

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

CIVIL MINUTES--GENERAL

Case No. CV 15-874 AJW

Date: April 6, 2015

Title: ANTONIO TONY VERA v. CON-WAY FREIGHT, INC., et al.

PRESENT: HON. ANDREW J. WISTRICH, MAGISTRATE JUDGE

Ysela Benavides  
Deputy Clerk

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Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:  
None Present

ATTORNEYS PRESENT FOR DEFENDANTS:  
None Present

**ORDER REGARDING PLAINTIFF'S MOTION TO REMAND**

The complaint alleges three claims. Only the second, for violation of California Labor Code section 1102.5, alleges a claim against defendant Juan Fuentes. No case has held that section 1102.5 creates personal liability for individual employees. Indeed, in what is apparently the only case to decide the issue, the court held that no individual liability exists under section 1102.5 and dismissed without leave to amend the claims against the individual employee defendants. Conner v. Aviation Serv. of Chevron U.S.A., 2014 WL 5768727, \*5 (N.D. Cal. Nov. 5, 2014). The statutory text, structure, and legislative history all indicate that only employers - not individual employees - are liable for violations of the statute. This is broadly consistent with the approach taken by California courts in interpreting similar or related statutes. Therefore, the complaint fails to state a claim against Fuentes. The defect is not remediable, so allowing leave to amend would be futile. This means that Fuentes is a so-called "sham defendant" who must be disregarded for purposes of determining whether diversity of citizenship jurisdiction exists. When Fuentes is set aside, diversity of citizenship is present. For the foregoing reasons, the motion to remand is **denied** and plaintiff's claim against Fuentes is **dismissed**.

**IT IS SO ORDERED.**

cc: Parties

CIVIL-GEN