

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

McMillon v. O'Reilly Auto Enterprises, LLC

McMillon · No. 3:25-cv-01357-CAB-SBC · Decided October 3, 2025

SUMMARY

The Southern District of California grants Noah McMillon’s motion to remand a representative California Private Attorneys General Act action against O’Reilly Auto Enterprises, LLC. The court holds that Defendant failed to establish by a preponderance of the evidence that the amount in controversy exceeded \$75,000, applying pro rata treatment to PAGA penalties and attorney fees, and declines to award removal-related attorney fees.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Cathy Ann Bencivengo
JURISDICTION	United States District Court for the Southern District of California
DECIDED	October 3, 2025
DOCKET	3:25-cv-01357-CAB-SBC
DISPOSITION	remanded
PROCEDURAL POSTURE	Plaintiff moved to remand a California Private Attorneys General Act representative action removed by Defendant on diversity-jurisdiction grounds.
STANDARD OF REVIEW	The removing defendant bears the burden of establishing federal subject matter jurisdiction by a preponderance of the evidence. When the amount in controversy is contested, the court examines the complaint and may consider summary-judgment-type evidence; the defendant's calculations may not rest on unreasonable or speculative assumptions.
PRECEDENTIAL VALUE	unpublished district-court opinion
PARTIES	O’Reilly Auto Enterprises, LLC v. Noah McMillon

TOPICS

- subject matter jurisdiction
- civil procedure
- wage and hour
- flsa
- attorney fees

PRACTICE AREAS

civil procedure

employment law

wage and hour

remedies

QUESTIONS PRESENTED

1. Whether Defendant established by a preponderance of the evidence that the amount in controversy exceeded \$75,000 for purposes of diversity jurisdiction.
2. Whether PAGA civil penalties and attorney fees attributable to other aggrieved employees or the Labor and Workforce Development Agency could be aggregated with Plaintiff's individual share to satisfy the amount-in-controversy requirement.
3. Whether *Viking River Cruises, Inc. v. Moriana* required the court to treat Plaintiff's individual PAGA claim and associated attorney fees as independently recoverable for amount-in-controversy purposes.
4. Whether Plaintiff was entitled to attorney fees and costs incurred in obtaining remand.

HOLDINGS

1. Defendant failed to establish by a preponderance of the evidence that the amount in controversy exceeded \$75,000 because only Plaintiff's pro rata share of the PAGA penalties and attorney fees could be considered, and the resulting amount was well below the jurisdictional threshold.
2. The 65% share of PAGA penalties payable to the Labor and Workforce Development Agency should not be aggregated with Plaintiff's share when calculating the amount in controversy.
3. *Viking River Cruises, Inc. v. Moriana* does not require aggregation of Plaintiff's individual PAGA penalties or attorney fees in this remand proceeding.
4. Plaintiff was not entitled to attorney fees and costs incurred in seeking remand because Defendant had an objectively reasonable, colorable basis for removal.

KEY QUOTATIONS

“The Ninth Circuit has clearly held that only the PAGA penalties attributable to a plaintiff may be considered in calculating the amount in controversy.” (at 7)

“The Court finds that only Plaintiff’s pro rata share of attorney fees should be considered for purposes of determining the amount in controversy.” (at 12)

*“The Court holds that *Viking River* does not apply, and the Court must first rule on the question of subject matter jurisdiction.”* (at 13)

“For the foregoing reasons, the Court holds Defendant has not met its burden of establishing by a preponderance of evidence in this case that the amount in controversy meets the \$75,000 jurisdictional requirement.” (at 14)

FACTUAL BACKGROUND

Plaintiff worked as an hourly store manager for Defendant in California from approximately July 2021 through November 2024. He alleged that Defendant required him and other nonexempt employees to work off the clock,

failed to pay minimum and overtime wages and certain wage premiums, issued inaccurate wage statements, and failed to reimburse business expenses. Plaintiff brought the action under PAGA on behalf of himself and other aggrieved California employees and the State of California.

PROCEDURAL HISTORY

Plaintiff filed a representative PAGA action in the Superior Court of California, County of San Diego. Defendant removed the action under 28 U.S.C. §§ 1332(a), 1441, and 1446, asserting complete diversity and an amount in controversy exceeding \$75,000. Plaintiff moved to remand, and the district court granted the motion, remanding the action to state court and denying Plaintiff's request for removal-related attorney fees.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The action is remanded to the Superior Court of California, County of San Diego. Plaintiff's request for attorney fees and costs associated with the remand motion is denied.

CASES CITED

- Baumann v. Chase Investment Services Corp., 747 F.3d 1117, 1119 (9th Cir. 2014)
- Urbino v. Orkin Services of California, Inc., 726 F.3d 1118, 1121–22 (9th Cir. 2013)
- Becerra-Zamora v. Gruma Corp., No. 24-CV-01076-WHO, 2024 WL 3338353, at *2 (N.D. Cal. July 8, 2024)
- Gunther v. Alaska Airlines, Inc., 72 Cal. App. 5th 334, 357 (Ct. App. 2021)
- Smith v. Mail Boxes, Etc., 191 F. Supp. 2d 1155, 1158 (E.D. Cal. 2002)
- Caterpillar Inc. v. Williams, 482 U.S. 386, 392 (1987)
- Magnum Property Investments, LLC v. Pfeiffer, No. 18-CV-02855, 2019 WL 459194, at *2 (S.D. Cal. Feb. 6, 2019)
- Anderson v. Starbucks Corp., 556 F. Supp. 3d 1132, 1135 (N.D. Cal. 2021)
- Ibarra v. Manheim Investments, Inc., 775 F.3d 1193, 1197 (9th Cir. 2015)
- Singer v. State Farm Mutual Automobile Insurance Co., 116 F.3d 373, 377 (9th Cir. 1997)
- Martinez v. Sunnova Energy Corp., No. 2:24-cv-06346, 2025 WL 732350, at *5 (C.D. Cal. Mar. 7, 2025)
- Coffin v. Magellan HRSC, Inc., No. 19-CV-2047-BAS-NLS, 2020 WL 773255, at *5–6 (S.D. Cal. Feb. 18, 2020)
- Ruiz v. Snyder's-Lance, Inc., No. 24-CV-04053-RFL, 2024 WL 4295280, at *2 (N.D. Cal. Sept. 24, 2024)
- Sloan v. IHG Management (Maryland) LLC, No. CV 19-21-DMG (JCX), 2019 WL 1111191, at *2 (C.D. Cal. Mar. 11, 2019)
- Canela v. Costco Wholesale Corp., 971 F.3d 845, 848, 850 (9th Cir. 2020)
- Viking River Cruises, Inc. v. Moriana, 596 U.S. 639, 640, 654–55 (2022)

- Butt v. 9W Halo West Opco, L.P., No. 2:22-CV-02012 WBS AC, 2023 WL 196472, at *3 (E.D. Cal. Jan. 17, 2023)
- Bell v. DeVry University, Inc., No. 25-CV-595-RSH-BLM, 2025 WL 1453842, at *4 (S.D. Cal. May 21, 2025)
- Fritsch v. Swift Transportation Co. of Arizona, LLC, 899 F.3d 785, 796 (9th Cir. 2018)
- Higginbotham v. South East Employee Leasing Services, Inc., No. 2:20-cv-00575-KJM-DB, 2020 WL 5535421 (E.D. Cal. Sept. 15, 2020)
- Martin v. Franklin Capital Corp., 546 U.S. 132, 141 (2005)
- Lopez v. FedEx Office and Print Services, Inc., 3:23-cv-02155-JO-SBC (S.D. Cal. Jan. 31, 2024)

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