

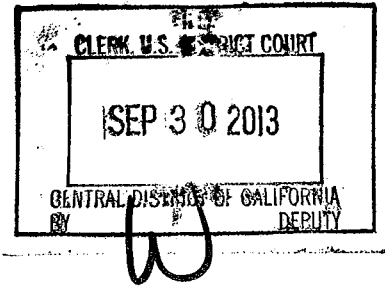
Case 2:13-cv-0534

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

13 RUTH SMITH,  
14 Plaintiff,  
15 vs.  
16 NATIONAL RAILROAD  
17 PASSENGER CORPORATION, a  
18 Corporation, and DOES 1 through 20,  
19 inclusive,  
20 Defendants.

CASE NO. Civ13-5340R (PJWw)  
Hon. Manuel L. Real

**[PROPOSED] ORDER FOR MOTION FOR  
REMAND TO STATE COURT AND  
OPPOSITION TO DEFENDANT'S  
REQUEST FOR REMOVAL TO  
FEDERAL COURT AND MOTION TO  
DISMISS**

Date: September 16, 2013  
Time: 10:00 a.m.  
Court Room: 8 - 2<sup>nd</sup> Floor

Trial Date: None Set

21 The Motion of Plaintiff RUTH SMITH in the above-entitled action, for an Order  
22 pursuant to 28 U.S.C. § 1445(a) remanding the SMITH v. NATIONAL RAILROAD  
23 PASSENGER CORPORATION action BC 511333 to Superior Court of California from  
24 which it was removed, came on for hearing on September 16, 2013.

25 Upon reading and considering the supporting papers filed in connection with  
26 Plaintiff's motion for remand, and defendant's opposition thereto, and it satisfactorily  
27 appearing to the Court that good cause has been shown; the Court makes the following  
28 findings and fact:

1 The Court concludes that on its face of the complaint states sufficient facts to sustain  
2 FELA claim in state court. Importantly, unlike federal pleading, a state -- to state a claimed  
3 under California law the complaint must contain allegations of ultimate facts as opposed  
4 to evidentiary facts which might eventually form a part of plaintiff's proof. *C.A. versus*  
5 *William S. Hart Union High School District*, 53 Cal.4th 861, 12 -- 2012.

6 Plaintiff's complaint in this case does --does state the necessary ultimate facts that  
7 plaintiff was acting in the course and scope of her special employment for defendant while  
8 the defendant was engaged in interstate commerce, that defendant retained and  
9 exercised control over the work performed by plaintiff, that defendant supervised plaintiff's  
10 work while on defendant's premises, and that plaintiff's services were integral to  
11 defendant's business.

12 Further, the Court is not persuaded that the contract between Amtrak and Aramark,  
13 ipse dixit, defines the employment relationship between plaintiff and defendant. There are  
14 many examples of cases where an employment relationship characterized as one thing on  
15 paper turns out to be quite different in fact. *Smith versus Burlington Northern and Santa*  
16 *Fe Railway Company*, 605 F.3d 686, Ninth Circuit 2010.

17 Defendant's appeal to the Court to review a bare contract between Amtrak and  
18 Aramark does nothing to rebut the factual allegations that the defendant controlled,  
19 supervised, and directed plaintiff's employment. Taking those allegations as true, despite  
20 their contrast to the terms of the contract between Amtrak and Aramark, the Court  
21 concludes that defendant has not met its burden to demonstrate that there is possibility that  
22 plaintiff's claim against defendant may be viable in state court.

23 Consequently, defendant has not met its heavy burden to establish that removal is  
24 appropriate. The Court notes, however, that should the defendant prevail against the  
25 plaintiff on the FELA claim in state court, it appears that removal of the remaining claims  
26 would be appropriate.

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For the foregoing reasons, the Court grants plaintiff's motion to remand, denies plaintiff's request for sanctions, denies defendant's motion to dismiss as moot, and remands the case to the Superior Court of the State of California.

IT IS SO ORDERED.

Dated: *Sept. 30, 2013*

  
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Hon. Manuel L. Real

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