19 court.” *Id.* (quoting *Dart Cherokee*, 574 U.S. at 87). “‘If the plaintiff contests the defendant’s  
20 allegation,’ then removal is proper only ‘if the district court finds, by the preponderance of the  
21 evidence, that the amount in controversy exceeds the jurisdictional threshold.’” *Id.* (quoting  
*Dart* 22 *Cherokee*, 574 U.S. at 88). “‘In such a case, both sides submit proof and the court decides,  
by a 23 preponderance of the evidence, whether the amount-in-controversy requirement has been  
24 satisfied.’” *Id.* (quoting *Dart Cherokee*, 574 U.S. at 88). The parties spar a bit over whether the  
25 amount in controversy must be proven to a legal certainty, see, e.g., Dkt. No. 16 at 2, but *Dart*  
26 *Cherokee* dispelled any such notion by quoting “a House Judiciary Committee Report which 27  
stated that removing ‘defendants do not need to prove to a legal certainty that the amount in 1  
controversy requirement has been met.’” *Wondeh*, 2020 WL 5630268, at \*1 (quoting *Dart* 2  
*Cherokee*, 574 U.S. at 88-89). 3 GS Operating provided a fact-based estimate that Luciano’s  
damages are in the ballpark of 4 \$20,850. See Dkt. No. 1 at 8-13 (citing Dkt. No. 3 ¶ 5). Luciano  
did not dispute this estimate or 5 proffer any contrary facts. Consequently, that amount is accepted  
for jurisdictional purposes. 6 The main area of disagreement is whether Luciano will incur enough

in attorney's fees and 7 costs to get the amount in controversy over the \$75,000 threshold. Attorney's fees that may be 8 recovered by statute or contract are counted toward the amount in controversy. *Coleman v. Hat 9 World, Inc.*, No. 3:23-cv-03437-JD, 2024 WL 422079, at \*1 (N.D. Cal. Feb. 5, 2024) (citing 10 *Fritsch v. Swift Transportation Company of Arizona, LLC*, 899 F.3d 785, 794 (9th Cir. 2018)). As 11 GS Operating states, without objection by Luciano, attorney's fees and costs may be awarded if 12 Luciano prevails on the claims under the California Labor Code. See Dkt. No. 1 at 13 (citing Cal. 13 Lab. Code §§ 218.5, 226(e) & (g), 1194(a), 2802(c)). GS Operating, the proponent of federal 14 jurisdiction, bears the burden of demonstrating by a preponderance of evidence and in a non- 15 speculative way that Luciano will incur fees and costs of at least \$55,000 to establish jurisdiction 16 under Section 1332(a). *Id.* (citing *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 701 (9th 17 Cir. 2007)).

18 It has done so. GS Operating estimates that attorneys for Luciano are likely to incur at 19 least 117 hours on his individual claims at a blended rate of \$645 per hour, leading to a total of 20 \$75,465 in fees. Dkt. No. 17 at 12-13. GS Operating based the estimate on a breakdown of the 21 hours anticipated for each task involved in litigating this case through trial, as well as on fee 22 awards in similar wage and hour actions. See *id.* at 10-13. The blended rate estimate was based 23 on declarations filed by plaintiff's counsel in similar cases. See Dkt. No. 17 at 11-12 (citing Dkt. 24 Nos. 17-2, 17-3, 17-4).<sup>1</sup> Even if these figures were discounted substantially to 100 hours and a 25 blended rate of \$550 per hour, the fees component would be enough to exceed the threshold. It 26 1 Court filings and records are appropriate for judicial notice, and GS Operating's request is 27 unopposed. See Dkt. No. 17-1. Consequently, the Court takes notice of the attorney's fees 1 also bears mention that, in the Court's long experience, attorney's fees of at least \$55,000 are not 2 || unreasonable in light of getting a case like this through discovery, summary judgment, and trial, 3 even without factoring in expert witness proceedings. 4 Luciano did not have much to say in response. For the most part, he simply branded GS 5 Operating's numbers and explanation as speculative, without providing any evidence that might 6 || have undercut GS Operating's facts and figures. 7 Consequently, removal under 28 U.S.C. § 1332(a) was proper. A remand to state court is 8 || denied. 9 IT IS SO ORDERED. 10 Dated: February 28, 2025 11

JAMES JONATO

12 United States District Judge 15 16 = 17 Z 18 19 20 21 22 23 24 25 26 27 28