

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. **CV 17-1234 FMO (KSx)** Date **April 5, 2017**

Title **Adam Mehlman v. Delta Air Lines, Inc., et al.**

Present: The Honorable **Fernando M. Olguin, United States District Judge**

Vanessa Figueroa

None

None

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorney Present for Plaintiff(s):

Attorney Present for Defendant(s):

None Present

None Present

Proceedings: (In Chambers) Order Re: Motion to Remand

Having reviewed and considered all the briefing filed with respect to plaintiff's Motion to Remand [] (Dkt. 12, "Motion"), the court finds that oral argument is not necessary to resolve the Motion, *see* Fed. R. Civ. P. 78; Local Rule 7-15; *Willis v. Pac. Mar. Ass'n*, 244 F.3d 675, 684 n. 2 (9th Cir. 2001), and concludes as follows.

BACKGROUND

On January 13, 2017, plaintiff Adam Mehlman ("Mehlman" or "plaintiff") filed a Complaint in the Los Angeles County Superior Court against Delta Air Lines, Inc. ("Delta" or "defendant") and Does 1 through 100 (collectively, "defendants") asserting a single claim of negligence. (*See* Dkt. 1-1, Complaint at ¶¶ 1-3 & 26-32). Specifically, plaintiff alleges that while in the air during an international flight from Buenos Aires, Argentina to Atlanta, Georgia, a Delta flight attendant "knocked an entire pot of scalding coffee into Plaintiff's lap[,] (*see id.* at ¶¶ 6-7), resulting in first and second degree burns, (*see id.* at ¶ 8), which Delta employees failed to adequately treat during the remainder of the flight. (*See id.* at ¶¶ 9-21).

On February 15, 2017, Delta timely removed the action on the basis of federal question jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1441. (*See* Dkt. 1, Notice of Removal ("NOR") at ¶¶ 1-2). On February 24, 2017, Delta amended the notice of removal on the additional basis of diversity jurisdiction pursuant to 28 U.S.C. §§ 1332 and 1441.¹ (*See* Dkt. 13, Amended Notice of Removal ("ANOR") at ¶ 3). Specifically, Delta contends that federal question jurisdiction exists because plaintiff's negligence claim is completely preempted by the Convention for the Unification

¹ Delta was served with the summons and Complaint on February 2, 2017. (*See* Dkt. 1-2, Proof of Service); 28 U.S.C. § 1446(b)(2)(B) ("[D]efendant shall have 30 days after receipt by or service on that defendant of the initial pleading or summons . . . to file the notice of removal."); *ARCO Envtl. Remediation, L.L.C. v. Dep't of Health & Envtl. Quality of Montana*, 213 F.3d 1108, 1117 (9th Cir. 2000) ("The Notice of Removal cannot be amended to add a separate basis for removal jurisdiction after the thirty day period.") (internal quotation marks omitted).

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of Certain Rules for International Carriage by Air, May 28, 1999 (“Montreal Convention”). (See id. at ¶ 1). Delta alternatively contends that diversity jurisdiction exists because plaintiff is a citizen of California, Delta is a citizen of Delaware and Georgia, and plaintiff claims \$1 million in damages. (See id. at ¶¶ 5-8).

LEGAL STANDARD

“Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute[.]” Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377, 114 S.Ct. 1673, 1675 (1994). The courts are presumed to lack jurisdiction unless the contrary appears affirmatively from the record. See DaimlerChrysler Corp. v. Cuno, 547 U.S. 332, 342 n. 3, 126 S.Ct. 1854, 1861 (2006). Federal courts have a duty to examine jurisdiction sua sponte before proceeding to the merits of a case, see Ruhrgas AG v. Marathon Oil Co., 526 U.S. 574, 583, 119 S.Ct. 1563, 1569 (1999), “even in the absence of a challenge from any party.” Arbaugh v. Y&H Corp., 546 U.S. 500, 514, 126 S.Ct. 1235, 1244 (2006).

“The right of removal is entirely a creature of statute and a suit commenced in a state court must remain there until cause is shown for its transfer under some act of Congress.” Syngenta Crop Protection, Inc. v. Henson, 537 U.S. 28, 32, 123 S.Ct. 366, 369 (2002) (internal quotation marks omitted). Where Congress has acted to create a right of removal, those statutes, unless otherwise stated, are strictly construed against removal jurisdiction. See id. Unless otherwise expressly provided by Congress, “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court[.]” 28 U.S.C. § 1441(a); see Dennis v. Hart, 724 F.3d 1249, 1252 (9th Cir. 2013) (same). A removing defendant bears the burden of establishing that removal is proper. See Abrego Abrego v. The Dow Chem. Co., 443 F.3d 676, 684 (9th Cir. 2006) (per curiam) (noting the “longstanding, near-canonical rule that the burden on removal rests with the removing defendant”); Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992) (“The strong presumption against removal jurisdiction means that the defendant always has the burden of establishing that removal is proper.”) (internal quotation marks omitted). Moreover, if there is any doubt regarding the existence of subject matter jurisdiction, the court must resolve those doubts in favor of remanding the action to state court. See Gaus, 980 F.2d at 566 (“Federal jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance.”).

DISCUSSION

Based on the court's review of the ANOR, the state court Complaint, and the briefing on the Motion, the court finds that defendant has met its burden to establish that removal was proper in this case. Specifically, the court is persuaded that plaintiff could have originally brought this

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action in federal court by competently alleging facts supplying diversity jurisdiction.² See 28 U.S.C. § 1332(a);³ Caterpillar, Inc. v. Williams, 482 U.S. 386, 392, 107 S.Ct. 2425, 2429 (1987) (“Only state-court actions that originally could have been filed in federal court may be removed to federal court by the defendant.”) (footnote omitted).

Here, plaintiff “is a resident in the County of Los Angeles, California.” (Dkt. 1-1, Complaint at ¶ 1). Defendant is a Delaware corporation that has its corporate headquarters in Atlanta, Georgia. (See Dkt. 13, ANOR at ¶ 8 & Exh. D); Daimler AG v. Bauman, 134 S.Ct. 746, 760 (2014) (“With respect to a corporation, the place of incorporation and principal place of business are paradigm bases for general jurisdiction.”) (internal quotation and alteration marks omitted).

With respect to the amount in controversy, Delta has met its burden of proving by a preponderance of the evidence that the amount in controversy meets the \$75,000 jurisdictional threshold. See Valdez v. Allstate Ins. Co., 372 F.3d 1115, 1117 (9th Cir. 2004); Matheson v. Progressive Specialty Ins. Co., 319 F.3d 1089, 1090 (9th Cir. 2003) (*per curiam*) (“Where it is not facially evident from the complaint that more than \$75,000 is in controversy, the removing party must prove, by a preponderance of the evidence, that the amount in controversy meets the jurisdictional threshold. Where doubt regarding the right to removal exists, a case should be remanded to state court.”) (footnotes omitted). Here, the amount of damages plaintiff seeks cannot be determined from the Complaint, as the Complaint does not set forth a specific amount. (See Dkt. 1-1, Complaint at ECF 11) (Prayer for Relief). But during the meet and confer in connection with this Motion, plaintiff advised Delta that if it stipulated to remand the action to state court, plaintiff would “stipulate to damages no more than \$ 1 million.”⁴ (Dkt. 18-1, Declaration of Todd C. Worthe [], Exh. B at ECF 130). Plaintiff’s offer to put a ceiling on his damages in an amount that far exceeds the jurisdictional minimum is sufficient to satisfy defendant’s burden of establishing by a preponderance of the evidence that the amount in controversy meets the jurisdictional threshold.

² Because the court finds that diversity jurisdiction exists, the court need not consider the parties’ arguments regarding federal question jurisdiction. (See Dkt. 12, Motion at 4-9; Dkt. 19, Delta’s Amended Opposition to Motion to Remand at 7-15).

³ In relevant part, 28 U.S.C. § 1332(a) provides that “district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between . . . citizens of different States[.]”

⁴ Plaintiff contends that the \$1 million demand is “presented out of context,” and was made as “frolic and banter” in the midst of settlement discussions. (See Dkt. 20, Reply to Defendant’s Opposition to Remand Matter [] at 4). The court, however, has a difficult time understanding how settlement discussions are an occasion for “frolic and banter.”

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CONCLUSION

This Order is not intended for publication. Nor is it intended to be included in or submitted to any online service such as Westlaw or Lexis.

Based on the foregoing, IT IS ORDERED THAT plaintiff's Motion to Remand (**Document No. 12**) is **denied**.

Initials of Preparer 00 : 00
vdr