

JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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CIVIL MINUTES - GENERAL

CASE NO.: EDCV 17-00951 SJO (DTBx) DATE: July 27, 2017

TITLE: Mohammad Chowdhury v. Actavis Pharma, Inc., et al.

PRESENT: THE HONORABLE S. JAMES OTERO, UNITED STATES DISTRICT JUDGE

Victor Paul Cruz Not Present
Courtroom Clerk Court Reporter

COUNSEL PRESENT FOR PLAINTIFF: COUNSEL PRESENT FOR DEFENDANTS:

Not Present Not Present

PROCEEDINGS (in chambers): ORDER SUA SPONTE REMANDING CASE TO THE SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF RIVERSIDE

This matter is before the Court on its own motion. On March 10, 2017, Plaintiff Mohammad Chowdhury ("Plaintiff") filed the action in the Superior Court of California for the County of Riverside. (See generally Notice of Removal ("Removal") ¶ 1, ECF No. 1, Ex. 1 Compl. ("Compl."), ECF No. 1-1.) In his Complaint, Plaintiff alleges seven causes of action under the California Government Code and public policy associated with harassment, discrimination, retaliation, and wrongful termination on the basis of age and race. (See generally Compl.) Defendants timely removed the action to this Court on May 16, 2017 on the basis of diversity jurisdiction pursuant to 28 U.S.C. § 1332. (Removal ¶ 7.)

"If at any time before final judgment it appears that the district court lacks subject matter jurisdiction," it must remand the case. 28 U.S.C. § 1447(c). "[A] court may raise the question of subject matter jurisdiction, sua sponte, at any time during the pendency of the action." Snell v. Cleveland, Inc., 316 F.3d 822, 826 (9th Cir. 2002). Courts must "strictly construe the removal statute against removal jurisdiction" and reject federal jurisdiction "if there is any doubt as to the right of removal in the first instance." Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992) (citations omitted). "The strong presumption against removal jurisdiction means that the defendant always has the burden of establishing that removal is proper." Id. (citation and internal quotation marks omitted).

Diversity jurisdiction exists when "the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs, and is between . . . citizens of different States." 28 U.S.C. § 1332(a)(1). "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." Matheson v. Progressive Specialty Ins. Co., 319 F.3d 1089,1090 (9th Cir. 2003); accord Valdez v. Allstate Ins. Co., 372 F.3d 1115, 1117 (9th Cir. 2004).

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Here, Plaintiff seeks damages for medical expenses, loss of earnings, loss of earning capacity, reasonable attorneys' fees and costs, and punitive damages, but the Complaint does not allege on its face any specific amounts. (See *generally* Compl., Prayer for Relief; Removal ¶ 19.) Notably, Plaintiff alleges that he was a Director of Lab Operations at the time of his termination, but does not allege his salary amount. (Compl. ¶ 5.) Without any supporting evidence, such as through a declaration, Defendants argue that Plaintiff's annual salary was \$180,471.46 as of November 13, 2015, such that his alleged lost earnings to present (17 months) total \$255,667. (Removal ¶ 20a.) The remainder of Defendant's Notice of Removal, in which they argue that Plaintiff's emotional distress, punitive damages, and attorneys' fees requests exceed \$75,000, is also unsupported. Defendants cite cases where sufficient emotional and punitive damages were awarded, but make no effort to analogize the facts in those cases with the instant facts; Defendants simply note that they involved age- and race-based discrimination, retaliation, harassment, and wrongful termination. (See Removal ¶ 20b-d.) Finally, Defendants cannot show that it is more likely than not that the threshold amount is met simply because the case was filed in the unlimited jurisdiction of the state court. (Removal ¶ 18.) In sum, Defendants fail to show, by a preponderance of the evidence, that the threshold amount in controversy is met.

Accordingly, the Court **REMANDS** this action to the Superior Court of California for the County of Riverside. This action shall close.

IT IS SO ORDERED.