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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SINAT CHHAN, an individual, on behalf of)	CASE NO. CV 17-4008-R
himself and all others similarly situated,)	
)	ORDER GRANTING PLAINTIFF SINAT
Plaintiff,)	CHHAN’S MOTION TO REMAND
)	
v.)	
)	
SOUTHERN CALIFORNIA GAS)	
COMPANY, a California corporation;)	
SEMPRA ENERGY, a California)	
corporation; and DOES 1 through 100,)	
inclusive,)	
)	
Defendants.)	
)	

Before the Court is Plaintiff’s Motion to Remand, which was filed on June 29, 2017. (Dkt. No. 16). Having been briefed by both parties, this Court took the matter under submission on August 2, 2017.

“The burden of establishing federal subject matter jurisdiction falls on the party invoking removal.” *Marin Gen. Hosp. v. Modesto & Empire Traction Co.*, 581 F.3d 941, 944 (9th Cir. 2009) (citing *Toumajian v. Frailey*, 135 F.3d 648, 652 (9th Cir. 1998)). There is a “strong presumption against removal jurisdiction,” and courts must reject it “if there is any doubt as to the

1 right of removal in the first instance.” *Geographic Expeditions, Inc., v. Estate of Lhotka ex rel.*
2 *Lhotka*, 599 F.3d 1102, 1107 (9th Cir. 2010).

3 Plaintiff filed the initial complaint in this action on September 23, 2013 in the Superior
4 Court of the State of California for the County of Los Angeles. The complaint alleged ten wage-
5 and-hour causes of action against Defendants. After the parties participated in significant
6 litigation at the state court level, Defendants removed this action to federal court on May 30, 2017,
7 following a ruling by the state court granting Plaintiff’s Motion for Class Certification as to his
8 rest break and minimum wage claims. Defendants based their Notice of Removal on the grounds
9 that Plaintiff’s claims are preempted by Section 301 of the Labor Management Relations Act
10 (“LMRA”). With his Motion, Plaintiff seeks to remand this action on two grounds: (1)
11 Defendants’ removal of this action was untimely; and (2) Defendants’ removal is substantively
12 defective. As the Court concludes that Defendants’ removal was untimely, the Court need not
13 reach Plaintiff’s argument with respect to the alleged substantive defects in Defendants’ Notice of
14 Removal.

15 The time requirements for filing a petition for removal are stated in Title 28 U.S.C. §
16 1446(b). Section 1446 (b)’s “time limit is mandatory and a timely objection to a late petition will
17 defeat removal.” *Fistoe v. Reynolds Metals Co.*, 615 F.2d 1209, 1212 (9th Cir. 1989). Section
18 1446 provides two 30-day windows during which a case may be removed: “during the first thirty
19 days after the defendant receives the initial pleading or during the first thirty days after the
20 defendant receives a paper ‘from which it may be ascertained that the case is one which is or has
21 become removable’ if ‘the case stated by the initial pleading is not removable.’” *Harris v.*
22 *Bankers Life and Cas. Co.*, 425 F.3d 689, 692 (9th Cir. 2005) (quoting 28 U.S.C. § 1146 (b)(3)).

23 Defendants’ removal was untimely because they had all the information necessary to
24 ascertain the purported grounds for removability at least as early as May 20, 2014, when they
25 deposed Plaintiff. As stated above, Defendants argue that removal is appropriate on the grounds
26 that Plaintiff’s claims are preempted by Section 301 of the LMRA. Specifically, Defendants argue
27 that resolution of Plaintiff’s rest period and minimum wage claims requires an interpretation of the
28 relevant collective bargaining agreement.

1 The second 30-day window provided by Section 1446 begins to run when a defendant
2 receives a paper from which it may be ascertained that the case is one which is or has become
3 removable. 28 U.S.C. § 1146 (b)(3). At Plaintiff's May 20, 2014 deposition, Plaintiff testified,
4 among other things, that he was in fact part of a union and that the collective bargaining agreement
5 applied to his employment. Thus, Defendants had the information necessary to ascertain their
6 grounds for removability on that date. Indeed, subsequent to Plaintiff's deposition, Defendants
7 filed a Motion for Summary Judgment on October 31, 2014, arguing, among other things, that
8 Plaintiff's rest break and minimum wage claims were preempted by Section 301 of the LMRA.
9 Defendants' contention that their 30-day window did not begin to run until Judge Maren Nelson's
10 April 27, 2017 Order Granting Class Certification is without merit. Accordingly, because
11 Defendants were put on notice of removability on May 20, 2014, their Notice of Removal, filed
12 over three years later, is untimely.

13 Finally, the Court declines to grant Plaintiff's request for attorney's fees under Section
14 1447(c). Each party shall bear their own costs.

15 **IT IS HEREBY ORDERED** that Plaintiff's Motion to Remand is GRANTED. (Dkt. No.
16 16). The instant action is hereby REMANDED to the Superior Court of the State of California for
17 the County of Los Angeles.

18 Dated: August 29, 2017.



21 MANUEL L. REAL
22 UNITED STATES DISTRICT JUDGE