

**UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA**

Joe Montoya v. Flatiron Dragados USA, Inc.

No. 8:25-cv-00891-DOC-DFM (C.D. Cal. May 7, 2025) · No. 8:25-cv-00891-DOC-DFM · Decided May 7,
2025

OPINION

UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA CIVIL MINUTES – GENERAL Case No. 8:25-cv-00891-DOC-DFM Date: May 7, 2025 Title: Joe Montoya v. Flatiron Dragados USA, Inc. PRESENT: THE HONORABLE DAVID O. CARTER, JUDGE Karlen Dubon Not Present Courtroom Clerk Court Reporter ATTORNEYS PRESENT FOR ATTORNEYS PRESENT FOR PLAINTIFF: DEFENDANT: None Present None Present PROCEEDINGS (IN CHAMBERS): ORDER REMANDING CASE TO STATE COURT SUA SPONTE On the Court’s own motion, the Court hereby REMANDS this case to the Superior Court of California, County of Orange.

I. Background This is an employment action brought under California state law. Plaintiff Joe Montoya alleges that he began working for Defendant Flatiron Dragados USA, Inc. in April 2023 as a Batch Plant Operator. Complaint ¶ 11 (“Compl.”) (Dkt. 2-1). Plaintiff further alleges that in November 2023 he sustained a shoulder injury during work, in August 2024 he began to experience severe pain in his knees, and in late August 2024 he sought treatment for his knee pain.

Id. ¶ 19-20. Plaintiff needed surgery on his knees and time off work for treatment. Id. ¶ 20. After undergoing his surgery, Plaintiff gave his employer all relevant medical documentation including a doctor’s note that he could return to work in March 2025. Id. ¶ 22.

On January 31, 2025, Plaintiff was terminated. Id. Plaintiff alleges the following causes of action: (1) Failure to Pay Minimum Wages; (2) Failure To Provide Rest Periods; (3) Failure to Provide Meal periods; (4) Willful Failure To Pay Wages; (5) Failure To Provide Itemized Wage Statements; (6) Violations of Business and Professions Code; (7) Discrimination in Violation of FEHA.; (8) Failure to Engage in a Good Faith Interactive Process in Violation of FEHA; (9) CIVIL MINUTES – GENERAL Case No. 8:25-cv-00891-DOC-DFM Date: May 7, 2025 Page 2 Failure to Provide Reasonable Accommodations in Violation of FEHA; (10) Retaliation in Violation of FEHA; (11) Failure to Prevent Discrimination and Retaliation in Violation of FEHA; (12) Violation of Whistleblower Protection Pursuant to Labor Code § 1102.5; (13) Retaliation and Discrimination in Violation of Labor Code § 6310; and (14) Wrongful Termination in Violation of Public Policy.

See generally Compl. Plaintiff originally filed suit in the Superior Court of California, County of Orange, on March 28, 2025 and Defendant was served on April 1, 2025. See generally Notice of Removal (“Not.”) (Dkt. 1).

On April 30, 2025, Defendant removed the action to this Court, asserting diversity jurisdiction. *Id.* II. Legal Standard “If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.” 28 U.S.C. § 1447(c). Removal of a case from state court to federal court is governed by 28 U.S.C. § 1441, which provides in relevant part that “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed... to the district court of the United States for the district and division embracing the place where such action is pending.” 28 U.S.C. § 1441.

This statute “is strictly construed against removal jurisdiction,” and the party seeking removal “bears the burden of establishing federal jurisdiction.” *Ethridge v. Harbor House Rest.*, 861 F.2d 1389, 1393 (9th Cir. 1988) (emphasis added) (citations omitted). Federal diversity jurisdiction requires that the parties be citizens of different states and that the amount in controversy exceed \$75,000.

28 U.S.C. § 1332(a). For diversity jurisdiction purposes, a corporation is “deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business.” 28 U.S.C. § 1332(c)(1).

The presence of any single plaintiff from the same state as any single defendant destroys “complete diversity” and strips the federal courts of original jurisdiction over the matter. *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 553 (2005). Generally, a removing defendant must prove by a preponderance of the evidence that the amount in controversy satisfies the jurisdictional threshold.

Guglielmino v. McKee Foods Corp., 506 F.3d 696, 699 (9th Cir. 2008). If the complaint affirmatively alleges an amount in controversy greater than \$75,000, the jurisdictional requirement is “presumptively satisfied.” *Id.* In that situation, a plaintiff who then tries to defeat removal
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must prove to a “legal certainty” that a recovery of more than \$75,000 is impossible.

St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 288-89 (1938); *Crum v. Circus Enters.*, 231 F.3d 1129, 1131 (9th Cir. 2000). This framework applies equally to situations where the complaint leaves the amount in controversy unclear or ambiguous. See *Gaus v. Miles, Inc.*, 980 F.2d 564, 567 (9th Cir. 1992); *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 403-04 (9th Cir.

1996). A removing defendant “may not meet [its] burden by simply reciting some ‘magical incantation’ to the effect that ‘the matter in controversy exceeds the sum of [\$75,000],’ but instead,

must set forth in the removal petition the underlying facts supporting its assertion that the amount in controversy exceeds [\$75,000].” *Richmond v. Allstate Ins. Co.*, 897 F. Supp. 447, 450 (S.D.

Cal. 1995) (quoting *Gaus*, 980 F.2d at 567). If the plaintiff has not clearly or unambiguously alleged \$75,000 in its complaint or has affirmatively alleged an amount less than \$75,000 in its complaint, the burden lies with the defendant to show by a preponderance of the evidence that the jurisdictional minimum is satisfied. *Geographic Expeditions, Inc. v. Estate of Lhotka ex rel.*

Lhotka, 599 F.3d 1102, 1106-07 (9th Cir. 2010); *Guglielmino*, 506 F.3d at 699. While the defendant must “set forth the underlying facts supporting its assertion that the amount in controversy exceeds the statutory minimum,” the standard is not so taxing so as to require the defendant to “research, state, and prove the plaintiff’s claims for damages.” *Coleman v. Estes Express Lines, Inc.*, 730 F. Supp. 2d 1141, 1148 (C.D.

Cal. 2010) (emphases added). In short, the defendant must show that it is “more likely than not” that the amount in controversy exceeds the statutory minimum. *Id.* Summary judgment-type evidence may be used to substantiate this showing. *Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090–91 (9th Cir. 2003); *Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 377 (9th Cir.

1997). For example, defendants may make mathematical calculations using reasonable averages of hourly, monthly, and annual incomes of comparable employees when assessing the amount in controversy in a wrongful termination suit. *Coleman*, 730 F. Supp. 2d. at 1148–49. If the court lacks subject matter jurisdiction, any action it takes is ultra vires and void. See *Gonzalez v. Crosby*, 545 U.S. 524, 534 (2005); *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 94, 101–02 (1998).

The lack of subject matter jurisdiction may be raised at any time by either the parties or the court. Fed. R. Civ. P. 12(h)(3). If subject matter jurisdiction is found to be lacking, the court must dismiss the action, *id.*, or remand pursuant to 28 U.S.C. § 1447(c). A court may raise the question of subject matter jurisdiction sua sponte. See *Snell v. Cleveland, Inc.*, 316 F.3d 822, 826 (9th Cir.

2002). CIVIL MINUTES – GENERAL Case No. 8:25-cv-00891-DOC-DFM Date: May 7, 2025 Page 4 III. Discussion Defendant argues that the Court has diversity jurisdiction in this action. Not. at 4- 12. The Court disagrees. Here, Plaintiff does not expressly allege an amount in controversy over \$75,000. See generally Compl.

Accordingly, Defendant must show by a preponderance of the evidence that the jurisdictional minimum is satisfied. See *Geographic Expeditions, Inc.*, 599 F.3d at 1106-07; *Guglielmino*, 506 F.3d at 699. Defendant states that Plaintiff’s lost wages from the date of termination on January 31, 2025, until an estimated trial on May 2, 2026, amount to \$161,040 (66 weeks multiplied by 40 hours per week multiplied by \$61 per hour).

Not. at 7. This is based on Plaintiff's allegation that he made \$61 per hour and worked 40 hours per week. *Id.* This Court, however, only counts lost wages from date of termination until date of removal. There are twelve and a half weeks from January 31, 2025, to April 30, 2025.

Thus, Plaintiff's lost wages are about \$30,500 (12.5 weeks multiplied by 40 hours per week multiplied by \$61 per hour). Accordingly, Plaintiff's past economic damages at the time of removal are less than \$75,000. Defendant asserts that other awards Plaintiff seeks such as emotional distress damages, civil penalties, punitive damages, and attorney's fees exceed the amount in controversy requirement.

However, this Court does not include the types of speculative damages and awards that Defendant includes when calculating the amount in controversy. See *Traxler v. Multnomah Cnty.*, 596 F.3d 1007, 1011 (9th Cir. 2010) (recognizing that front pay is speculative); *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998) ("We hold that where an underlying statute authorizes an award of attorneys' fees, either with mandatory or discretionary language, such fees may be included in the amount in controversy.").

Because Defendant has not satisfied its burden to show that more than \$75,000 is at issue in this case, the Court lacks diversity jurisdiction. The Court's decision not to include speculative awards in the amount in controversy is reinforced by the fact that Congress has not raised the amount in controversy since 1996—nearly three decades ago.¹ See The Federal Courts Improvement Act of 1996, 110 Stat. 3850.

Since then, the inflation rate is over 100% (i.e., prices have more than doubled). Thus, adjusted for inflation, the amount in controversy should be over \$150,000 today. Stated conversely, a case worth \$75,000 in 1996 is worth less than 1 For reference, in 1996, the minimum wage was \$4.75 per hour, and only 16% of Americans had cell phones. Indeed, the current amount-in-controversy is older than both of my law clerks.

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\$37,500 in today's dollars. Because inflation has plainly decreased the "real" value of the amount in controversy, more and more cases are able to meet the jurisdictional threshold and can be brought in federal court.

As federal diversity jurisdiction expands, state court jurisdiction to decide purely state law issues and develop state law correspondingly decreases. Thus, the federal jurisdictional creep is incompatible with the most basic principles of federalism. Federalism is not the only loser in Congress's failure to increase the amount in controversy. When a case is improperly removed, as happened here, ultimate resolution is delayed.

Moreover, if a court does not immediately remand a case sua sponte, a plaintiff may move to remand. Because cases subject to motion to remand are typically small dollar cases, this increased

motion work can quickly cause attorneys' fees to outrun any potential recovery and places an immense burden on a plaintiff's lawyer working on contingency.

In this respect, the current low jurisdictional threshold reduces access to justice. Therefore, the Court respectfully encourages Congress to reconsider the amount in controversy minimum. IV. Disposition For the reasons set forth above, the Court hereby REMANDS this case to the Superior Court of Orange County. All further hearings are VACATED.

The Clerk shall serve this minute order on the parties. MINUTES FORM 11 Initials of Deputy Clerk: kdu CIVIL-GEN