

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Silva v. Kaiser Foundation Hospitals

No. 2:25-cv-00142-DJC-JDP (E.D. Cal. Aug. 12, 2025) · No. 2:25-cv-00142-DJC-JDP · Decided August 13, 2025

SUMMARY

The United States District Court for the Eastern District of California considered Plaintiff Richard Silva’s motion to remand and Defendant Kaiser Foundation Hospitals’ motion to dismiss. The court held that the plaintiff’s wage-and-hour claims were not preempted under section 301 of the LMRA because the claims arose from state law and did not require interpretation of the collective bargaining agreement. The court granted remand to the Solano County Superior Court and denied the motion to dismiss.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Daniel J. Calabretta
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	August 13, 2025
DOCKET	2:25-cv-00142-DJC-JDP
DISPOSITION	remanded
PROCEDURAL POSTURE	Plaintiff moved to remand a removed California state-court employment action, and Defendant moved to dismiss on the ground that the claims were preempted by section 301 of the LMRA and subject to a collective-bargaining agreement's grievance and arbitration provisions.
STANDARD OF REVIEW	Federal removal statutes are strictly construed, doubts about removal are resolved against federal jurisdiction, and the removing defendant bears the burden of establishing federal jurisdiction. A remand is mandatory when the district court lacks subject-matter jurisdiction. On a Rule 12(b)(6) motion, dismissal is appropriate only when the complaint lacks a cognizable legal theory or sufficient facts to support one, with factual allegations construed in the nonmoving party's favor.
PRECEDENTIAL VALUE	nonprecedential district court order

TOPICS

subject matter jurisdiction

arbitration

wage and hour

motions to dismiss

civil procedure

PRACTICE AREAS

civil procedure

labor and employment law

employment arbitration

wage and hour

federal jurisdiction

QUESTIONS PRESENTED

1. Whether the remaining state-law wage-and-hour claims were completely preempted by section 301 of the LMRA so as to create federal-question jurisdiction.
2. Whether the collective bargaining agreement contained a clear and unmistakable waiver of Silva's right to a judicial forum for the wage-and-hour claims.
3. Whether adjudicating the wage-and-hour claims required interpretation, rather than mere reference to, the collective bargaining agreement.
4. Whether Defendant's Rule 12(b)(6) motion should be granted.

HOLDINGS

1. The claims were not preempted under the first step of the section 301 preemption analysis because the right to compensation for hours worked was conferred by state law, and the collective bargaining agreement did not clearly and unmistakably waive Silva's right to a judicial forum.
2. The wage-and-hour claims were not preempted under the second step because Defendant did not show that interpreting the collective bargaining agreement, as opposed to merely referring to it, was necessary to adjudicate the claims.
3. The court could not exercise federal jurisdiction over the remaining state-law claims after the amendment because the remaining claims were not completely preempted under section 301.
4. The motion to dismiss was denied because the court remanded for lack of subject-matter jurisdiction and did not reach the merits of Defendant's asserted grievance-and-arbitration defense.

KEY QUOTATIONS

"The use of a defense cannot be used to form the basis of a federal question for purposes of jurisdiction." (at 8)

"Defendants must explain why interpretation, as opposed to mere reference to the CBA, is necessary." (at 10)

FACTUAL BACKGROUND

Richard Silva worked for Kaiser Foundation Hospitals as a drywall finisher and painter from April 2019 until August 2024 in the Napa and Solano service area. His employment was governed by two successive collective bargaining agreements, with the later agreement adding a provision requiring certain wage-and-hour claims to proceed through grievance and arbitration procedures. Silva alleged that after requesting intermittent CFRA leave, he was demoted, replaced, and terminated, and that he was not paid for brief periods spent performing

work-related tasks while off the clock. The remaining wage claims were based principally on alleged unpaid minimum wages and derivative wage-statement, waiting-time, and UCL claims.

PROCEDURAL HISTORY

Plaintiff originally filed the action in the Superior Court of California, County of Solano. Defendant removed the action to the Eastern District of California, asserting federal-question jurisdiction based on section 301 of the LMRA. Plaintiff filed a First Amended Complaint that omitted two wage claims, then moved to remand; Defendant moved to dismiss. The court granted remand, denied the motion to dismiss, directed the Clerk to close the federal case, and ordered remand to the Superior Court of California, County of Solano.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The Clerk of Court was directed to close the federal case and remand the action to the Superior Court of California, County of Solano.

CASES CITED

- City of Chicago v. International College of Surgeons, 522 U.S. 156, 163 (1997)
- Rivet v. Regions Bank of Louisiana, 522 U.S. 470, 475 (1998)
- Grancare, LLC v. Thrower by and through Mills, 889 F.3d 543, 550 (9th Cir. 2018)
- Geographic Expeditions, Inc. v. Estate of Lhotka, 599 F.3d 1102, 1106-07 (9th Cir. 2010)
- Gaus v. Miles, Inc., 980 F.2d 564, 566-67 (9th Cir. 1992)
- Hunter v. Philip Morris USA, 582 F.3d 1039, 1042 (9th Cir. 2009)
- Smith v. Mylan, Inc., 761 F.3d 1042, 1044 (9th Cir. 2014)
- Bruns v. National Credit Union Administration, 122 F.3d 1251, 1257 (9th Cir. 1997)
- Mendiondo v. Centinela Hospital Medical Center, 521 F.3d 1097, 1104 (9th Cir. 2008)
- Steinle v. City and County of San Francisco, 919 F.3d 1154, 1160 (9th Cir. 2019)
- Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009)
- Thomas v. Pacific Gas & Electric Co., 768 F. Supp. 3d 1021, 1024 (N.D. Cal. 2025)
- Royal Canin U.S.A., Inc. v. Wullschleger, 604 U.S. 22, 25-26 (2025)
- Williams v. Costco Wholesale Corp., 471 F.3d 975, 976 (9th Cir. 2006)
- Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 209 (1985)
- Burnside v. Kiewit Pacific Corp., 491 F.3d 1053, 1059-60 (9th Cir. 2007)
- Franchise Tax Board v. Construction Laborers Vacation Trust, 463 U.S. 1, 23 (1983)
- Caterpillar Inc. v. Williams, 482 U.S. 386, 393, 398-99 (1987)
- Kobold v. Good Samaritan Regional Medical Center, 832 F.3d 1024, 1034 (9th Cir. 2016)
- Mellon v. Universal County Studios, 625 F. Supp. 3d 1007, 1014-15 (C.D. Cal. 2022)

- *Renteria-Hinjosa v. Sunsweet Growers*, No. 2:23-cv-01413-DJC-DB, 2023 WL 6519308, at *5-6 (E.D. Cal. Oct. 5, 2023)
- *Wilson-Davis v. SSP America, Inc.*, 434 F. Supp. 3d 806, 813, 817 (C.D. Cal. 2020)
- *Munoz v. Atlantic Express of LA, Inc.*, No. 2:12-cv-06074-GHK-FMO, 2012 WL 5349408, at *4 (C.D. Cal. Oct. 30, 2012)
- *Wright v. Universal Maritime Service Corp.*, 525 U.S. 70, 80-81 (1998)
- *14 Penn Plaza LLC v. Pyett*, 556 U.S. 247, 257 (2009)
- *Epic Systems Corp. v. Lewis*, 584 U.S. 497, 524-25 (2018)
- *Prime Healthcare Paradise Valley LLC*, 368 NLRB No. 10, 2019 WL 2525342, at *8-9 (June 18, 2019)
- *Segismundo v. Rancho Murieta Country Club*, No. 2:21-cv-02272-DAD-JDP, 2022 WL 9921676, at *4 n.2 (E.D. Cal. Oct. 17, 2022)
- *Alexander v. Republic Services, Inc.*, No. 2:17-cv-00644-WBS-AC, 2017 WL 2189770, at *4-5 (E.D. Cal. May 18, 2017)

OPINION

Silva v. Kaiser Foundation Hospitals

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10

11 RICHARD SILVA, No. 2:25-cv-00142-DJC-JDP

12 Plaintiff, 13 v. ORDER 14

KAISER FOUNDATION HOSPITALS, et

15 al., 16 Defendants. 17 18 Before the Court are Plaintiff's Motion to Remand this action back to California 19 Superior Court and Defendant's Motion to Dismiss. Plaintiff originally filed this matter 20 in the Superior Court of the State of California, County of Solano. Defendant removed 21 the action to federal court based on section 301 of the Federal Labor Management 22 and Relations Act ("LMRA"). Defendant contends that federal jurisdiction exists 23 because Plaintiff's employment was subject to a collective bargaining agreement that 24 preempts Plaintiff's otherwise state law-based causes of actions. Plaintiff brings the 25 present Motion to Remand arguing that this action should be remanded to the 26 Superior Court because the rights asserted do not arise under or rely on the 27 interpretation of the collective bargaining agreement and therefore are not 28 preempted by the LMRA. Relatedly, the Defendant brings a Motion to Dismiss 1 arguing that the Plaintiff's claims are subject to the grievance and arbitration 2 provisions in the CBA and fail to state claims upon which relief can be granted. For 3 the reasons below, the Court DENIES Defendant's Motion to Dismiss and GRANTS 4 Plaintiff's Motion for Remand.

5 BACKGROUND

6 Plaintiff Richard Silva brings suit against Defendant Kaiser Foundation 7 Hospitals. Plaintiff worked for Defendant as a dry wall finisher and painter from April 8 2019 until August 2024 in the Napa and Solano service area. (FAC (ECF No. 5) ¶¶ 6, 9 16, 20.) His employment was governed by a collective bargaining agreement titled 10 “Northern California Drywall Finishers Masters Agreement Between District Council 16 11 & The Wall and Ceiling Alliance” and by the Work Referral document that dispatched 12 him from his Union.¹ (Not. Removal (ECF No. 1) ¶ 17.) The CBAs differ in that the 13 earlier CBA, which governed Plaintiff’s employment from 2019 until June 30, 2022, 14 did not include Article 15 Section 9, see (CBA 1 (ECF No. 1-3, Ex. A) at 18–19) which 15 states: 16 In addition to claims for meal periods, rest period and heat recovery violations governed by Article 11, Section 1, the 17 following claims and claims for associated penalties will be 18 resolved exclusively through the procedures set forth in this Grievance and Arbitration procedure, and may not be 19 brought in a court of law or before any administrative agency such as the California Labor Commissioner: all 20 claims arising under the FLSA, California Labor Code and 21 Industrial Welfare Commission Orders, including Wage Order 16-2001 including but not limited to claims for: 22 unpaid wages (e.g. claims for hours worked off the clock, overtime wages, minimum wages, incorrect rate(s) or pay 23 and travel time; waiting time penalties. . . . 24 25 26 27 1 Defendants request judicial notice of the CBAs governing Plaintiff’s employment and the Work Referral document dispatching Plaintiff from his Union. The Court GRANTS Defendant’s request as 28 pursuant to Federal Rule of Evidence 201(b). 1 (CBA 2 (ECF No. 1-3, Ex. B) Art. 15.9.) The more recent CBA, effective July 1, 2022, 2 until Plaintiff’s termination, does include such provision. 3 While employed by Defendant, Plaintiff took CFRA leave following the birth of 4 his second child (FAC ¶¶ 7,) and when he returned, alleges that Kaiser Construction 5 Manager, Todd Thesman, stated that if Plaintiff was not going to be available when 6 Defendant needed him, Defendant should fire Plaintiff. (Id. ¶ 9.) In March 2024, 7 Plaintiff had a third child and a few months later, Plaintiff informed Defendant that he 8 sought intermittent CFRA leave. (Id. ¶¶ 11–12.) 9 Within one week of Plaintiff informing Defendant that he sought CFRA 10 intermittent leave, Plaintiff was demoted from a foreman to a journeyman. (Id. ¶ 14.) 11 Defendant then hired Ivan Rodriguez to perform Plaintiff’s workplace duties and 12 Plaintiff trained Rodriguez to perform Plaintiff’s workplace duties. (Id. ¶¶ 15, 17.) Prior 13 to hiring Rodriguez, Plaintiff was the only dry wall finisher and painter in the Napa and 14 Solano service area for Defendant. (Id. ¶ 16.) At the end of July 2024, Plaintiff 15 suffered from multiple health related issues and was forced to call in sick due to 16 physical disability symptoms. (Id. ¶¶ 18–19.) 17 Plaintiff argues that Defendant discriminated and retaliated against Plaintiff by 18 terminating his employment and informed him that he was fired for a “lack of work.” 19 (Id. ¶ 20.) However, Rodriguez was hired after Plaintiff’s request to take CFRA leave 20 and was trained by Plaintiff to do his job. (Id.) Moreover, Plaintiff alleges that 21 Defendant failed to pay Plaintiff the wages he was entitled. (Id. ¶ 21.) Specifically, he 22 alleges that while clocked out and not at work, Plaintiff was forced to reply to work 23 related calls and messages regarding work-related

tasks. (Id.) He estimates that he 24 spent five to twenty minutes per week working off the clock but was not compensated. 25 (Id.) 26 Plaintiff initially alleged fifteen causes of action: CFRA Interference; CFRA 27 Retaliation; Physical Disability Discrimination; Failure to Engage in the Interactive 28 Process; Failure to Accommodate; FEHA Retaliation; Wrongful Termination in 1 Violation of Public Policy; Violation of California Labor Code § 223; Failure to Prevent 2 Discrimination and Retaliation; Failure to Pay Minimum Wages; Failure to Pay 3 Overtime Wages; Failure to Pay Wages Owed; Failure to Provide Accurate, Itemized 4 Wage Statements; Waiting Time Penalties; and Violation of California Business & 5 Professions Code § 17200. (See generally Compl. (ECF No. 1-2, Ex. A).) 6 On January 10, 2025, Defendant filed a Notice of Removal arguing that federal 7 jurisdiction exists under Section 301 of the LMRA. Plaintiffs then filed the First 8 Amended Complaint.² The First Amended Complaint removed the Failure to Pay 9 Overtime Wages and Failure to Pay Wages Owed claims. Plaintiff now pursues 10 thirteen causes of action. The Defendants then filed a Motion to Dismiss (Mot. Dismiss 11 (ECF No. 6)) and Plaintiff filed a Motion to Remand (Mot. Remand (ECF No. 8)) back to 12 California Superior Court. Because the two Motions raise interrelated issues, the 13 Court will decide the Motions together.

14 LEGAL STANDARDS

15 A defendant may remove a state court civil action to federal court so long as 16 that case could originally have been filed in federal court, based on either diversity 17 jurisdiction or federal question jurisdiction. 28 U.S.C. § 1441(a)–(b); *City of Chicago v. 18 Int'l Coll. of Surgeons*, 522 U.S. 156, 163 (1997). Federal question jurisdiction is met 19 where the action “aris[es] under the Constitution, laws, or treaties of the United 20 States.” See 28 U.S.C. § 1331. “[T]he presence or absence of federal-question 21 jurisdiction is governed by the ‘well-pleaded complaint rule,’ which provides that 22 federal jurisdiction exists only when a federal question is presented on the face of the 23 plaintiff’s properly pleaded complaint.” *Rivet v. Regions Bank of La.*, 522 U.S. 470, 475 24 (1998) (citations omitted). A defense is not part of a plaintiff’s properly pleaded 25 statement of his or her claim. *Id.* (citations omitted). 26 27 2 The Defendant argues that Plaintiff’s filing of the First Amended Complaint is improper. Although filed without consent, the Court nevertheless considers the FAC for purposes of efficiently resolving the 28 dispute at hand. 1 The removal statute is strictly construed and federal jurisdiction is rejected 2 where there are doubts as to the right of removal in the first instance. *Grancare, LLC v. 3 Thrower by and through Mills*, 889 F.3d 543, 550 (9th Cir. 2018) (citation omitted). 4 The defendant seeking removal of an action from state court bears the burden of 5 establishing grounds for federal jurisdiction, see *Geographic Expeditions, Inc., v. Est. 6 of Lhotka*, 599 F.3d 1102, 1106–07 (9th Cir. 2010); *Gaus v. Miles, Inc.*, 980 F.2d 564, 7 566–67 (9th Cir. 1992); see also *Hunter v. Philip Morris USA*, 582 F.3d 1039, 1042 (9th

8 Cir. 2009), but the district court must remand the case “[i]f at any time before final

9 judgment it appears that the district court lacks subject matter jurisdiction.” 28 U.S.C. 10 §

1447(c); see also *Smith v. Mylan, Inc.*, 761 F.3d 1042, 1044 (9th Cir. 2014); *Bruns v. 11 Nat'l Credit Union Admin.*, 122 F.3d 1251, 1257 (9th Cir. 1997) (holding that remand 12 for lack of subject matter jurisdiction “is mandatory, not discretionary”). 13 Additionally, under Federal Rule of Civil Procedure 12(b)(6), a party may move 14 to dismiss for “failure to state a claim upon which relief can be granted[.]” Fed. R. Civ. 15 P. 12(b)(6). The motion may be granted only if “the complaint lacks a cognizable legal 16 theory or sufficient facts to support a cognizable legal theory.” *Mendiondo v. 17 Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008) (citation omitted). 18 While the court assumes all material factual allegations are true and construes “them 19 in the light most favorable to the nonmoving party,” *Steinle v. City & Cnty. of S.F.*, 919 20 F.3d 1154, 1160 (9th Cir. 2019), if the complaint’s allegations do not “plausibly give 21 rise to an entitlement to relief” the motion must be granted. *Ashcroft v. Iqbal*, 556 U.S. 22 662, 679 (2009).

23 DISCUSSION

24 I. Removal 25 Defendant does not contest the nature of the Plaintiff’s first nine causes of 26 action. Rather, the dispute centers around Plaintiff’s wage and hour causes of action, 27 ten through thirteen. Defendant argues that the wage and hour claims are preempted 28 1 by Section 301 and therefore federal question jurisdiction exists. (Opp’n Remand 2 (ECF No. 9) at 5.) 3 The Supreme Court recently reaffirmed the principle that federal courts are 4 courts of limited jurisdiction. *Thomas v. Pacific Gas & Electric Co.*, 768 F. Supp. 3d 5 1021, 1024 (N.D. Cal. 2025) (citing *Royal Canin, U.S.A., Inc. v. Wullschleger*, 604 U.S. 6 22, 26 (2025)). Thus, while the Ninth Circuit has “long held that post-removal 7 amendments to the pleadings cannot affect whether a case is removable,” *Williams v. 8 Costco Wholesale Corp.*, 471 F.3d 975, 976 (9th Cir. 2006) (citations omitted), if a 9 plaintiff files an amended complaint that excises any federal law claims, the court may 10 not exercise supplemental jurisdiction over the state law claims. See *Royal Canin 11 U.S.A.*, 604 U.S. at 25–26 (“When an amendment excises the federal-law claims that 12 enabled removal, the federal court loses its supplemental jurisdiction over the related 13 state-law claims.”). 14 After Defendant removed the instant case to federal court, Plaintiff amended 15 his Complaint to remove the Failure to Pay Wages and Failure to Pay Overtime causes 16 of action.³ Plaintiff now contends that no federal question jurisdiction exists. 17 Defendant argues that this amendment is improper and does not change whether 18 jurisdiction exists. But unlike circumstances where a plaintiff merely disclaims reliance 19 on a CBA, see *Vieira v. Kaiser Foundation Hospitals*, No. 2:25-cv-03042-SB-AJR, 2025 20 WL 1393960, at *2 (C.D. Cal. May 14, 2025), or simply deletes the word “federal” from 21 the complaint, see *Abdel-Ghani v. Target Corp.*, No. 0:14-cv-03644-PJS-HB, 2015 WL 22 1292568, at *4–5 (D. Minn. Mar. 23, 2015), here Plaintiff has removed two causes of 23 action from his complaint. Given the Supreme Court’s direction in *Royal Canin*, the 24 Court will assess the remaining causes of action to determine whether it retains 25 jurisdiction following the Plaintiff’s amendment. 26 //// 27 3 The Parties dispute whether the now-removed Failure to Pay Wages and Failure to Pay Overtime 28 claims served as a basis for federal question jurisdiction. 1 II. Jurisdiction Under the LMRA

2 Section 301 of the LMRA is a “mandate . . . to fashion a body of federal common
3 law to be used to address disputes arising out of labor contracts” requiring federal 4 courts to
exercise jurisdiction over federal labor law claims. *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202,
209 (1985). Where a CBA governs the claim against an 6 employer, section 301 of the LMRA
preempts the claim and converts it to a federal 7 question over which the federal court has
jurisdiction. See *Burnside v. Kiewit Pac. Corp.*, 491 F.3d 1053, 1059 (9th Cir. 2007). In effect,
section 301 “displace[s] entirely 9 any state cause of action for violation of contracts between an
employer and a labor 10 organization,” *Franchise Tax Bd. v. Constr. Laborers Vacation Tr.*, 463
U.S. 1, 23 (1983) 11 (citation omitted), such that “any claim purportedly based on [a] . . . state law
is 12 considered, from its inception, a federal claim, and therefore arises under federal 13 law.”
Caterpillar Inc. v. Williams, 482 U.S. 386, 393 (1987) (citation omitted). However, 14 “a
defendant cannot, merely by injecting a federal question into an action. . .transform 15 the action
into one arising under federal law.” *Id.* at 398–99. 16 The Ninth Circuit established a two-step test
in *Burnside v. Kiewit Pac. Corp.* to 17 determine whether a state-law claim is preempted by
section 301. See 491 F.3d at 18 1059–60. The first step looks at “whether the asserted cause of
action involves a right 19 conferred upon an employee by virtue of state law” or if the right is
granted by the 20 CBA. *Id.* at 1059. If the cause of action stems only from the CBA, then the
claim is 21 preempted. *Id.* If not, the Court must decide whether the claim is “substantially 22
dependent” on the terms of the CBA by considering “whether the claim can be 23 resolved by
looking to versus interpreting the CBA.” *Id.* at 1059–60 (citation omitted). 24 Where a state law
claim has been found to be substantially dependent on a CBA 25 typically, “that claim must either
be treated as a § 301 claim, or dismissed as pre- 26 empted by federal labor-contract law.” *Kobold*
v. Good Samaritan Reg’l Med. Ctr., 832 27 F.3d 1024, 1034 (9th Cir. 2016) (citation omitted). 28
//// 1 A. Remaining Wage and Hours Claims 2 Although Plaintiff removed two causes of action,
the First Amended Complaint 3 still brings the following counts involving wage and hour claims:
failure to pay 4 minimum wages; failure to provide accurate, itemized, wage statements; waiting
time 5 penalties; and violations of the UCL. The causes of action for failure to issue itemized 6
wage statements, waiting time periods, and violations of the UCL are derivative of the 7 failure to
pay minimum wages claim.⁴ (Mot. Remand at 6–7.) The failure to pay 8 minimum wages claim is
premised on California Labor Code §§ 1197, 1194 and 9 1194.2.5 Section 1197 provides in part
that “[t]he minimum wage for employees fixed 10 by the commission or by any applicable state or
local law, is the minimum wage to be 11 paid to employees, and the payment of a lower wage than
the minimum so fixed is 12 unlawful.” Cal. Lab. Code § 1197. 13 1. *Burnside* Step One 14
Beginning with the first *Burnside* step, the Court finds that the right to be 15 compensated for
“hours worked” is a right conferred as a matter of state law. See 16 *Mellon v. Universal Cty.*
Studios, 625 F. Supp. 3d 1007, 1014 (C.D. Cal. 2022) 17 (explaining that state law provided an
independent right for plaintiff to be paid for 18 “hours worked”). While it is unclear from the
briefing, Defendant appears to argue the 19 Plaintiff’s claims arise from the CBA because

Plaintiff's wage and hours causes of 20 action are subject to arbitration. (See Opp'n Remand at 5; MTD at 10–11.) 6 Upon 21 4 Because the itemized wage statements, waiting time periods and violations of the UCL claims are 22 derivative of the failure to pay minimum wages claim the court need not analyze them separately. See e.g., *Segismundo v. Rancho Murieta Country Club*, 2022 WL 9921676, No. 2:21-cv-02272-DAD-JDP, at 23 *4 n. 2 (E.D. Cal. Oct. 17, 2022) (analyzing only the underlying claims for preemption). 24 5 Section 1194 entitles an employee receiving less than the minimum wage to recover, in a civil action, the unpaid balance of minimum wages owing, plus interest thereon, reasonable attorneys' fees, and 25 costs of suit. Cal. Lab. Code § 1194. Section 1194.2 entitles an employee receiving less than the minimum wage to recover liquidated damages in an amount equal to the unpaid minimum wages and 26 interest thereon. Cal. Lab. Code § 1194.2. 27 6 Defendant also makes arguments about the issue of the grievance procedure as it pertains to step two of *Burnside*, however, the Court considers the issue under step one. See *Renteria-Hinjosa v. Sunsweet 28 Growers*, No. 2:23-cv-01413-DJC-DB, 2023 WL 6519308, at *5–6 (E.D. Cal. Oct. 5, 2023). 1 reviewing both CBAs, it appears that Article 15 Section 9 is a new addition to the more 2 recent CBA. (See CBA 2 Art. 15.9.) This section expands the CBA's arbitration 3 requirement to wage and hour claims. 4 “[A] court may look to the CBA to determine whether it contains a clear and 5 unmistakable waiver of state law rights without triggering section 301 preemption.” 6 *Burnside*, 491 F.3d at 1060. “[F]or a grievance or arbitration provision to implicate 7 preemption, the ‘union-negotiated waiver of employees’ statutory right to a judicial 8 forum’ must be ‘clear and unmistakable.’” *Wilson-Davis v. SSP America*, 434 F. Supp. 9 3d 806, 817 (C.D. Cal. 2020) (citing *Munoz v. Atl. Express of LA, Inc.*, No. 2:12-cv- 10 06074-GHK-FMO, 2012 WL 5349408, at *4 (C.D. Cal. Oct. 30, 2012) (quoting *Wright v. 11 Universal Mar. Serv. Corp.*, 525 U.S. 70, 80–81 (1998))). Courts generally cannot 12 interfere when a union and an employer agree to include an arbitration provision in a 13 collective-bargaining agreement. See 14 *Penn Plaza LLC v. Pyett*, 556 U.S. 247, 257 14 (2009). 15 The CBAs here require that certain “grievances” must go through the outlined 16 arbitration policies. However, the CBAs define what a “grievance” is differently. In the 17 earlier version of the CBA, a grievance was “any dispute or controversy between the 18 Employer, the Union and any employee covered by this Agreement, involving the 19 meaning, interpretation, or application of the provisions of this Agreement.” (CBA 1

20 Art. 15.1.) In the more recent version, the definition goes a step further by including 21 “disputes set forth in Section 9” as grievances. (CBA 2 Art. 15.1.) Section 9, in turn, 22 covers all claims arising under the FLSA, California Labor Code 23 and Industrial Welfare Commission Orders, including Wage

24 Order 16-2001 including but not limited to claims for:

unpaid wages (e.g. claims for hours worked off the clock, 25 overtime wages, minimum wages, incorrect rate(s) of pay and travel time; waiting time penalties; reimbursement of 26 expenses. . . ; recordkeeping of personnel files, time records 27 and payroll records; and violation of Labor Code

sections 212 and 226. 28 1 (CBA 2 Art. 15.9.) The difference between the CBAs is relevant here because under 2 the first definition of grievance, it would appear that Defendant is inserting a federal 3 question by mounting a defense. See, e.g., *Renteria-Hinjosa*, 2023 WL 6519308, at *5 4 (collecting cases). However, under the more recent CBA, the provision shows the 5 bargaining parties intended for Plaintiff's wage and hour disputes, which are brought 6 under the California Labor Code, to be subject to the grievance and arbitration 7 procedure outlined in the agreement. 8 Here, Plaintiff's allegations regarding unpaid wages occurred while his 9 employment was subject to the more recent CBA. (FAC ¶¶ 7–12.) Plaintiff does not 10 deny that the procedures outlined in the CBA would apply to him or that the 11 procedures have been exhausted. Rather, he briefly states that the procedures are 12 unlawful because it contains no exceptions for filing administrative charges and 13 requires employees to waive their rights to pursue class or collective actions involving 14 employment-related claims. (Opp'n MTD (ECF No. 10) at 12–13.) 15 As for Plaintiff's issue with the waiver of class and collective action, the Supreme 16 Court has held that these provisions are typically acceptable under the NLRA. See 17 *Epic Systems Corp. v. Lewis*, 584 U.S. 497, 524–25 (2018) (holding that employer- 18 employee agreements that contain class and collective action waivers and stipulate 19 that employment disputes are to be resolved by individualized arbitration do not 20 violate the NLRA and must be enforced as written pursuant to the FAA). However, 21 Plaintiff's reliance on the NLRB's decision in *Prime Healthcare Paradise Valley LLC*, 22 presents a much closer question. 368 NLRB No. 10, 2019 WL 2525342 (June 18, 23 2019). In *Prime Healthcare*, the NLRB held that an arbitration agreement violated 24 Section 8(a)(1) of the NLRA when it could be reasonably interpreted to interfere with 25 the exercise of the right to file charges with administrative agencies. *Id.* at *8–9. Here, 26 the more recent CBA states that certain claims “may not be brought in a court or 27 before any administrative agency such as the California Labor Commissioner.” (CBA 2 28 Art. 15.9.) Unlike *Prime Healthcare*, arbitration here is not the “exclusive forum for the 1 resolution of all claims, including federal statutory claims under the [NLRA].” *Prime 2 Healthcare Paradise Valley*, 2019 WL 2525342, at *9 (emphasis added). However, the 3 fact that the CBA limits bringing claims before “any administrative agency” is 4 problematic. The Court is not convinced by Defendant's attempts to distinguish the 5 decision because the NLRB does not appear to limit its holding based on whether an 6 individual employer or a Union sought to remove an employee's right to file charges 7 with the NLRB. See *id.* at *8–9 (“Consistent with [] clear congressional command, we 8 hold that the FAA does not authorize the maintenance or enforcement of agreements 9 that interfere with an employee's right to file charges with the Board.”). 10 At the very least, the holding in *Prime Healthcare* makes the validity of the 11 arbitration provision here unclear. As such, the Court finds that Defendant's 12 arguments pertaining to the arbitration provision constitutes a defensive use of the 13 CBA. The use of a defense cannot be used to form the basis of a federal question for 14 purposes of jurisdiction. See *Caterpillar Inc.*, 482 U.S. at 398–99 (“It is true that when a 15 defense to a state claim is based on

the terms of a collective-bargaining agreement, 16 the state court will have to interpret that agreement to decide whether the state claim 17 survives. . . a defendant cannot, merely by injecting a federal question into an 18 action. . . transform the action into one arising under federal law.”). The Court is not 19 invalidating the arbitration provision, and Defendant may raise a defense that Plaintiff 20 failed to comply with the grievance procedure. However, at this stage, the Court 21 cannot find that a “clear and mistakeable” waiver of Plaintiff’s rights exists here such 22 that arbitration is mandatory. Accordingly, Plaintiff’s ability to bring his claims does 23 not arise out of the CBA, and thus there is no federal jurisdiction under Burnside step 24 one. 25 2. Burnside Step Two 26 Turning to the second step of Burnside, Defendant argues that the failure to 27 pay wages claim and the derivative causes of action require interpretation of the CBA 28 1 to adjudicate. Defendant cites to Article 117, Sections 1 and 2, and Article 10, Section 2 168 in the Motion to Dismiss. Section 1 defines a “regular work day” and Section 2 3 lays out when overtime is applicable. Article 10, Section 16 states that 4 Employees shall not report to any shop earlier than thirty 5 (30) minutes nor to any job earlier than twenty (20) minutes before starting time. These provisions shall apply only to 6 work within (40) miles from the point of dispatch. Reporting to work on jobs beyond fifty (50) miles from the point of 7 dispatch shall be in accordance with the provisions of 8 “Travel Time” herein defined. 9 (CBA 1 Art. 10.19; CBA 2 Art. 10.16). However, “it is not enough for Defendants to 10 provide a laundry list of provisions that they allege the court must interpret to resolve 11 Plaintiff’s claims; Defendants must explain why interpretation, as opposed to mere 12 reference to the CBA, is necessary.” *Wilson-Davis v. SSP Am. Inc.*, 434 F. Supp. 3d 13 806, 813 (C.D. Cal. 2020) (emphasis in original). Here, Defendant has failed to explain 14 how interpretation of the CBA is required to adjudicate the wage and hour claims. 15 Plaintiff does not dispute the definition or meaning of the terms in the cited 16 provisions. Rather, he argues that he was not properly paid for the time he worked 17 outside of the hours listed in the “regular work day provision.” Moreover, Defendant 18 does not dispute that the work Plaintiff alleged he did would be compensated such 19 that interpretation of the CBA is needed. Compare *Mellon*, 625 F. Supp 3d at 1015 20 (discussing that interpretation of the CBA was required where it was unclear whether 21 the work Plaintiff did was intended to be compensated). Given that there is no need 22 23 7 Defendant refers to Article 9 in the CBA, which discusses apprenticeship, however the referenced 24 sections appear to be under Article 11 “Working Conditions.” 25 8 Defendant cites to Article 9 Section 2 of the CBA for this provision. However, upon review, the Court cannot locate the precise language used in Defendant’s motion. (See Mot. Dismiss at 7.) However, the 26 Court finds the above stated language, which most closely resembles Defendant’s citation at Article 10, Section 19 in CBA 1 and Article 10, Section 16 in CBA 2. (CBA 1 Art. 10.19; CBA 2 Art. 10.16.) 27 Moreover, the Court notes that there have been several other inconsistencies with regard to citations to the CBAs. Counsel is cautioned to remember their duties under Rule 11 of the Federal Rules of Civil 28 Procedure. 1 | to interpret the CBA, the Court finds that Plaintiff's unpaid minimum wage claim and 2 | derivative claims are not

preempted. See, e.g. *Alexander v. Republic Services, Inc.*, 3 | 2017 WL 2189770, No. 2:17-cv-00644-WBS-AC, at *4-5 (E.D. Cal. May 18, 2017) 4 | (finding that a claim for unpaid minimum wages under section 1197 was not 5 | preempted because the court would merely have to decide whether defendants paid 6 | plaintiff minimum wages for all the hours they worked, which does not implicate CBA 7 | provisions).

8 CONCLUSION

9 For the reasons discussed above, IT |S HEREBY ORDERED that Plaintiff's Motion 10 | to Remand (ECF No. 8) is GRANTED. Defendant's Motion to Dismiss (ECF No. 6) is 11 | DENIED. The Clerk of Court is directed to close this case and remand the action back 12 | to the Superior Court of California, County of Solano. 13 14 IT IS SO ORDERED. 15 | Dated: _August 12, 2025
“Daniel CoD tto— Hon. Daniel □□ |. Cod

16 UNITED STATES DISTRICT JUDGE

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