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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 11-1372 DOC (JCx) Date: April 15, 2011

Title: MIKE RUTTI et. al. v. LOJACK CORPORATION INC. et. al.

PRESENT:

THE HONORABLE DAVID O. CARTER, JUDGE

Julie Barrera	Not Present
Courtroom Clerk	Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:	ATTORNEYS PRESENT FOR DEFENDANTS:
NONE PRESENT	NONE PRESENT

PROCEEDING (IN CHAMBERS): GRANTING PLAINTIFFS' MOTION TO REMAND

Before the Court is a Motion to Remand filed by Plaintiffs Mike Rutti et. al. ("Plaintiffs") in the above-captioned case ("Motion to Remand") (Docket 40). The Court finds this matter appropriate for decision without oral argument. Fed.R.Civ. P. 78; Local Rule 7-15. After considering the moving, opposing and replying papers thereon, and for the reasons explained below, the Court GRANTS the Motion to Remand.

I. BACKGROUND

Plaintiffs allege that Defendant violated California wage and hour laws, including failure to provide meal and rest breaks, failure to pay wages, failure to reimburse business expenses, violations of California's Unfair Competition Law, minimum wage violations, and a cause of action under California's Private Attorneys General Act ("PAGA").

Plaintiffs initially filed their claims for violations of the California Labor Code, along with a claim under the federal Fair Labor Standards Act, as a federal action in front of the instant Court (SACV 06-350 DOC (RNBx)) ("Rutti I"). On August 16, 2007, the Court granted summary judgment as to all federal law causes of action in the complaint, leaving only the claims under the California

Labor Code.[1] Subsequently, on August 24, 2007, the Court issued an Order to Show Cause as to why the remaining California law claims should not be dismissed for lack of subject matter jurisdiction. After receiving no arguments from either party in favor of federal subject matter jurisdiction, the Court dismissed the remaining California state law claims for lack of subject matter jurisdiction.

On November 20, 2007, Plaintiffs Rutti and Anaya filed the instant class action in the Los Angeles County Superior Court asserting the same state law claims that had previously been dismissed for lack of subject matter jurisdiction by this Court and adding the PAGA claim as well as a few new claims under the California Labor Code ("Rutti II"). On January 2, 2008, Defendant filed its First Notice of Removal in Rutti II, asserting federal subject matter jurisdiction pursuant to the Class Action Fairness Act ("First Removal Attempt"). The Court rejected Defendant's First Removal Attempt, finding that Defendant had not met its burden of showing that the amount in controversy in Rutti II exceeded $5 million. The Court further expressed concern about the procedural gamesmanship that Defendant's actions exhibited, noting that Defendant declined to assert CAFA jurisdiction in response to the Court's Order to Show Cause in Rutti I, deciding instead to wait until Plaintiffs had filed a new action in state court.

On February 14, 2011, Defendants tried once again to remove Rutti II to federal court, citing allegedly newly discovered evidence regarding the amount in controversy. Plaintiffs bring the instant Motion to Remand.

II. LEGAL STANDARD

a. Remand

Remand may be ordered for lack of subject matter jurisdiction or any defect in the removal procedure. 28 U.S.C. § 1447(c). A defendant may remove a state action only if the plaintiff could have originally filed the action in federal court. *See* 28 U.S.C. § 1441. "The burden of establishing federal jurisdiction is on the party seeking removal, and the removal statute is strictly construed against removal jurisdiction." *Prize Frize, Inc. v. Matrix (U.S.), Inc.*, 167 F.3d 1261, 1265 (9th Cir. 1999); *see Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). Where there is a doubt regarding the right to removal, "a case should be remanded to state court." *Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1091 (9th Cir. 2003) (citing *Gaus*, 980 F.2d at 566).

b. Class Action Fairness Act

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[1]The Court's grant of summary judgment was appealed to the Ninth Circuit. The Ninth Circuit affirmed in part and reversed in part the Court's order granting summary judgment and remanded a portion of Plaintiffs' claims under the Fair Labor Standards Act for further proceedings.

Under the Class Action Fairness Act ("CAFA"), "the district courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of $5,000,000.00," the action is a class action, and "any member of a class of plaintiffs is a citizen of a State different from and defendant." 28 U.S.C. § 1332(d)(2).

III. DISCUSSION

a. Motion to Remand

The parties do not agree on the burden of proof that Defendant bears in attempting to prove that the amount in controversy exceeds $5 million. Plaintiffs contend that Defendant must prove the required jurisdictional amount to a "legal certainty," whereas Defendant argues that a "preponderance of the evidence" standard applies. The preponderance of the evidence standard applies "[w]here the complaint does not specify the amount of damages sought." *Abrego Abrego v. The Dow Chemical Co.*, 443 F.3d 676, 683 (9th Cir. 2006). "Under this burden, the defendant must provide evidence that it is 'more likely than not' that the amount in controversy" is greater than the jurisdictional minimum. *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 2007). Where a plaintiff, acting in good faith, affirmatively pleads an amount of damages less than the jurisdictional amount, the removing defendant must prove to a legal certainty that the amount in controversy exceeds the amount alleged in the complaint. *Lowdermilk v. U.S. Bank Nat'l Assoc.*, 479 F.3d 994, 988-999 (9th Cir. 2007).

Here, Plaintiffs' Complaint avers that "[t]he total damages for the entire class does not exceed $5,000,000.00." Complaint, Exh. A to Notice of Removal (Docket 1). However, on January 19, 2011, Plaintiffs stated in a discovery response that they did "not agree to place a cap or otherwise limit the damages sought to recover on behalf of the class to $5 million." Decl. of D. Chammas in Support of Notice of Removal ("First Chammas Decl."), Exhs. E-H. Defendants argue that Plaintiffs' discovery response indicates that the jurisdictional allegations in the Complaint were made in bad faith and that, consequently, the preponderance of the evidence standard applies.

Defendants have the better of the argument regarding the appropriate burden of proof. The Court, however, need not conclusively resolve the burden of proof issue because Defendant's attempt at removal fails under either standard. In arguing that the amount in controversy exceeds $5 million, Defendant calculates potential damages using declarations from a non-random sample of class members – specifically, the sixteen proposed class representatives. Defendant assumes, without any stated basis for doing so, that the damages claimed by each absent class member will approximate the damages claimed by the purported class representatives. Defendant's assumption is unsound: the active participation of the purported class representatives in this lawsuit provides reason to believe that the representatives' claims are among the strongest of the class. The Court made a similar point in response to Defendant's First Removal Attempt, where Defendant based its damages projection on extrapolations from the claims of named plaintiff Mike Rutti and on inflated calculations built on

unfounded assumptions. SACV 08-0006 DOC (Jcx), Order Granting First Motion to Remand, June 4, 2008, at 5 ("Defendants have over-broadly interpreted Plaintiffs' allegations in the Third Cause of Action to mean that every single putative plaintiff incurred the exact same expenses as Plaintiff Rutti."); *id.* at 4 (explaining that "Plaintiffs' allegations of 'daily' and 'systemic' violations do not automatically lead to the conclusion that Plaintiffs allege that every Plaintiff missed every rest break and every meal period every single day, or that every Plaintiff had the exact same business expenses as Plaintiff Rutti.")

Defendant points to Plaintiffs' above-described refusal to stipulate to a $5 million damages cap in their discovery response, as well as a past settlement offer by Plaintiffs that exceeded $5 million, as further proof of the amount in controversy. *See* Chammas Decl., Exhs. E-F; Confidential Decl. of D. Chammas in Opposition to Motion to Remand ("Second Chammas Decl."). Although Plaintiffs' discovery response and settlement offer lend some credence to the claim that over $5 million is in issue in this case, this evidence does not suffice to show that it is more likely than not that the CAFA damages minimum is met. Plaintiffs' stated valuation of the case is only one indication of the actual amount in controversy and may be disregarded if it does not appear to reflect a reasonable estimate of the value of the claims. *See Cohn v. Petsmart, Inc.*, 281 F.3d 837, 840 (9th Cir. 2002) ("A settlement letter is relevant evidence of the amount in controversy ***if*** it appears to reflect a reasonable estimate of the plaintiff's claim.") (emphasis added); *id.* (citing *Burns v. Windsor Ins. Co.*, 31 F.3d 1092, 1097 (11th Cir.1994) (stating that a "settlement offer, by itself, may not be determinative, [although] it counts for something.")). Plaintiffs' statements during settlement negotiations or their refusal to estimate a damages cap in response to a discovery request likely reflects little more than puffery, an attempt to take a "hard line" during negotiations, and/or Plaintiffs' counsels' overvaluation of their own claims.

In light of the other evidence in this case revealing the limited nature of Plaintiffs' potential damages – evidence that Defendant has previously cited to this Court in arguing, for example, that Plaintiffs' claims are de minimis under the Fair Labor Standards Act, *see* SACV 06-350 DOC (RNBx), Opposition to Plaintiffs' Motion for Conditional Certification, Nov. 29, 2010 (Docekt 194) – Defendant has failed to prove by a preponderance of the evidence that the amount in controversy in this case exceeds $5 million. Where there is a doubt regarding the right to removal, "a case should be remanded to state court." *Matheson*, 319 F.3d at 1091. Remand is warranted here.

b. Motion for Attorneys Fees

Plaintiffs request that the Court order Defendant to reimburse Plaintiffs for the attorneys fees incurred in fighting Defendant's allegedly "frivolous" removal. The Court declines to do so. "Courts may award attorney's fees [for frivolous removal] only where the removing party lacked an objectively reasonably basis for seeking removal." *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 141 (2005). Although Defendant did not put forth sufficient evidence to prove that the jurisdictional minimum was more likely than not met in this case, Defendant certainly offered enough evidence to

establish an objectively reasonable basis for seeking removal. Accordingly, the request for attorneys fees must be denied.

IV. DISPOSITION

For the reasons stated above, Plaintiffs' Motion to Remand is GRANTED. The instant case is hereby REMANDED to the Los Angeles County Superior Court. Plaintiffs' Motion for attorneys fees is DENIED.

The Clerk shall serve this minute order on all parties to the action.