

**UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
WASHINGTON**

John Milito v. Wizards of the Coast LLC, et al.

No. 24-cv-1111-BJR · No. No. 24-cv-1111-BJR · Decided December 29, 2025

OPINION

1 The Honorable Barbara J. Rothstein 2 3 4 5 UNITED STATES DISTRICT COURT WESTERN
DISTRICT OF WASHINGTON 6 AT SEATTLE 7 NO. 24-cv-1111-BJR JOHN MILITO, 8
ORDER GRANTING REMAND Plaintiff, 9 v. 10 WIZARDS OF THE COAST LLC, et al., 11
Defendants. 12 13 I. INTRODUCTION 14 Plaintiff, John Milito, originally filed this case in King
County Superior Court alleging that 15 Defendants, Wizards of the Coast, LLC and Hasbro Inc.,
had violated a specific provision of 16 Washington State’s Equal Pay and Opportunities Act
(“EPOA”), RCW 49.58.110, which requires 17 certain employers to disclose the wage scale or
salary range, and a general description of other 18 compensation and benefits, in each posting for
an available position.¹ Defendants removed the case 19 to this Court on the basis of diversity
jurisdiction and under the Class Action Fairness Act 20 (“CAFA”), 28 U.S.C. § 1332(d).

See Notice of Removal, ECF No. 1. Now pending before the Court 21 22 1 A detailed statutory
background may be found in this Court’s decisions in related cases. See, e.g., *Floyd v. Insight
Global LLC, et al.*, 23-CV-1680-BJR, 2024 WL 2133370, at *1-2 (W.D. Wash. May 10, 2024);
Atkinson v. Aaron’s 23 LLC, et al., 23-CV-1742-BJR, 2024 WL 2133358, at *1-2 (W.D. Wash.
May 10, 2024).

24 ORDER GRANTING REMAND 1 is Plaintiff’s Motion to Remand, ECF No. 22, and
Defendants’ motion to amend their answer, ECF 2 No. 32.2 Having reviewed the materials,³ the
record of the case, and the relevant legal authorities, 3 the Court will grant Plaintiff’s motion and
remand this case to King County Superior Court.

The 4 reasoning for the Court’s decision follows. 5 II. BACKGROUND 6 On May 31, 2024, John
Milito applied for a job opening with Defendants in King County, 7 Washington. Compl. ¶¶ 15,
26, ECF No. 1-3. He alleges that the posting for the job opening did 8 not disclose the wage scale
or salary range to be offered. *Id.* ¶¶ 28-31; Ex.1. He further alleges that 9 he “expected that at
some point he would learn the rate of pay for the open position...[but] 10 Defendants withheld the
rate of pay for the open position in the job posting and throughout the 11 application process,
forcing Plaintiff to complete the entire application without learning the rate of 12 pay.” *Id.* ¶¶ 29-
30.

Mr. Milito alleges that he lost time applying for a position for which the wage 13 scale was not
disclosed and his ability to negotiate pay is adversely affected. *Id.* ¶¶ 34-35. Mr. 14 Milito also

claims to represent “dozens” (“more than 40”) potential class members who also applied 15 for jobs with Defendants for positions that did not disclose the wage scale or salary range.

Id. ¶¶ 16 10, 22, 43. Mr. Milito’s complaint was virtually identical to numerous other putative class-action 17 lawsuits filed by multiple plaintiffs represented by Emery Reddy, PLLC, and subsequently removed 18 to this Court by the defendants. Mr. Milito filed the pending motion seeking remand back to state 19 court, asserting that this Court lacks subject matter jurisdiction because he lacks Article III standing 20 21 2 In the interim period, the Court stayed this case and deferred ruling on all pending motions pending the Washington 22 Supreme Court’s opinion on the certified question in a related case.

See Stay Order, ECF No. 19. The stay was lifted on September 29, 2025. Lift Stay Order, ECF No. 21. 3 Including Plaintiff’s remand motion, ECF No. 22; response in opposition, ECF No. 26; and reply, ECF No. 38. 23 Defendant’s motion, ECF No. 32, is not yet ripe for decision. 24 ORDER GRANTING REMAND 1 to proceed in federal court. Mot. Remand 1. He also argues, in the alternative, that remand is 2 required because CAFA’s mandatory and discretionary exceptions apply.

Id. 3 On August 20, 2024, the Honorable Judge Chun certified a question in a similar case to the 4 Washington Supreme Court, asking it to interpret the term “job applicant” as used in the EPOA 5 statute. *Branson v. Washington Fine Wines & Spirits, LLC*, 2:24-CV-00589-JHC, 2024 WL 6 4510680, at *1 (W.D. Wash. Aug. 20, 2024), certified question accepted, 103394-0, 2024 WL 7 4471756 (Wash.

Oct. 11, 2024)). The Court stayed this case pending the state Supreme Court’s 8 decision on the certified question. See Stay Order, ECF No. 19. On September 4, 2025, the 9 Washington Supreme Court issued its decision. *Branson v. Wash. Fine Wine & Spirits, LLC*, No. 10 103394-0, 2025 WL 2536266, 574 P.3d 1031 (Sept. 4, 2025) (en banc).

The Court concluded: 11 A job applicant need not prove they are a “bona fide” applicant to be deemed a “job applicant.” Rather, in accordance with the plain 12 language of RCW 49.58.110(4), a person must apply to any solicitation intended to recruit job applicants for a specific available 13 position to be considered a “job applicant,” regardless of the person’s subjective intent in applying for the specific position.

14 Id. at *8. The stay has been lifted, and the parties’ motions will now be addressed. Lift Stay Order, 15 ECF No. 21. 16 III. LEGAL STANDARD 17 A defendant may remove to federal court any case filed in state court over which the federal 18 court would have original jurisdiction. 28 U.S.C. § 1441(a). Federal question jurisdiction exists 19 over “civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. 20 § 1331. “The general rule, referred to as the ‘well-pleaded complaint rule,’ is that a civil action 21 arises under federal law

for purposes of § 1331 when a federal question appears on the face of the 22 complaint.” *City of Oakland v. BP PLC*, 969 F.3d 895, 903 (9th Cir.

2020) (quoting *Caterpillar 23 24 ORDER GRANTING REMAND 1 Inc. v. Williams*, 482 U.S. 386, 392 (1987)). Jurisdiction is based on the pleadings filed at the time 2 of removal and is based “solely on the plaintiff’s claims for relief and not on anticipated defenses 3 to those claims.” *Id.* (quoting *ARCO Env’t Remediation, L.L.C. v. Dep’t of Health & Env’t Quality 4 of Mont.*, 213 F.3d 1108, 1113 (9th Cir.

2000)). 5 Removal requirements should be strictly construed. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 6 (9th Cir. 1992). A removing party bears the burden of establishing federal jurisdiction and must 7 overcome a “strong presumption” against removal. *Abrego Abrego v. The Dow Chem. Co.*, 443 8 F.3d 676, 685 (9th Cir. 2006). Federal jurisdiction “must be rejected if there is any doubt as to the 9 right of removal in the first instance.” *Gaus*, 980 F.2d at 566. “[T]he court resolves all ambiguity 10 in favor of remand to state court.” *Hunter v. Philip Morris USA*, 582 F.3d 1039, 1042 (9th Cir.

11 2009) (citing *Gaus*, 980 F.3d at 566). If at any time before final judgment it appears that the federal 12 district court lacks subject matter jurisdiction, “the case shall be remanded” to state court. 28 U.S.C. 13 § 1447(c); see also *Duncan v. Stuetzle*, 76 F.3d 1480, 1485 (9th Cir. 1996). 14 IV. DISCUSSION 15 Mr. Molito requests that this matter be remanded for lack of Article III standing and subject 16 matter jurisdiction.

Mot. Remand 1, 2 (citing similar cases that have been remanded). “Under 17 Article III, the Federal Judiciary is vested with the ‘Power’ to resolve not questions and issues but 18 ‘Cases’ or ‘Controversies.’” *Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125, 132 (2011). 19 “Among other things, that limitation requires a plaintiff to have standing.” *Fed.*

Election Comm’n 20 v. Cruz, 596 U.S. 289, 295–96 (2022). In the context of a class action, the class representatives must 21 have standing. See *NEI Contracting & Eng’g, Inc. v. Hanson Aggregates Pac. Sw., Inc.*, 926 F.3d 22 528, 532 (9th Cir. 2019) (“[I]f none of the named plaintiffs purporting to represent a class 23 establishes the requisite of a case or controversy with the defendants, none may seek relief on behalf 24 ORDER GRANTING REMAND 1 of himself or any other member of the class.”) (quoting *O’Shea v. Littleton*, 414 U.S. 488, 494 2 (1974))); see also *Lierboe v. State Farm Mut.*

Auto. Ins. Co., 350 F.3d 1018, 1022 (9th Cir. 2003) 3 (“[S]tanding is the threshold issue in any suit. If the individual plaintiff lacks standing, the court 4 need never reach the class action issue.”). Whether plaintiffs have Article III standing to proceed 5 with this lawsuit implicates the Court’s subject matter jurisdiction. See *Warth v. Seldin*, 422 U.S. 6 490, 498 (1975) (stating that standing is jurisdictional).

7 “[T]o establish standing, a plaintiff must show (i) that he suffered an injury in fact that is 8 concrete, particularized, and actual or imminent; (ii) that the injury was likely caused by the 9 defendant; and (iii) that the injury would likely be redressed by judicial relief.” *TransUnion LLC v. 10 Ramirez*, 594 U.S. 413, 423 (2021) ((citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 11 (1992)). “[E]ach element must be supported in the same way as any other matter on which the 12 plaintiff bears the burden of proof, i.e., with the manner and degree of evidence required at the 13 successive stages of the litigation.” *Lujan*, 504 U.S. at 561.

14 As Mr. Milito argues, this Court has found in similar— virtually identically pleaded—cases, 15 that the plaintiffs failed to allege that they applied for the posted positions in good faith with a 16 genuine interest in employment with the employer. See, e.g., *Floyd v. Insight Global, LLC*, No. 17 2:23-cv-01680-BJR (W.D. Wash.); *Atkinson v. Aaron’s, LLC*, No. 2:23-cv-01742-BJR (W.D.

18 Wash.); *David v. Herc Rentals Inc.*, No. 2:24-cv-00175-BJR (W.D. Wash.). At issue in those cases, 19 as here, is the “[f]irst and foremost” of standing’s three requirements—“a harm suffered by the 20 plaintiff that is concrete and actual or imminent, not conjectural or hypothetical.” *Steel Co. v. 21 Citizens for a Better Env’t*, 523 U.S. 83, 103 (1998) (citations omitted).

22 To establish an injury in fact, plaintiffs must show that they suffered “an invasion of a 23 legally protected interest.” *Lujan*, 504 U.S. at 560 (citations omitted). Injury is particularized if it 24 ORDER GRANTING REMAND 1 affects a plaintiff “in a personal and individual way.” *Id.* at 560 n.1. And it is concrete if it “actually 2 exist[s],” meaning that it is “real, and not abstract.” *Spokeo, Inc. v. Robins (Spokeo I)*, 578 U.S. 3 330, 340 (2016) as revised (May 24, 2016) (citations omitted).

Importantly, “Article III standing 4 requires a concrete injury even in the context of a statutory violation.” *Id.* at 341 (emphasis added). 5 A plaintiff may not “allege a bare procedural violation, divorced from any concrete harm, and 6 satisfy the injury-in-fact requirement of Article III.” *Id.* “[T]he Supreme Court made clear that a 7 plaintiff does not ‘automatically satisf[y] the injury-in-fact requirement whenever a statute grants a 8 person a statutory right and purports to authorize that person to sue to vindicate that right.’” *Robins 9 v. Spokeo, Inc. (Spokeo II)*, 867 F.3d 1108, 1112 (9th Cir.

2017) (quoting *Spokeo I*, 578 U.S. at 10 341). To establish a concrete injury, “the plaintiff must allege a statutory violation that caused him 11 to suffer some harm that ‘actually exist[s]’ in the world; there must be an injury that is ‘real’ and 12 not ‘abstract’ or merely ‘procedural.’” *Id.* (quoting *Spokeo I*, 578 U.S. at 340). 13 Intangible injuries, such as the omission of statutorily required information, “can 14 nevertheless be concrete.” *Magadia v. Wal-Mart Assocs., Inc.*, 999 F.3d 668, 679 (9th Cir.

2021) 15 (quoting *Spokeo I*, 578 U.S. at 340). “[A]n intangible injury may be concrete if it presents a material 16 risk of tangible harm or ‘has a close relationship to a harm that has traditionally been regarded as 17 providing a basis for a lawsuit in English or American courts,’ like common law torts or certain 18 constitutional violations.” *Phillips v. United States Customs & Border Prot.*, 74 F.4th 986, 991 (9th 19 Cir.

2023) (quoting *Spokeo I*, 578 U.S. at 340-41). To determine whether the violation of a statute 20 constitutes a concrete harm, the Ninth Circuit engages in a two-part inquiry. *Magadia*, 999 F.3d at 21 679. First, a court considers “whether the statutory provisions at issue were established to protect. 22.. concrete interests (as opposed to purely procedural rights).” *Id.* (citation omitted).

The court then 23 24 ORDER GRANTING REMAND 1 assesses “whether the specific procedural violations alleged in this case actually harm, or present a 2 material risk of harm to, such interests.” *Id.* 3 In *Floyd and Atkinson*, referred to above, this Court further reviewed various cases that 4 analyzed statutory violations in the context of Article III standing and concluded that the statutory 5 violation at issue here is distinctly different from those cases that relate to privacy interests or where 6 misleading information creates a risk of harm.

See 2:23-cv-01680-BJR; No. 2:23-cv-01742-BJR. 7 The Court found that in cases such as these, there is no obvious analogue in the history of American 8 courts and plaintiffs must allege some personal harm. *Id.* Indeed, in *Magadia*, the Ninth Circuit 9 Court confirmed that the “‘procedural violation of an informational entitlement does not by itself 10 suffice to keep a claim in federal court.’ The plaintiff must further allege ‘at least that the 11 information had some relevance to her.’” 999 F.3d at 679-80 (quoting *Brintley v. Aeroquip Credit 12 Union*, 936 F.3d 489, 493 (6th Cir.

2019)). This Court concluded that a violation of the statutory 13 provision at issue here—a job posting with no compensation information included—is a technical 14 or procedural violation that by itself does not manifest concrete injury but requires a bona fide 15 applicant before there is a risk of harm. Plaintiffs must allege, at minimum, that they applied for 16 the job with good-faith intent, and became personally exposed to the risk of harm caused by the 17 violation.

18 Defendants argue that Mr. Milito alleged actual harm by pleading that he “was qualified to 19 perform the position for which he applied,” and Defendants’ “failure to provide statutorily required 20 information ‘forc[ed] [Milito] to complete the entire application without learning the rate of pay,’ 21 thereby causing Milito to ‘los[e] valuable time.’” *Opp’n* 6 (quoting *Compl.* ¶¶ 27, 30, 35).4 22 4 The Court notes that any time wasted in applying for a job without good faith is actually a self-inflicted harm.

23 24 ORDER GRANTING REMAND 1 Defendants also cite Mr. Milito’s allegations that his inability to evaluate and compare pay to other 2 available positions negatively impacted his ability

to negotiate, which caused him economic and 3 non-economic harm. Id. (citing Compl. ¶¶ 33, 34, 36, 37). Defendants contend that these allegations 4 represent a cognizable informational injury and no further showing of harm is required.

Id. at 11. 5 The Court disagrees. Mr. Milito’s allegations fail to show any actual harm against which 6 the EPOA intends to protect. See *Hill v. ACV Auctions Inc.*, No. C25-616 MJP, 2025 WL 1582249, 7 at *3 (W.D. Wash. June 4, 2025) (concluding that the EPOA’s legislative history “confirms that the 8 EPOA’s procedural requirement of disclosure was established to protect applicants by arming them 9 with sufficient information to ensure fair and equitable pay negotiations, and to avoid wasting time 10 interviewing for positions whose pay would never be adequate.”); see also *Partridge v. Heartland 11 Express Inc. of Iowa*, No. 3:24-CV-05486-DGE, 2024 WL 4164245, at *4 (W.D.

Wash. Sept. 12, 12 2024) (stating that when a plaintiff “does not allege that he was offered employment or an 13 interview,” he “does not suggest that the deprivation of information compromised his bargaining 14 power in pay negotiations, placed him at a disadvantage relevant to other applicants, or resulted in 15 him having to exit a lengthy interview process after learning the pay was insufficient for his 16 needs.”).

Indeed, Mr. Milito himself argues that he lacks Article III standing. Mr. Milito’s 17 conclusory allegations in his complaint are insufficient to allege Article III standing. See *Lujan*, 18 497 U.S. at 888 (holding that neither conclusory allegations nor conclusory affirmations are 19 sufficient to confer standing).

As this Court has stated before, a nominal applicant with no interest 20 in the position will neither receive a benefit from early pay disclosure nor be harmed by the lack 21 thereof. 22 Further, the state Supreme Court’s decision in *Branson* does not change this Court’s Article 23 III standing analysis.

The *Branson* court did not address standing—neither federal nor statutory— 24 ORDER GRANTING REMAND 1 but answered the question: “What must a plaintiff prove to be deemed a ‘job applicant’ within the 2 meaning of RCW 49.58.110(4)?” 2025 WL 2536266, at *1.

The *Branson* decision clarifies that a 3 plaintiff does not have to prove they are a “bona fide” or “good faith” applicant to qualify as a “job 4 applicant” that can sue to obtain remedies under the statute. Id. But a plaintiff must still show an 5 injury-in-fact for Article III purposes. *Spokeo II*, 867 F.3d at 1112. Mr. Milito has failed to plead 6 such an injury.

7 Defendants also contend that this Court can find jurisdiction based on their proposed 8 counterclaim under the Declaratory Judgment Act, 28 U.S.C. § 2201. Opp’n 10. However, a 9 counterclaim is not relevant to whether a district court has original jurisdiction over a civil action. 10 See, e.g., *Royal Canin U. S. A., Inc. v. Wulfschleger*, 604 U.S. 22, 26 (2025) (“[T]he

determination of jurisdiction is based only on the allegations in the plaintiff's 'well-pleaded complaint'—not on any issue the defendant may raise." (citation omitted)); *Home Depot U. S. A., Inc. v. Jackson*, 587 U.S. 435, 442 (2019) ("A counterclaim is irrelevant to whether the district court had 'original jurisdiction' over the civil action....

The civil action of which the district court must have 'original jurisdiction' is the action as defined by the plaintiff's complaint..." (cleaned up)). Unlike Defendants' contention, determining whether there is a case or controversy that gives a federal court the power to proceed does not rely solely on how "substantial" the claim may or may not be.

See Opp'n 1-3, 9.5 Federal Article III standing is a mandatory jurisdictional hurdle that exists independently of the legal theory at issue; a federal court lacks the power to rule if the plaintiff cannot demonstrate standing. See *Warth*, 422 U.S. at 498. The Court further notes that the state court is a court of general, rather than limited, jurisdiction and is a forum more than capable of adjudicating these claims, which are properly within its own judicial authority.

ORDER GRANTING REMAND Federal courts are courts of limited jurisdiction, and "[i]f at any time before final judgment it appears that the district court lacks subject matter jurisdiction," the case must be "remanded" to state court. 28 U.S.C. § 1447(c).

Accordingly, this case will be remanded to King County Superior Court. V. CONCLUSION For the foregoing reasons, 1. Plaintiff's Motion to Remand, ECF No. 22, is GRANTED for lack of Plaintiff's Article III standing; and 2. This case is remanded to King County Superior Court. 9 DATED this 29th day of December 2025. Barbara Jacobs Rothstein 12 United States District Court Judge 13 14 15 16 17 18 19 20 21 22 23 24 ORDER GRANTING REMAND