

JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. 2:17-CV-04671-RGK-PJW

Date July 25, 2017

Title *Abelardo Morales v. Service King Paint and Body, LLC et al.*

Present: The Honorable R. GARY KLAUSNER, UNITED STATES DISTRICT JUDGE

Sharon L. Williams

Not Reported

N/A

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendant:

Not Present

Not Present

Proceedings: (IN CHAMBERS) Order Re: Order Remanding Action to State Court

On May 16, 2017, Abelardo Morales (“Morales”) filed a class action, on behalf of himself and others similarly situated, against Service King Paint and Body, LLC (“Service King”) for violations of California’s Unfair Competition Law, failure to pay overtime wages, failure to provide accurate itemized statements, failure to reimburse employees for required expenses, and failure to provide wages when due.

On June 23, 2017, Service King removed this action to federal court alleging CAFA jurisdiction. Upon review of Service King’s Notice of Removal, the Court hereby remands the action for lack of subject matter jurisdiction.

Pursuant to 28 U.S.C. § 1332(d)(2), district courts shall have original jurisdiction over any civil action in which (1) any member of the class of plaintiffs is a citizen of a state different from any defendant; and (2) the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interests and costs. After a plaintiff files a case in state court, the defendant attempting to remove the case to federal court bears the burden of proving the amount in controversy requirement has been met. *Lowdermilk v. United States Bank Nat’l Ass’n*, 479 F.3d 994, 998 (9th Cir. 2007). If the complaint does not allege the amount in controversy, the removing defendant must supply this jurisdictional fact in the Notice of Removal. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566-567 (9th Cir. 1992).

Service King has reached the amount in controversy by making significant assumptions in its calculations. First, Service King assumes that every class member within the three-year statutory period is entitled to waiting time penalties, therefore reaching \$2,577,616 in possible damages. However, Morales’ Complaint states that the class would only seek waiting time penalties for members of the class who are owed minimum and/or overtime compensation. (Pl. Compl. ¶ 69.) Service King has provided no evidence as to how many members of the class would be owed minimum and/or overtime compensation and, thus, has not provided an accurate basis for calculating how much potential waiting time penalties would be.

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Service King also assumes that each member of the class suffered two rest period violations and one meal period violation per week within the four year statutory period. By doing this, Service King estimated \$2,461,974 in possible damages. Service King has provided no basis, from Morales' Complaint or any evidentiary sources of its own, to assume these violations happened once or twice every week for each class member. In fact, Morales' Complaint alleges these violations only happened "from time to time." (Pl. Compl. ¶ 10-11.)

Lastly, Service King gave no calculation of attorney's fees which have accrued so far and, again, only made bare assumptions towards anticipated attorney's fees. Service King reached their \$1,335,735 attorney's fees calculation taking 25% of their estimated amount in controversy. However, the Court has already determined that this amount in controversy estimation was based on assumptions that have not been established by evidence or Morales' Complaint. Thus, any attorney's fees calculation based on Service King's amount in controversy calculation is also based on unfounded assumption.

In short, Service King asks the Court to make broad assumptions as to the applicable number of class members and frequency of waiting time violations and meal and rest period violations. Additionally, Service King asks the Court to include attorney's fees that were based on these assumptions. The Court, however, cannot base jurisdiction on Service Kings' speculation and conjecture. *Lowdermilk* at 1002 (2007). The only calculation Service King has given reliable evidence for is for wage statement penalties, which total to only \$303,350. This amount is well under the amount in controversy requirement and, without any basis for calculating waiting time and rest period violations, Service King has failed to meet its burden.

In light of the forgoing, the action is hereby **remanded** to the state court for all further proceedings.

IT IS SO ORDERED.

Initials of Preparer

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